From Pariah to Parrhesiastes: Reconceptualising the Whistleblower in a Complex World

by
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Declaration

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Abstract

This thesis commences with an exploration of the ethics of whistleblowing as traditionally understood, describing the ethical dilemma at its centre: remaining loyal to one's organisation, against alerting society to organisational wrongdoing that threatens its welfare. The positions on several problematic issues in the literature, such as dissent, organisational retaliation, whistleblower motive, and mandatory whistleblowing will be presented and evaluated. The key internal/external disclosure dichotomy within whistleblowing will also be critically examined. The purported solutions to these issues, as well as whistleblowing's central dilemma, will be shown to remain unsatisfactory. This will be attributed to the adoption of an Enlightenment rules-based approach to ethics in general, which underpins and informs the ethics of whistleblowing in particular. An Enlightenment rules-based approach seeks to posit universal and immutable ethical standards that transcend context.

As corrective to the above failings, the ethics of whistleblowing will be investigated from the view that seeks to understand whistleblowing as a historically determined and culturally mediated social practice. Within the contexts of the USA and South Africa it will be demonstrated that key whistleblowing issues (and even the central whistleblowing dilemma of divided loyalties) cannot be cast in immutable and universal terms, and are influenced by the contingencies that accompany them. An attempt will then be made to understand whistleblowing in the context of the globalisation of the last thirty years, which will prove more difficult. This will be undertaken through an analysis of Vandekerckhove's project, which seeks to place the normative legitimisations of whistleblowing legislation and organisational whistleblowing policies within a globalisation semantic able to contain the conflict between society and the organisation. This will be shown as ill-conceived because of Vandekerckhove's particular understanding of the organisation as an operationally closed system.

Moving the argument forward will be undertaken at the hand of Critical Complexity theory which attempts to make the case for understanding the organisation as an open system. This will allow us to recast corporate responsibility as relational responsiveness to a particular stakeholder, which in turn will allow flexibility in terms of who qualifies as a recipient of a disclosure of wrongdoing. Consequently the internal/external disclosure dichotomy will be proved unsustainable. Further opening up the organisation will render the boundary with

society meaningless, as it will be shown that the identity of society and organisation are inextricably tied together. As such, the notion of society versus the organisation will disappear, and whistleblowing will be reconceptualised as loyalty to *both* society and the organisation simultaneously, thus rendering the central dilemma of whistleblowing obsolete.

Opsomming

Hierdie tesis begin met 'n studie van die etiese kwessies rakende fluitjieblasers soos dit tradisioneel verstaan word, en beskryf die sentrale etiese dilemma – om lojaal te bly tot die organisasie, teenoor om die gemeenskap in te lig oor die organisatoriese oortredings wat die welvaart van die gemeenskap bedreig. Die verskillende menings ten opsigte van verskeie problematiese kwessies in die literatuur soos verdeeldheid, organisatoriese vergelding, motief van die fluitjieblaser en verpligte fluitjieblaas sal aangebied en gëevalueer word. Die hoof vraag of 'n openbaring van informasie wat binne of buite die organisasie gebeur as fluitjieblaas beskou kan word, word ook krities ondersoek. Die voorgestelde oplossings tot hierdie kwessies, sowel as die fluitjieblaser se kerndilemma, is onbevredigend en sal dus onderskryf word deur die aanvaarding van 'n reëls-gebaseerde Verligtingsbenadering tot etiek in die algemeen, wat deur die etiek van fluitjieblaas spesifiek, ondersteun en ingelig word. 'n Reëls-gebaseerde Verligtingsbenadering poog om universele en onveranderlike etiese standaarde, wat konteks oorbrug, te postuleer.

As korreksies tot die bogenoemde tekortkominge, sal die etiek van fluitjieblaas ondersoek word vanuit 'n benadering wat poog om fluitjieblaas as 'n histories bepaalde en versoenbare sosiale praktyk te verstaan. Binne die konteks van die VSA en Suid-Afrika, sal dit gedemonstreer word dat sleutel fluitjieblaas kwessies, en selfs die sentrale fluitjieblaas dilemma van verdeelde lojaliteit, nie binne onveranderlike en universele terme gegroepeer kan word nie, en dat hierdie kwessies beïnvloed word deur die gebeurlikhede wat daarmee gepaard gaan. 'n Poging sal aangewend word om fluitjieblaas binne die konteks van globalisering in die afgelope 30 jaar te verstaan, wat meer kompleks sal wees. Dit sal gedoen word deur 'n analise van Vandekerckhove se projek, wat poog om die normatiewe legitimering van fluitjieblaas wetgewing en organisatoriese fluitjieblaas beleide in 'n globale semantiek te plaas, ten einde om die konflik tussen die gemeenskap en die organisasie te verminder. Dit sal bewys word dat hierdie projek nie deurdag is nie, as gevolg van Vandekerckhove se bepaalde begrip van organisasies as 'n operasionele geslote sisteem.

Die argument sal verder onderskryf word aan die hand van die Kritiese Kompleksiteitsteorie, wat die organisasie as 'n oop sisteem beskryf. Dit sal ons toelaat om korporatiewe verantwoordelikheid as 'n reaksie in 'n verhouding met 'n spesifieke belanghebbende te beskryf, wat weer op sy beurt ons sal toelaat om buigsaam te wees in die kwalifisering van wie as 'n ontvanger van 'n onthulling van oortredings geïdentifiseer moet word. Gevolglik sal

die onderskeid tussen 'n interne en eksterne openbaring van informasie as onvolhoubaar bewys word. As die organisasie oper gemaak word, sal dit die grens met die gemeenskap betekenisloos maak, omdat, soos bewys sal word, die identiteit van die organisasie en gemeenskap onlosmaaklik vas is aan mekaar. So sal die konsep van gemeenskap teenoor die organisasie verdwyn, en sal fluitjieblaas geherkonsepsualiseer word as gelyktydige lojaliteit tot beide die gemeenskap en die organisasie, wat die sentrale dilemma van fluitjieblaas sal uitskakel.

Dedication

This thesis is dedicated to my partner Bronwyn de Beer. Thank you for your unwavering support and faith in me; this thesis represents the culmination of your continuous encouragement. Your love is the anchor in my life.

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To my promoter, Dr. Minka Woermann, whose impeccable standards both inspired and drove me to achieve standards of excellence I would not otherwise have achieved. Thank you.

Contents

Introduction

1. The whistleblower as pariah: setting the context

Even during whistleblowing's finest hour, when *Time* magazine, in 2002, named three whistleblowers as their persons of the year, following the corporate governance scandals of the early 2000s in corporate America, exemplified by the spectacular financial implosion of Enron, the ambivalent attitudes associated with whistleblowing were hard to overcome. In an interview conducted with the three whistleblowers - Cynthia Cooper, Coleen Rowley, and Sherron Watkins - both Cooper and Rowley stated that they hated the term 'whistleblower'; Cooper said it was too much like 'tattletale' (Layco and Ripley 2002). Those ambivalent attitudes are also evidenced in the titles of papers in the academic literature: 'The Whistleblower: Patriot or Bounty Hunter?' (Singer 1992); 'Whistleblowers: Saint or Snitch?' (Anonymous 1992); 'Whistleblowers: Heroes or Stool Pigeons?' (Fiesta 1990); 'Whistleblowing: Subversion or Corporate Citizenship?' (Johnson 1996).

The ambivalence whistleblowing provokes stems from the central dilemma of divided loyalties at the heart of the ethics of whistleblowing. On the one side are those who argue that employees owe their allegiance, first and foremost, to the organisation which provides them with a livelihood. Ravishankar (2003) mentions an arbitrator, in a case from 1972, whose rebuke sums up this sentiment, "you cannot bite the hand that feeds you and insist on staying on for the banquet." In other words, whistleblowing is an act of disloyalty against the organisation. Whistleblowers then are rightly regarded as pariahs. A pariah can be defined as a social outcast; in blowing the whistle the whistleblower is cast out from the organisation in order that the organisation retains its prerogative to define its actions.   Furthermore, the implication is that the whistleblower should expect that this act of disloyalty will result in being expelled from the organisation; or worse. Some have gone further in their criticism of whistleblowing, arguing that it undermines the very basis of Capitalism. In a now infamous quote James Roche (1971), then chairman of the board of General Motors, stated that:

> Some critics are now busy eroding another support of free enterprise - the loyalty of a management team, with its unifying values of cooperative work. Some of the enemies of business now encourage an employee to be disloyal to the enterprise. They want to create suspicion and disharmony, and pry into the propriety interests of the business. However this is labelled - industrial espionage, whistleblowing, or professional

responsibility - it is another tactic for spreading disunity and creating conflict (Roche 1971, in Clark 1997: 1071).

On the other side of the whistleblowing dilemma of divided loyalties are those who argue that the public interest overrides the interests of the organisation, and that when organisational wrongdoing threatens harm to society then whistleblowing is justified; even an act that should be encouraged. The problem is that even when whistleblowing is justified the organisation retaliates against the whistleblower. This reflexive action can be traced back to the organisational belief that "their outfits would have quietly righted all wrongs if only they had been given time" (Layco and Ripley 2002: 2). The Enron debacle disproved this cynical hope - given more time, those responsible did not try to right their wrongs, but instead hastened their looting of the organisation, speeding up its demise.

Society has come to recognise that in order to expect the whistleblower's warning, it must offer it its protection. To that end, legislation which aims to protect the whistleblower against organisational retaliation has been enacted around the world. Whistleblowing has become institutionalised, set down in official organisational whistleblowing policies (created in response to that legislation.) These lay out the procedures a would-be whistleblower must follow in making a disclosure, and the conditions which allow a whistleblower to claim protection against retaliation: his/her motives in disclosing must be moral, s/he must be able to produce sufficient evidence of wrongdoing, s/he must disclose to a particular person; if not the disclosure is unethical and does not qualify as a protected disclosure. As Alford (2001: 112) remarks, "in the realm of whistleblower protection, procedure is king."

This insistence on procedure undermines the hope that institutionalising whistleblowing will be able to eliminate the conflict between organisation and society. Alford (133) continues, "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 perpetuate the problem … transforming whistleblowing into deviance." In other words, if the institutionalisation of whistleblowing focuses primarily on the whistleblower and not the organisation, specifically the organisation in society, then the whistleblower will continue to be seen as a pariah.

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 deemed not to be part of the organisation. This

internal/external dichotomy mirrors, at a procedural level, the central dilemma within the ethics of whistleblowing: internal disclosure is seen as an act of loyalty to the organisation, while external disclosure amounts to putting the public interest first. The former allows the organisation to right its wrongs before being subjected to the scrutiny of the public. External disclosure amounts to a declaration that the public interest is so vitally threatened that any delay in making that information known is inexcusable, even if that haste is to the detriment of 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 not, and as such who is privy to information that may affect his/her interests? The whistleblower who discloses 'externally' is thus a "boundary violator" (99), "someone from the inside [who] represents the interests of the outside" (129). What this organisational fear - of having its boundaries violated - represents, is the more general organisational distrust of dissent: if we do not all agree on which corporate activities constitute a public harm, or do not all agree that a particular 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. Thus, "… the whistleblower does not necessarily need to go public to get into trouble because once he mentions his or her concerns he or she already is the public inside the organisation"(130). In other words, from the perspective of the organisation, what is of more concern than whether the would-be whistleblower discloses information concerning wrongdoing internally or externally, is that the would-be whistleblower describes a particular corporate act as wrongdoing in the first place.

2. Conceptualising the whistleblower as *parrhesiastes*: goals of the thesis

One of the goals of this thesis is to reconceptualise whistleblowing such that dissent, which some theorists (Jubb 1999, Bok 1980) argue is fundamental to the notion of whistleblowing, can be accommodated within the organisation. Accommodating dissent will be explored under the notion of 'normative congruence'. If the attempt to accommodate dissent proves successful then we will be on our way to dispelling the notion of whistleblowing as an act of organisational disloyalty. In the process we will come to "provide a legitimate - if dangerous - social identity for the person who speaks fearlessly" (Jones *et al*.2005: 120). Providing a legitimate social identity for the whistleblower constitutes another goal of this thesis: to reconceptualise the identity of the whistleblower from a pariah to a *parrhesiastes*. The

ancient Greek *parrhesiastes* was one who spoke fearlessly - a truth-teller regardless of the consequences. This reconceptualisation of the whistleblower seeks to acknowledge the political dimension inherent in the whistleblowing act - an act which seeks to change the way the organisation conducts itself, and more importantly the way the organisation understands its place in society.

The identity of the whistleblower as *parrhesiastes* will be tied to the identity of the organisation, understood as an open system. The organisation as an open system will see the boundaries of the organisation as flexible and the strict demarcation between the organisation and the stakeholders in its environment as no longer possible. The central premise of this thesis is that if we can understand the organisation as an open system then the internal/external disclosure dichotomy is void.

The central challenge then is to make a viable case for understanding the organisation as an open system. This will be undertaken at the hand of Critical Complexity theory. Critical Complexity will allow us to conceive of the boundaries of the organisation in a new way: as fluid, not fixed, open to it's environment. The nature of corporate identity that will emerge from our understanding of organisations as complex, open systems will have profound implications for our notions of corporate responsibility. Corporate responsibility will be recast as 'relational responsiveness'. This relational responsiveness - toward a stakeholder who may be affected by a corporate action - will facilitate the process of making the organisation's boundaries flexible, in particular with reference to the distinction between internal and external disclosure.

It will also be argued that Critical Complexity allows us to reframe the boundaries between organisation and society. Such a reframing, which seeks to understand the identity of society and the organisation as coterminous - (i.e. the identities arise and die together) allows us to achieve this thesis' central goal - to dissolve the central whistleblowing dilemma of conflicting loyalties. If the identity of society and the organisation are coterminous then there can be no society *versus* organisation. This thesis' central claim, then, is that Critical Complexity, in opening up the boundaries of the organisation, allows us to understand the whistleblowing act as an act of loyalty to *both* the organisation and to society simultaneously.

Facilitating the process of reframing the boundaries between the organisation and society is an understanding of 'ethics as practice'. Ethics as practice eschews a rules-based approach to moral problem solving and "remain[s] fully engaged with the concrete contingencies and

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dynamics of the world" (Painter-Morland 2008: 87). A rules-based approach finds its grounding in the ideals of the Enlightenment. Ethical theories grounded in the Enlightenment seek to posit universal and immutable ethical principles to guide moral action. Enlightenment theories also posit a moral agent capable of transcending his/her circumstances to make a rational and objective moral decision. It will be shown that such Enlightenment ethical theories fail to satisfactorily address ethical dilemmas in general, and the whistleblowing dilemma in particular. Moving toward a more acceptable ethics of whistleblowing then entails a sensitivity to context, and to understanding whistleblowing "… as an historically determined, institutionally shaped, culturally mediated social practice", which is "constituted in and through the social order that generates them, the discourses that articulate them and the subject positions which realize them" (Perry 1998: 239). This thesis will thus advocate abandoning Enlightenment ethical theories, such as Kantianism and Utilitarianism, and adopting an ethics of whistleblowing that incorporates Perry's and Painter-Morland's insights.

A further failure of Enlightenment ethical theories to satisfactorily deal with the internal/external disclosure dichotomy, or the whistleblowing dilemma of divided loyalties, can be attributed to their particular understanding of moral agency. Enlightenment ethical theories assume that a direct causal relationship can be established between a moral agent and a resultant action. This assumption, in the context of whistleblowing, means that a direct causal relationship between an act of corporate wrongdoing and a particular employee, or group of employees can be established, and thus someone, or some corporate policy or procedure, can be held responsible. Again, Critical Complexity will allow us to disregard such fallacious assumptions and posit an alternative notion of moral agency that supports this thesis' central goal.

3. Structure of the thesis

This thesis proceeds in three parts. In chapter 1, we unpack the standard notions of the ethics of whistleblowing. We start by considering how to define whistleblowing, choosing to adopt Jubb's (1999) formulation, which neatly distills whistleblowing into six essential elements: action; outcome; actor; subject; target and recipient. We then examine how organisational loyalty has been conceptualised in the literature and juxtapose this with accounts of dissent within the organisation. Between these two poles, we then put forward the opposing cases for internal or external disclosure. Next we investigate how the organisation retaliates against the

whistleblower, reviewing the strategies it employs to isolate and eventually dismiss the whistleblower. Completing that review is an exploration of whistleblower motive, which becomes even harder to fathom in light of those retaliation strategies. It is at this juncture that this thesis' problem statement (or rather the first component of this thesis' problem statement) starts to take shape - the understanding and critique of whistleblowing as "the manifestation of prior ontological certainties or universal truths" (Perry 1998: 239).

The section which follows serves to sharpen the outlines of that problem statement, dealing with the conditions under which whistleblowing should be seen as obligatory, as opposed to permissible. The problem is that by making whistleblowing a duty the organisation in effect shifts its corporate responsibilities on to its employees. That shift is tied to standard universal truths concerning wrongdoing, which posit a direct line of causation between agent and outcome. In the last section of chapter 1 we make the implicit political dimensions of whistleblowing explicit, exploring some of the issues involved in the politics of whistleblowing, such as workplace free speech as human right. It will be argued that in the final analysis, the politics of whistleblowing prove to be inseparable from the ethics of whistleblowing. Chapter 1 concludes by outlining, what was identified above as, one of this thesis' goals - providing a legitimate social identity for the whistleblower. We delineate the identity of the *parrhesiastes* and postulate that identity as a way to reconceptualise the whistleblower.

Chapter 2 begins by developing further the first component of the problem statement - rooting the aporia of whistleblowing within the context of The Enlightenment. The Enlightenment ideal, guided by Reason, is elucidated upon and found wanting, particularly in relation to the ethics of whistleblowing. As an alternative to that unsuccessful approach, we then follow Perry's (1998) strategy of understanding whistleblowing as a "historically determined, institutionally shaped, culturally mediated social practice." We put Perry's thesis to the test by examining whistleblowing within the social and historical contexts of the USA and South Africa. It will be shown that those countries' unique histories and cultures produce different conceptualisations of organisational loyalty, for example, and thus produce divergent strategies to justify, protect and encourage whistleblowing. Thereafter, we trace the evolution of the ethics of whistleblowing within the historical context of the globalisation of the last thirty years. In particular, we examine the shifts in the normative legitimisations of whistleblowing legislation and organisational whistleblowing policies, which have sought to eliminate the conflict between society and the organisation (manifesting itself as the central

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whistleblowing dilemma of organisational loyalty versus societal welfare) but containing that conflict within the organisation or a proxy of society, such as a regulator or Ombudsperson. That examination focuses on Vandekerckhove's (2006) Organisational Social Responsibility (OSR) legitimisation which is grounded in his 'globalisation semantic'. A central concept of that globalisation semantic is Vandekerckhove's 'network perspective' which understands organisations as autopoietic systems, i.e. operationally closed systems, forming and shaping themselves on their own, at a distance from society. It is here that the second, major component of the problem statement emerges: organisations understood as closed systems cannot eliminate the conflict between society and organisation because organisations as closed systems cannot resolve the internal/external disclosure dichotomy.

Chapter 3 aims to make the case for understanding organisations as open systems. To this end chapter 3 commences with an exegesis of Critical Complexity theory. We examine the characteristics of a complex system and the features (such as emergence and self-organisation) which follow from those characteristics. We explore in depth the notion of the boundaries of a complex system, which cannot be definitively demarcated with its environment. Furthermore, the boundaries of a complex system don't just separate, but also *enable* that which is bounded. Boundaries do not *a priori* distinguish one complex system from another, but are the result of a framing strategy. Choosing a framing strategy involves a normative choice which precipitates an ethics of Critical Complexity: we will always leave something out in choosing one framing strategy over another, and, as such, our knowledge of complex systems - which includes where to draw its boundaries - will always be provisional. The next step in the argument will be to show how organisations can be understood as complex systems. Identity formation in the organisation, it will be argued, occurs through complex processes such as 'normative congruence' - a process which allows the organisation to maintain its identity while accommodating dissent. This manner of accommodating dissent allows us to achieve another of the goals of this thesis which, as stated above, was to show that whistleblowing is not an act of organisational disloyalty. A reconceptualisation of corporate responsibility as 'relational responsiveness' will follow from such a complex understanding of corporate identity. Relational responsiveness facilitates in bounding the organisation's identity and purpose, and allows the boundaries of the organisation to remain open and flexible to its stakeholder set. Therefore who qualifies as a recipient of a disclosure of wrongdoing is also flexible, dependant on what response is required to a particular stakeholder. The internal/external disclosure dichotomy is thus shown to be unsustainable,

which, as stated above, is the central goal of this thesis. The chapter concludes by extending this analysis to dissolve the boundaries between the organisation and society whose identities are argued to be coterminous. The organisation as an open system, constituted as it is by its normative processes, then views ethics as practice. Finally it is argued that the employee who similarly integrates ethics into his/her corporate identity then becomes the whistleblower-as-*parrhesiastes:* s/he becomes the ethical boundary of the organisation. The whistleblower-as-*parrhesiastes* thus conceived, gives substance to the identity first postulated at the end of chapter 1, and completes, as was one of the goals of this thesis, the reconceptualisation of the whistleblower.

Chapter 1: Unpacking whistleblowing

1. Introduction

Sticking your neck out, breaking ranks, standing up for your beliefs, speaking truth to power, protecting the public, betraying the team, etc. are all pejoratives bandied about when the topic of whistleblowing is raised. How to characterise the polarising act is, as they say, all a matter of perception. Whether whistleblowing should be lauded or lamented depends, say Jones, Parker & Ten Bos (2005:12) on who you want to win the game. The plethora of purported definitions offered to capture the essence of whistleblowing deepen, rather than mitigate the ambiguity at its centre. Classically, whistleblowing is framed as a dilemma - is loyalty owed to the organisation or society first? Does one buy into management's explanations that although its style of play is rough, it is within the confines of the rules; or does one appeal to the third umpire of society who will more thoroughly scrutinise the encounter and decide to call it a foul? Reporting design flaws and production snags, closing loopholes and identifying inefficiencies, curbing waste and reducing costs, are all part and parcel of the everyday work routine. We bring these to management's attention and expect that part of management's function is to solve these problems that are sometimes visible only from the shop floor. Raising concerns is giving feedback that allows the corporation to deliver better service and better products. Most feel that their responsibility is now discharged and although they may fret when management takes no further action, they leave the matter there. Society, however, depends on the matter *not* being left there for its welfare.

Society needs someone to persist, to seek not only a sympathetic ear but also an authoritative ally with the power to stop harmful misconduct. The whistleblower might try to enlist such an ally from within, but if none is forthcoming s/he needs to go outside the organisation. The organisation, perceiving such course as betrayal responds as to an enemy, attempting to not just deprive the whistleblower of his/her livelihood but also to eviscerate his/her social identity, leaving only the shell of a pariah behind. Fortunately, society has recognised that in order to expect the whistleblower's warning, it must offer it its protection. To that end it has enacted legislation, and in so doing made whistleblowing policies *de rigueur* in corporate codes of conduct. The unintended consequences of these developments however, risk turning the whistleblower into another corporate instrument by implicitly transforming whistleblowing into a duty.

This chapter follows this evolution of the whistleblower, from pariah to automaton, culminating in a proposed new identity – the *parrhesiastes*, or truth-teller. The chapter starts by interrogating one definition of whistleblowing which neatly encapsulates the essential elements constitutive of the act, serving as a launching pad into mapping the controversies within the literature. Section 3 then examines the various interpretations offered of loyalty which is contrasted with dissent. How loyalty and dissent are conceptualised also have a direct bearing on whether internal or external disclosure suffices as whistleblowing. Section 4 investigates both *how* the organisation retaliates against the whistleblower, and *what* motivates the whistleblower to act in spite of such retaliation. At this point we briefly consider the ethical theories underlying the issues within whistleblowing, which in the instance of Kantianism and Utilitarian, are part of a much larger normative ideal - the Enlightenment ideal. The Enlightenment ideal, which is critically explored only in chapter 2, amounts to a rules-based approach to ethics - a hope to legislate a set of rules that will apply to all instances of whistleblowing for all time, regardless of the specifics and nuances that may present themselves in any particular situation. Section 5 discusses the ethical risks in making whistleblowing mandatory, and the dynamics and effects of whistleblowing policies within organisations. Section 6 makes the implicit political dimensions of whistleblowing explicit, and then outlines the parameters for an alternative conceptualisation of whistleblowing.

2. Defining whistleblowing

The research on whistleblowing covers diverse aspects - psychological, social, legal, cultural, conceptual and ethical (Vandekerckhove 2008: 107). Consequently, definitions of whistleblowing abound in the literature. One concise definition of whistleblowing is offered by Rothschild and Miethe (1994: 254): "The disclosure of illegal, unethical, or harmful practices in the workplace to parties who might take action."

 Another, more restrictive definition, is argued for by Peter Jubb (1999: 83) who defines whistleblowing as:

> 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.

Jubb's definition of whistleblowing will be used in this thesis for several reasons: it aims to give the definition of whistleblowing "… a generality appropriate for ordinary speech" as "it is constructed from an exclusively *ethical* perspective" (81) (Emphasis added). Furthermore, his definition is a synthesis of seven other prominent definitions of whistleblowing, (84) whose selection aims to be representative and "he points out the different purposes and disciplinary focus the selected definitions were intended to suit" (Vandekerckhove 2006:22). Finally, the structure of Jubb's (1999: 83) definition of whistleblowing into six elements: action; outcome; actor; subject; target and recipient, neatly distill (most of) the essential problematic dichotomies present in whistleblowing.

The action, a *non-obligatory* disclosure means that the disclosure must be freely undertaken and not as a result either of coercion or because required by an organisation's policies (90). We should also distinguish those agents whose professional responsibilities require them to disclose irregularities as part of their job function, such as auditors. We will not concern ourselves with these so-called 'gate-keepers', but instead restrict whistleblowing to cover only those employees whose job requirements do not as a matter of course require them to report malfeasance, whilst acknowledging that such distinction may not always be possible to make in practice. The requirement of a non-obligatory disclosure, especially in relation to organisational whistleblowing policies is highly contentious, and Jubb's position, along with his detractors, will be critically analysed later in this chapter, section 5.

The outcome that gets onto the *public record* does not require that the disclosure be made known to the general public but that "the whistleblower's information is accessible without too many bureaucratic obstacles" (90). This means that disclosure is made to agencies such as an industry Ombudsman, a Public Protector, an Anti-Corruption Commission, Human rights NGOs or the "unofficial safety valve of the media". In the age of social-networking however, what constitutes the 'public record' becomes a very fluid concept. Unofficial whistleblowing websites such as *Wiki-Leaks* become the preferred outlet of disclosure bypassing the afore-mentioned agencies. The user-content posted on *Facebook, Twitter* and *You-Tube*, with their millions of subscribers, arguably capture more faithfully the 'public record' than do the more traditional media outlets.

The outcome element anticipates the requirement that the disclosure be to a recipient that is an *external entity*. Again, Jubb acknowledges the polarisation this requirement causes, but argues for excluding internal disclosures as acts of whistleblowing (91), because only

disclosures to an external entity produce the essential whistleblowing element of dissent, and the central whistleblowing dilemma of divided loyalties (82). Dissent and the dilemma of conflicting loyalties are explored more fully in the following section which frames the discussion as to who or what can be regarded as a legitimate disclosure recipient.

The actor element, *by a person with privileged access to an organisation's data*, includes not just former and current employees but also volunteers, unpaid trainees, subcontractors and consultants; and in some cases even suppliers and clients, because their relationship with the organisation makes them privy to information from which they may learn about organisational wrongdoing (86). The actor element, thus conceived, opens up the organisation's boundaries to its external environment, the implications of which will be mapped out when the concept of corporate identity is explored in Chapter 3 (Section 3.1.). What needs to be explicitly excluded are accounts of organisational wrongdoing uncovered through external monitoring or observation, such as investigative journalism and exposés, because any information gleaned through such activity is not the result of privileged access.

The subject element, concerning an *illegality or other wrongdoing*, covers not just illegality or wrongdoing that has actually occurred, but also the suspicion that such illegality or wrongdoing might occur, thus giving whistleblowing a preventative function (87). Thus conceived, Jubb's subject element lowers the burden of proof on the whistleblower, who may lack the requisite authority to access the relevant evidence, or is obstructed from obtaining it. However, as Bok (1980: 338) warns us, "a concrete risk must be at issue rather than a vague foreboding or a sombre prediction." DeGeorge (1986: 230) argues that whistleblowing is justifiable only when organisational wrongdoing will result in "serious and considerable harm" to the consumer or general public. Although DeGeorge allows that serious harm may include financial and other kinds of harm, he restricts himself to mean only harm that threatens life or health. Further examples of wrongdoing can be found in Near *et al.*(2004) who employ seven broad categories of wrongdoing in their empirical study which demonstrates that the type of wrongdoing affects the decision whether an individual decides to blow the whistle or not. Wrongdoing can amount to (226-7)

1. Stealing, which includes accepting bribes and using ones position for personal gain.
2. Waste, which includes ineligible people receiving benefit.
3. Mismanagement, which includes covering up poor performance and making false projections.

4. Safety problems, which includes non-compliant products and dangerous working environments.

5. Sexual harassment.

6. Unfair discrimination based on race, gender, religion etc..

7. Other legal violations.

Closely correlated to the type of wrongdoing, as a predictor of whistleblowing, was the quality of evidence that could be produced in support of a claim of wrongdoing – the stronger the evidence proving wrongdoing the would-be whistleblower could marshal, the more likely the would-be whistleblower would actually make a disclosure (236).

What exactly constitutes wrongdoing, however, is an open question - what the would-be whistleblower perceives as wrongdoing is not always corroborated by the organisation, and this crucial act of definition lies at the heart of whistleblowing dissent (see following section.) Similarly, what constitutes a non-trivial wrong as against a trivial wrong can be contested by both employee and organisation.

The final element of Jubb's definition, the target element, which *implicates the organisation*, holds the organisation accountable for the disclosed wrong (Jubb 1999: 87). Committing a wrong includes "encouragement, perpetration, abetting, connivance; or failing to stop wrongdoing when such responsibility is accepted voluntarily or lawfully imposed" (87). In a complex entity like an organisation however, determining where or with whom responsibility lies, is necessarily problematic. The issue of organisational accountability and the challenge of distributed moral agency will be fully addressed in Chapter 3 (Section 3.2.).

Jubb also identifies the question of whether motive should be constitutive of a definition of whistleblowing as a core dispute in the literature (88) but argues against including it (90) because he is aiming at a restrictive definition. Nonetheless, he acknowledges that motive is a crucial factor, which requires further examination, both as regards its legal implications and to discern, and then encourage "meritorious, morally courageous whistleblowing" (92). Whistleblower motive will be examined in some depth in this chapter, undertaken below in Section 4.2.

Having mapped out the elements in Jubb's whistleblowing definition and a programme to more thoroughly interrogate those elements we first need, however, to investigate what gives rise to the whistleblowing dilemma in the first place. Firstly, whistleblowing must be

distinguished from 'informing' which, widely conceived, constitutes the practice of publicising wrongs (77), such as an investigative journalism. Whistleblowing is then, according to Jubb, a special case of informing, because it is dissent (77). Secondly, Jubb asserts that his whistleblowing definition is "… founded on the ethical conflict of role-related loyalty to an organization and loyalties owed to wider constituencies …" (91). We thus first turn to the issues of loyalty and dissent.

3. Loyalty and dissent

The ethical problem of whistleblowing arises because of 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. How loyalty is conceived therefore, has direct bearing on how whistleblowing should be defined. If only disclosure to external entities, as opposed to internal agents, is regarded as an act of organisational disloyalty then only disclosure to external entities should count as whistleblowing. What then gives rise to organisational loyalty?

3.1 Conceptualising loyalty

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, simply because it would not be possible to envisage every particular scenario that might confront the employee in the execution of his/her job requirements. Organisational loyalty seeks to breach that gap, and consists in obedience, confidentiality and avoiding conflicts of interest (Bowie & Duska 1990: 70-72). Obedience involves following reasonable instructions, while the requirement of confidentially takes cognisance of the organisational need to keep its financial, management and operational data secret from its competitors. Avoiding conflicts of interest are not relevant as it pertains to whistleblowing, although observing wrongdoing which results from a conflict of interest may certainly give rise to the need for whistleblowing. Organisational loyalty also entails a "positive attitude" toward the organisation, as opposed to indifference or disaffection, because employees have a stake in the organisation, such as receiving wages

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for example, which depends on the continued existence, if not profitability of the firm (DeGeorge 1986: 227). Prima facie then, employees owe loyalty to the organisations they work for.

Firmly against this view Ronald Duska (2004) 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" (306). Corporations exist to make money and employees work primarily to earn a salary, thus the notion of organisational loyalty is illogical because, Duska argues, loyalty depends on "ties that demand self-sacrifice without expectation of reward" (308) such as those found in family relationships or between teammates on a sports team. Duska's argument is refuted by John Corvino (2002) who shows that even between teammates and in families some reward is often expected when sacrifices are made. Corvino however agrees with Duska in claiming that organisational loyalty does not conflict with whistleblowing because loyalty demands "… a certain degree of tolerance for shortcomings in the object of loyalty" (183). Familiar notions of 'We all make mistakes' and 'everyone deserves a second chance' seem to be the rationale here. Organisations will from time to time fail in certain respects, and they need to be given the opportunity to correct their wrongdoing. Public scrutiny, brought about by an external disclosure to the media for example, might cause more organisational resources to be diverted into dealing with the media fallout, as opposed to correcting the actual problem at hand.

DeGeorge (1986: 232) concurs with such reasoning, asserting that loyalty requires that the firm be given the chance to rectify harmful actions, procedures or policies before "it is charged in public." Such leniency should not, however, be viewed as a license for egregious wrongdoing warns Corvino, as loyalty "does not require *absolute* or *complete* tolerance" (2002: 184). Corvino's solution has been criticized for being too vague in its specification of exactly *how much* wrongdoing should be tolerated (Vandekerckhove and Commers, 2004). Furthermore, Corvino assumes that the corporation is always (or mostly) benevolent, and that its wrongdoing is a result of negligence or ignorance and not mendacity.

Jukka Varelius (2009) rejects Corvino's argument on those grounds, arguing that loyalty need not seek the moral good of its object (in this case - the errant organisation.) Considerations of what is in the self-interest or moral interest of the organisation and loyalty to the organisation are distinct and cannot be merely conflated away. Corvino's conception of loyalty fails because he fails to acknowledge an important feature of loyalty, i.e. "adherence to the

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decisions and wishes of its object" (269). What this characteristic acknowledges is the autonomy of loyalty's object to decide what to do based upon *its* beliefs of what is in its interests. This of course does not mean that an employee cannot or should not try to persuade the organisation that its interests *should* include moral considerations, but that organisational loyalty does not require it. (Varelius also rejects Vandekerckhove and Commers' (2004) position, presented in the next two paragraphs, on these grounds). This notion becomes problematic however, when applied to an organisation - what things can be said to embody the wishes of an organisation? One possible answer is offered by Vandekerckhove and Commers (2004).

The object of loyalty, according to Vandekerckhove and Commers, 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" (2004: 229). 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 (229), or signing up to the UN Global compact[1].

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" (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" (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"

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[1] The Global Compact is an UN initiative that "is both a policy platform and a practical framework for companies that are committed to sustainability and responsible business practices" which include the "embrace, support and enactment" of ten principles which constitute a set of core values in the areas of human rights, labour standards, the environment and anti-corruption. Available at www.unglobalcompact.org.

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(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 (230). Vandekerckhove and Commers' conception of rational loyalty also finds echoes in Rothschild and Miethe (1994: 256) who claim that "whistleblowing has become a powerful tool by which ordinary employees … can reveal the gap between the organization's purported 'mission' and its actual practices."

3.2 Dissent as indictment and accusation

Vandekerckhove and Commers' way of conceptualizing organisational loyalty assumes that internal disclosure qualifies as whistleblowing (2004: 226). The problem with internal disclosure is that it misses what some regard as a crucial element of whistleblowing - dissent (Bok 1980, Jubb 1999). Dissent, as an instance of disagreement, is what leads one to question ones loyalties in the first place. If there is no disagreement then the potential for conflicting loyalties disappears. However, expressing one's concerns does not always manifest itself as dissent, but if one persists in voicing disagreement, escalating the complaint, then at some stage it becomes dissent (Jubb 1999: 79). Concern and disagreement become an indictment, labeling certain corporate actions or omissions as misconduct, fraud, or incompetence (79). The alleged impropriety is blameworthy and some person or group of persons is *accused* of wrongdoing (Bok 1980: 337). Some person or group of persons must be held accountable. In such instances, it is not just a matter of breaching organisational loyalty, but also opposing the hierarchy, who may regard the alleged wrongdoing as trivial (337).

Understood in this light, we can restate that the whistleblower dissent consists in how to define corporate wrongdoing and impropriety, and whether such acts or omissions do in fact harm the public interest. The employee's superior and the organisation will both agree with the would-be whistleblower that corporate wrongdoing should be eliminated and that the welfare of society should be promoted but disagree as to which specific corporate actions would achieve that. Consider a corporation managing its labor relations - prohibiting employees from forming a union would be a clear act of corporate wrongdoing and illegality. However, in refusing to collect union membership fees from its employees on behalf of the union, the corporation, by restricting the union's ability to fund its activities, achieves a

similar outcome. The organisation may view such actions as 'hard-ball' tactics to leverage greater negotiating power with its employees as legitimate, but an employee may disagree, accusing the organisation in the instance of wrongdoing. In so doing, and when he/she does so publicly, what the whistleblower does, according to Alford (2001:130), is "bring the values of the home and church - the larger world - into the organization." In the example above, the values of fairplay and empathy, considered routine in our dealings with family, friends and members of our community, might be rejected by the organisation as not applicable in the instance of negotiating with a trade union. Or, to invoke an old business ethics controversy, do we have an instance of business bluffing, or business dishonesty? (Carr 1968).

3.3 Internal versus external disclosure

Disclosure to external entities thus "bring[s] the outer world into the inner, transgressing boundaries" (Alford 2001: 24). "External disclosure attacks and accuses the organization. Internal disclosure shields the organization" (Jubb 1999: 91). Internal disclosure can be viewed as collegial disloyalty, as when one 'breaks ranks' and reports wrongdoing by ones colleagues' to a superior, but such disclosure represents "dissent from the peer group and not dissent from the organization's values"(91). Internal disclosure is often seen as merely fulfilling one's work duties - the celebrated whistleblower Cynthia Cooper of WorldCom, honored along with Coleen Rowley of the FBI and Sherron Watkins of Enron, as *Time* Magazine's persons of the year in 2002 all only blew the whistle internally. Her sentiments represent a particular notion of whistleblowing; speaking for many when she says: "We don't feel like heroes. I feel like I did my job" (Layco and Ripley 2002).

DeGeorge (1986: 231-3) argues that external disclosure is morally justifiable only once internal disclosure has been attempted and has subsequently failed to elicit an appropriate response. Once an employee has identified a serious threat to the consumer or public, then, he/she must first report it to his/her immediate superior and also voice their moral concerns (231). If one's superiors fail to act on the concerns raised, then the employee should raise the issue with a superior further up the managerial chain, ending with the board of directors if necessary. In other words, one must first exhaust all possible internal reporting channels before going public (232). Such need may of course be precluded by the urgency of the threat, especially if a complaint is likely to get bogged down in bureaucracy which would waste valuable time in seeking a satisfactory remedy to the wrongdoing (233). Again, the

point must be made that internal disclosure gives the benefit of the doubt to the organisation - the presumption being that the organisation is benevolent and should be given a chance to first correct its errors.

Others have redefined external disclosure to include internal reporting which bypasses "formalized or conventional lines of communication" (Dandekar 1990: 557, cited in Jubb 1999: 91). An empirical study by Dworkin and Baucus (1998:1296) reveals that external whistleblowers 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 (1286). However, external whistleblowers are also more likely to be retaliated against (1296).

4. Retaliation and motivation

4.1 Retribution strategies: creating the pariah

The need to protect whistleblowers from organisational retaliation was recognized almost from the inception of whistleblowing as a social, political and ethical concern in the 1970s. The first significant piece of international legislation towards this end was enacted in 1978 in the United States - the *Civil Service Reform Act*. Although the Act protected the whistleblower from reprisals, it was flawed in many respects, such as extending protection to only civil servants, and then only for misconduct that had already occurred, thus denying a preventative function to curb potential wrongdoing (Vandekerckhove 2006: 170). Consequently, the Whistleblower Protection Act of 1989 was passed in the United States to address these shortcomings. Since then, whistleblower protection legislation has been passed in several national jurisdictions, including Australia, New Zealand, the U.K. - the Public Interest Disclosures Act (PIDA) of 1998, and South Africa, which passed the Protected Disclosures Act (PDA) in 2000, which variously extended protection to include private as well as public sector employees and also to give whistleblowing a preventative function (Vandekerckhove 2006: Chapter 4). Remedies available to whistleblowers are covered in Section 4 of the PDA which includes compensation and the right to be moved to a position of a similar pay and rank within the same, or another division (The PDA is examined further in Chapter 2, Section 3.2). The Sarbanes-Oxley Act (SOX)[2] 2002, enacted in the USA in the

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[2] SOX, as far as its provisions regarding whistleblowing are concerned, circumscribes penalties which can be levied against the organisation that retaliates against the whistleblower. Other American legislation seeks instead to 'incentivise' the whistleblower, offering him/her a financial reward for disclosing information

wake of the corporate governance scandals of the early 2000s in corporate America, exemplified by the spectacular financial implosion of Enron, is unique in that it provides not just civil relief to whistleblowers unfairly retaliated against, but also criminal punishment to the wrongdoer. The criminal sanctions are harsh - up to ten years in prison and a fine of $250 000 (Dasgupta and Kesharwani 2010: 66).

It is worthwhile to explore some of the retaliation strategies used against the would-be whistleblower, because the organisation, in its strategies to "disconnect the act of whistleblowing from the act of retaliation," renders so much whistleblowing protection legislation "practically irrelevant" (Alford 2001: 31). Such charges seem to be borne out by the fact that in setting up whistleblowing hotlines and reporting channels, most organisations include the option to disclose anonymously. While disclosing anonymously is allowed it is strongly discouraged, which amounts, in my view, to a tacit admission that the whistleblower is still always in danger of being retaliated against, and thus needs his/her identity protected. Anonymous whistleblowing can therefore be symptomatic of a deeper amorality within the organisation. Alford comments that "anonymous whistleblowing happens when ethical discourse becomes impossible" (36).

 In retaliation, the organisation avoids such overt reprisals as dismissal and demotion, using more subtle forms of retribution, which, by demoralising and humiliating the whistleblower have the same effect, which is to distance the whistleblower from the organisation. The whistleblower is placed under great psychological stress to meet unrealistic performance targets for example, while simultaneously denying him/her the resources to meet those targets. The whistleblower is, in short, set up to fail, which then occasions disciplinary action. The organisation is then vindicated when the employee is finally fired for poor performance or *any other reason except* his betrayal of company loyalty (2001: 32).

More disturbingly, the retaliation against the whistleblower does not always end when the organisation finally manages to rid itself of the whistleblower; in many niche industries informal blacklists exist that ensure the whistleblower never works in his/her field again (Uys 2000). Alford (2007: 238) recounts the story of a whistleblower that could not get a job in the state where she had worked because "They [the potential employers - J.A.] were afraid I

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regarding corporate wrongdoing. The most notable piece of legislation in this regard is the False Claims Act (FCA) of 1986. The Dodd-Frank Act of 2010 supplemented the FCA in providing financial incentives for whistleblowers to come forward. Both the FCA and Dodd-Frank Act are discussed in detail in Chapter 2, Section 2.1.

might commit the truth" (238). That is, other organizations are reluctant to hire a whistleblower because they, the whistleblower, might just decide to one day blow the whistle also on them. Retaliation in this instance then, does not merely involve the whistleblower losing his/her former job, but also his/her livelihood. Alford (2001: 55) characterises the average whistleblower as, "… a fifty-five year old nuclear engineer working behind the counter at Radio Shack. Divorced and in debt to his lawyers, he lives in a two-room rented apartment. He has no retirement plan and few prospects for advancement."   Whistleblowing then, can amount to "occupational suicide" (Perry 1998: 235).

Another common strategy used in retaliating against the whistleblower is what Alford calls the "nuts and sluts" strategy, "… referring to the way those who raise ethical issues are treated as disturbed or morally suspect" (2001: 61) The former track is initiated by sending the whistleblower for a battery of psychological evaluations which, in attempting to portray the whistleblower as somehow mentally disturbed, cast serious doubts on his/her accusations against the organisation (Bok 1984: 212). The latter track aims at equating the whistleblowers alleged, or better still, real promiscuity and associated 'loose' morals with a generally impaired moral judgement, which lacks the authority to 'call a foul' on the organisation.

What all these retaliation strategies have in common is to isolate the whistleblower, lest his/her disease - disloyalty - infect the organisation. The whistleblower becomes the despised other - the 'rat', 'snitch', 'squealer', 'tattle-tale', 'troublemaker'. The whistleblower, as traitor is cast out from the organisation, made a pariah. It is no surprise then that Alford asserts that, however a whistleblower is defined, "… in practice, the whistleblower is defined by the retaliation he or she receives … if there is no retaliation, she is just a responsible employee doing her job to protect the company's interests" (2001: 18). The whistleblower's act then becomes an act of self-sacrifice. Grant (2002) urges us to go further than merely viewing whistleblowers as tragic heroes but as "saints of secular culture."

4.2 Fathoming motives

Why then does the whistleblower persist in his/her course of action? Exploring how whistleblowers are sometimes retaliated against provides an insight into the vexatious issue of the whistleblower's motive in deciding whether to blow the whistle or not. Besides being contentious in regard to defining whistleblowing itself, it is also highly relevant in the whistleblowing protection legislation. Qualifying for protection usually requires that the whistleblowing is done in good faith (Miceli *et al*. 2009, Near *et al* 2004). Sections 6, 7, 8 &

9 of the South African Public Disclosure Act (PDA) of 2000 state that only a disclosure made in good faith will be protected. Acting in the public interest to protect it from potential harm certainly qualifies as whistleblowing done in good faith.

DeGeorge (1986: 223) considers only such motivation as moral and requires it in order for whistleblowing to be morally justifiable (230). Whistleblowing in order to exact revenge for past injustices, or as acts of malice, taint the whistleblowing act and are not considered as appropriate reasons for whistleblowing (Bok 1980: 338). Grant (2002: 394) argues that whistleblowing done in anticipation of a reward compromises the ethics of the act. The False Claims Act in the United States however, offers the whistleblower a financial incentive in the form of a portion of the moneys recovered, in cases of fraud for example, resulting from a successful lawsuit stemming from the whistleblowers disclosure (Vandekerckhove 2006: 173).(See also Chapter 2, Section 3.1.)

A more subtle but selfish motivation for whistleblowing is to "escape complicity so as to protect personal integrity and the ability to live with oneself" (Jubb 1999: 82). Alford (2001: 76-81) posits a theory of whistleblowing motivation as "narcissism moralized." The whistleblower acts from a sense of shame, trying to distance himself/herself from the organisation's wrongdoing that has corrupted him/her by association (73), compromising their 'ethical purity' (78). They blow the whistle because not to do so would be an act of supreme hypocrisy, failing to live up to one's moral standards, or more pertinently, the professed moral standards of the organisation claimed in its mission statement. In the sense that the motivation is selfish, it is narcissistic, but because the "whistleblower's narcissism is wounded by the *right thing*: that he was cast into an environment of lies and deception" his/her narcissism becomes moralized (79) (emphasis added.) Narcissism moralized may also explain why the whistleblower is retaliated against and made into a pariah - the whistleblower may come across as self-righteous, revealing the timidity and/or hypocrisy of his/her colleagues, forcing upon them a questioning of their own values and norms that they would prefer to avoid.

Alford acknowledges that his account does challenge conventional notions of ethics, while it simultaneously appears to assert what conventional ethical theories such as Kantianism or Utilitarianism (see below) assert, i.e. that the narcissism moralised means "no more and no less than that the whistleblower has idealized and internalized" those principles (86). The distinction is however, more subtle, - "Whistleblowers [are] loyal not to principles but to

ideal selves who embody those principles" (84), and yet also more profound - "narcissism moralised means not merely that principle is integrated into the self (when, in fact, it is) but that the principle becomes the self … so that holding to this principle is the form in which the self's perfection is expressed and contained" (86).

What the conflict concerning whistleblower motives reveals however, is a larger, more intractable conflict present within the more general arena of normative philosophy. What is at issue is whether Kantian concerns of motive - doing things because they are right in themselves, should trump Utilitarian concerns of consequences - doing things because they yield the greatest benefit to society. Kantianism best exemplifies Deontology, whose adherents believe that "ethics is about duties and about the intentions with which you do them" (Jones *et al*. 2005: 154). Kantian ethics are encapsulated in the two formulations of Kant's Categorical Imperative: "Act only according to that maxim by which you can at the same time will that it should become a universal law" (Kant 1959: 39) - the universalisation formulation, and: "Act so that you treat humanity, whether in your own person or in that of another, always as an end and never as a means only" (47) - the human dignity formulation. Utilitarianism, as the chief exemplar of Consequentialism, can be distilled into three propositions: 1. Actions are to be judged right or wrong solely by virtue of their consequences. 2. In assessing consequences, the only criteria is the amount of happiness or unhappiness that is created. 3. Each person's happiness counts the same (Rachels 2007: 100).

A whistleblower's disclosure may well open up promotion possibilities for him/herself by eliminating a rival colleague who is dismissed in the wake of such whistleblowing, and this may indeed be his/her primary, or even only, motivation for such disclosure. But should such calculating motives stop from bringing to light, and so eliminating, egregious fraud in which thousands of taxpayers face financial ruin? From a Utilitarian perspective, such a disclosure would still be ethical - in consequence of that act of disclosure, a greater happiness results; one person may be denied a promotion and his welfare be consequently diminished, but that must be weighed against the welfare of those thousands of taxpayers who now do not suffer a financial loss. From a Kantian perspective, however, the disclosure would be unethical. From a Kantian dignity formulation the whistleblower is using his/her rival (or more specifically, using his/her knowledge of his/her rival's wrongdoing) as a means to an end, and even though that end may be commendable - preventing financial loss to the taxpayers, the disclosure is nonetheless unethical (the end resulting in the elimination of his/her rival would also be unethical).

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More generally, what constrains both Kantian and Utilitarian approaches to whistleblowing is that they hope to legislate a set of rules that will apply to all instances of whistleblowing for all time, regardless of the specifics and nuances that may present themselves in any particular situation. This reach for universality - a hope expressed in the ideals of the Enlightenment - is what ultimately undermines Kantian and Utilitarian approaches to ethics in general and whistleblowing in particular. (The Enlightenment Ideal is examined in more detail in Chapter 2, Section 2.)

The above considerations reveal just how inscrutable motives may be. Whether they are included in the definition of whistleblowing or not, the motives of the whistleblower will always be relevant, especially from the perspective of the organisation, which will seek protection from malicious whistleblowers. The organisation will demand this as a positive right against society which as a positive right "requires society to ameliorate whistleblower provisions by tightening the criteria whistleblowers must meet or lessening the protection offered" (Vandekerckhove and Tsahuridu 2010: 370). What the considerations of motive do imply, however, is that the would-be whistleblower has a choice in deciding whether to blow the whistle or not. If whistleblowing was coerced, or a legislative or organisational requirement, then the issue of motive would be irrelevant. As an interesting counterpoint Alford (2001: 40-43, 2007) describes the whistleblower's act (one neither coerced or done as a result of legislative or organisational requirements) as an act of "choiceless choice", because of narcissism moralized, captured in such sentiments as " … I did it because I had to … because I had no other choice … what else could I do? I have to look at myself in the mirror every morning" (2007: 226). Such narratives may be worth investigating from a psychological perspective but we will apply choice here in a more restrictive sense. In the following section the discussion turns to whether whistleblowing should be mandatory or not.

5. Morally mandatory whistleblowing and whistleblowing policies

The discussion has turned thus far on whether whistleblowing is morally justifiable, and what considerations should be taken into account to sanction whistleblowing as morally permissible. Those considerations are not unproblematic - should the whistleblower's motive be moral or not, should the whistleblower disclose internally or not - but they all place the decision to blow the whistle or not firmly with the would-be whistleblower. This is in accordance with our common sense notions of the individual as an autonomous moral agent, responsible for his/her choices. In some circumstances however, might whistleblowing be not

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just morally permissible but morally obligatory? The potentially dire consequences facing any would-be whistleblower as a result of organisational retaliation, and the difficulty of choosing between conflicting loyalties, would make us hesitant to place any moral blame on any employee who decided to remain silent despite witnessing wrongdoing. Such act is supererogatory - morally praiseworthy, but not required, eliciting no censure when not undertaken. But there is also a "tacit agreement in our society - some sort of Good Samaritan principle - that under certain circumstances there is a moral obligation to prevent harm"(Duska & Duska 2003: 152).

 Vandekerckhove and Tsahuridu (2010: 372) cite two viewpoints which assert that one should always try to assist in preventing harm:

 1.Singer (1972: 231) "If it is in our power to prevent something bad from happening, without sacrificing anything of comparable moral importance, we ought, morally to do it,"

 2. Malm (2000: 707) "Persons ought to provide easy rescues and other acts of aid for persons in grave peril when they can do so at minimal risk, cost and inconvenience to themselves."

Although we can agree with these sentiments, the hope to draw a parallel with whistleblowing is quixotic. Conflicting loyalties, as has been shown, demonstrate that it is *always* necessary to sacrifice something of comparable moral value to prevent organisational wrongdoing from doing harm. Furthermore, as the discussion concerning organisational retaliation illustrated, whistleblowing will never be an *easy* rescue; there is always substantive risk and cost to the whistleblower.

 DeGeorge's (1986) attempts to circumscribe conditions for making whistleblowing obligatory, rather than helping the whistleblower, seem to add even more cumbersome requirements to the already costly and inconvenient path the whistleblower embarks upon. In addition to the conditions required for morally permissible whistleblowing - serious harm and internal disclosure (229-233), the whistleblower must, firstly have "documented evidence that would convince a reasonable, impartial observer that one's view of the situation is correct, and that the company's product or practice poses a serious and likely danger to the public;" and secondly "the employee must have good reason to believe that by going public the necessary changes will be brought about" (234).

The first condition is problematic for two reasons - as alluded to in Section 2 above, defining whistleblowing - requiring documented evidence implies the wrongdoing has already

occurred, and this denies a preventative function to whistleblowing. Besides, as DeGeorge requires that the disclosure first be made internally, the would-be whistleblower's access to the relevant evidence, assuming they had the authority to access the evidence, is most likely to be blocked. Secondly, having the evidence, the whistleblower may not be able to convince a reasonable impartial observer, because the high-tech quality of the harm or the scientific nature of the evidence is beyond the comprehension of the observer. A common refrain heard during the Global Financial Crisis of 2007-9 was that even the most senior, and one supposes financially literate, of the banking bosses could not grasp the sophistication and complexity of the financial instruments being created and traded within their own organisations. How then would a mere reasonable observer make sense of any evidence a potential whistleblower from an investment bank might have presented to prevent the ensuing financial collapse?

The second condition, belief that necessary changes will result, also presents challenges. Bringing the 'bad apples' to account is obviously intended but might it not also mean something more, such as getting legislation enacted or policy changed that has a direct bearing on the organisational wrongdoing perpetrated? But what if the whistleblower is inarticulate? Or ineloquent? We can agree with Bok (1980: 338) that to get problems corrected whistleblowing "must arouse its audience", but should the whistleblower be censured because of public apathy? We cannot expect every whistleblower to be a master of persuasion. There is also the real and always present danger that the whistleblower is genuinely mistaken - mistaken with regard to both the nature of the harm that will result from a particular act of the organisation, and also as to what changes will be necessary to eliminate, or mitigate that harm. Malicious whistleblowing can be preventatively managed by requiring the whistleblower to disclose in good faith, but mistaken whistleblowing, arguably, will *increase* if a duty to disclose is imposed on employees.

The correlate of the duty to blow the whistle is that if one knows of organisational wrongdoing and does not blow the whistle, then one is also guilty of wrongdoing. In order to avoid this potential liability we would expect employees to blow the whistle more often, and sooner, giving less consideration to the evidence before them, so that they shift this liability away from themselves as soon as possible (Vandekerckhove and Tsahuridu 2010: 375). As a result, one would expect an excessive amount of concerns being raised, leading to more cases of erroneous whistleblowing. The pernicious consequences of this danger would also begin to manifest themselves in a culture of indictment (377). Closely attendant to this problem is that a duty to blow the whistle places the onus of proving one did *not* know of the wrongdoing on

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the individual. Displacing such assumptions might prove unjustly burdensome if for example the whistleblower shares an office with the alleged wrongdoer, or works in different departments but moves in the same social circles where careless boasting of 'cutting corners' is overheard (375).

The deeper problem though is determining *what* course of action will lead to the necessary changes DeGeorge speaks about. There is a deep assumption that a direct causal relationship between an act of corporate wrongdoing and a particular employee, or group of employees can be established, and thus that someone, or some corporate policy or procedure can be held responsible. Establishing responsibility in a complex entity such as an organisation is however an extremely difficult task (Mellema 2003). It suffices for our purposes at this point to agree with Tsahuridu and Vandekerckhove (2008: 110) when they say, "people at work are held responsible for their moral behaviour, even if they are not or considered not to be morally autonomous, since organizations usually prescribe the means (systems/processes) and ends (goals/objectives) of behaviour".

In its crudest form this means that the employee cannot resort to the Eichmanian excuse of 'I was just following instructions' in order to cast off moral responsibility for an improper act committed. Against this must be considered Painter-Morland's (2008: 114) assertion that, "it is only really possible to hold an organization accountable for the actions of its individual employees if one acknowledges that social pressures and expectations in his/her work environment significantly influence an individual's behaviour." An example of this is provided by King (1999) who argues that whistleblowing may be affected by the structure of an organisation. An organisation with numerous hierarchical levels may discourage internal disclosure, while clear and open communication channels enhances trust between superiors and subordinates, facilitating disclosure of wrongdoing (324). In the final analysis, Lovell (2002: 63) sums it up best when he laments that "moral agency becomes the victim of autonomy's frailty", which is most vividly illustrated in the case when the organisation retaliates against the whistleblower.

Instituting whistleblowing policies in the workplace, as required either by whistleblowing protection legislation or by the demands of 'rational loyalty' (Vandekerckhove and Commers 2004: 226), which lay out the mechanisms and protections for disclosure, have the effect of strengthening the individual employees autonomy. The employee should now feel free to raise moral concerns about organisational wrongdoing without fear of retribution (Tsahuridu

and Vandekerckhove, 2008: 114). Autonomy is now robust, but also, because of that very robustness, the organisation is justified in holding employees responsible for not blowing the whistle. Autonomy has thus been turned into a liability (115). Whistleblowing as a duty then can "shift the organization's duty to abide by the law, the organization's requirement to be legitimate, and other corporate social responsibilities, to its employees" (116). Whistleblowing as a duty then becomes yet another mechanism by which the corporation can control its employees (116).

6. The political dimensions of whistleblowing and the sphere of *parrhesia*

6.1 Whistleblowing as 'politico-ethical' activism

What is at risk in institutionalising whistleblowing in organisational practices such as whistleblowing policies is that whistleblowing will lose the activist impetus which drove its earlier conceptualisations. Whistleblowing originated as what Vandekerckhove (2006: 10) calls a "politico-ethical" concept which "designated a practice of resistance to organizational authority and of unsealing boundaries of accountability for activities of and within organizations." Whistleblowers warned society of organisational wrongdoing, thus protecting the public from corporate rapaciousness (21). Whistleblowing as organisational practice is an attempt to eliminate conflict between the organisation and society (21). Whether such attempt can possibly succeed, or is in fact desirable, is addressed in the chapters to follow. In formulating an answer it is necessary to first examine the overt 'politico-ethical' dimension of whistleblowing, to which we now turn.

Rothschild and Miethe (1994: 255) argue that whistleblowing, and management's response to the whistleblowing, are political acts because the former, "from the start … is intended to change the way that the work gets done in the organization," and the latter, "… is intended to discredit the whistleblower … [and] neutralize the power of any information they may release." Uys (2000: 266) urges us to analyse whistleblowing as not "… just being a protest on moral grounds" but rather "as a form of political resistance in the workplace" and presents a case study of an employee at the South African Reserve Bank who is politicised because of higher management's reaction and retaliation to his exposing of irregularities within the bank.

Mansbach (2007: 125) regards whistleblowing as "going beyond an act of disclosure of wrongdoing" and as "a practice of high political value." In the process of resisting organisational retaliation and seeking to vindicate themselves in the public arena, the

individual's act can generate what Mansbach calls the "political surplus value" of whistleblowing which benefits a wider segment in society (127). Mansbach presents a case study of one Mia Kuch, who sought to bring to the notice of her superiors financial irregularities within the organisation, a huge dairy conglomerate, she was working in (125). She was later dismissed and when she attempted to challenge that dismissal was subjected to psychological evaluations that purported to portray her as mentally disturbed - a not untypical organisational retaliation strategy we have examined elsewhere (Section 4.1). At the height of her legal battle Mia Kuch then co-founded Oggen - The Association for Ethics and for the Eradication of Corruption in Israel; its stated mission to provide "moral support and legal advice to whistleblowers and more broadly, to promote the values of democracy … inculcating the values of honest administrative practices, accountability and integrity in the private and public sectors and educating the public in these values" (128). The establishment of Oggen is the 'political surplus' generated by Kuch's whistleblowing, which in benefiting other potential whistleblowers and society at large, transforms her individual act into "social solidarity" (128). Kuch's case should however, not be seen as typical; most whistleblowing cases do not generate such dramatic, or socially beneficial, political surplus value.

Lindblom (2007: 418) argues that whistleblowers' (free) speech (disclosure) falls under the description of free political speech because "they speak out about one of the basic institutions in society" - the corporation, and it is "such speech that potentially could change public perception and policy of a problem" (417). Lindblom uses a Rawlsian argument to show that the right to blow the whistle, which is equivalent to the right to free political speech, always trumps any purported duty of loyalty to an organisation, because such a duty is in direct violation of Rawls first principle of Justice[3] (419). Furthermore, because the rights that flow from that principle of justice are inalienable, contracts that seek to restrict whistleblowing are no more legitimate than attempts to sell our political voting rights (420).

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[3] Rawls is concerned with distributive justice and constructs a theory of justice on the notion of 'Justice as fairness', which is achieved via two principles (2004.) Rawls' first principle of justice reads as follows. "Each person is to have an equal right to the most extensive scheme of equal basic liberties compatible with a similar scheme of liberties for others." The second principle: "social and economic inequalities are to be arranged such that these are "a) reasonably expected to be to everyone's advantage, and b) attached to positions and offices open to all" (2004: 59).

Vandekerckhove (2006: 92-101) considers the legitimation of whistleblowing as upholding human rights, in particular the right to free speech as expressed in Article 19[4] of the UN Universal Declaration of Human Rights. The critical preliminary enquiry of whether private business, in addition to government, can be held responsible for human rights in general is answered in the affirmative, because *inter alia*, business also enjoys the means to realise the socio-economic conditions which would allow individuals to enjoy their human rights (95).

Next Vandekerckhove argues that whistleblowing can be understood as a human right, as workplace free speech. To do this he employs arguments put forward by Campbell (2002) - : "workplace free speech is an instrumental right promoting truth and efficiency … workplace free speech is necessary in order to respect human dignity … workplace free speech establish[es] the consensual idea (i.e. an argument for democracy)" (2006: 98).

Whistleblowing as workplace free speech can however be problematic in practice. Business needs to keep its propriety information confidential in order to function, so although it is possible to concede that workplace free speech encompasses the right to express one's opinion, that right would not allow access to information concerning the operations of the corporation (99). However, in order to make an opinion meaningful, one usually needs to disclose information. Vandekerckhove uses the Ford Pinto[5] case to illustrate the conflict: a design oversight leads to a safety danger in the car, but I am barred from disclosing this information (100.) All I can say is that in my opinion the Pinto is a bad car. But in order for my opinion to convey any meaning beyond the mere expression of preference I need to disclose operational information to motivate why I think the car is bad. Whistleblowing as workplace free speech then would need to include the right to disclose information where it was necessary to make meaningful sense of the disclosure.

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[4] Article 19: Everyone has the right to freedom of opinion and expression; this right includes the freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

[5] The Ford Pinto, a subcompact economy vehicle manufactured by Ford in the 1970s, exploded when struck from the rear even in low-speed collisions. The cause was traced to the faulty design and positioning of the fuel tank. Ford was aware of the serious fire hazard this presented, but pressed ahead with the car's launch. It later emerged that in making its decision, Ford had tallied the costs of a technical improvement that would have drastically improved the Pinto's safety (around $11 per vehicle, on 12.5 million vehicles), done an actuarial analysis calculating the probable occurrence of collision fatalities and the financial cost that would amount to in legal compensation to the victims. As it would be cheaper to pay out for 180 deaths and 180 serious burn injuries than install the $11 improvement, Ford went ahead and inflicted the Pinto on the American public (Shaw 2011:82-85).

Whistleblowing has also been favorably compared with civil disobedience - another political form of dissent (Elliston 1982). Within the same public, political arena De Maria (2008) seeks an alliance between whistleblowing and protesting as a more robust strategy against corruption in both government and business. Both forms of "ethical resistance" (866) seek to expose organisational wrongdoing and to bring about change; both activities can manifest themselves in internal and external arenas[6] (867).

Whistleblowing is presented as an *individual* voice strategy, while protesting is a voice and *group* mobilisation strategy. It is possible however, to move back and forward between these strategies, for example, when a whistleblower decides to join an activist coalition (869). De Maria presents a case study to demonstrate the synergies possible through a whistleblowing-protesting tie-up. Van Buitenen, an auditor in the European Commission's Financial Control Directorate, unhappy with the efficacy of the division's reporting channels which he had used, sent a 34-page letter to the president of the Green Party in the European parliament. The party used Van Buitenen's information to drive its protests, eventually culminating in the resignation of the EC president. Van Buitenen's journey took him from "silent observer to internal whistleblower to external whistleblower to politicized activist" (873).

6.2 Birth of the *parrhesiastes*

In considering the political dimension of whistleblowing it is instructive to take a moment to consider the metaphor which informs whistleblowing, something which was only touched upon in the chapter's introduction. Blowing the whistle evokes the analogy of the referee who stops the game in response to a foul. Another analogy is provided by the police officer who blows the whistle to summon help to stop a crime or a criminal. The former analogy has been found wanting in that unlike the referee, the whistleblower does not have the power to stop the game and address the foul. What is pertinent for our purposes however is that blowing the whistle always aims to get someone with the power to do something, to *listen*. To listen is to acknowledge that what is spoken is not only coherent but meaningful, i.e. has some truth to convey. Recall that one of the retaliation strategies employed against whistleblowers was to cast doubt on their mental soundness (see Section 4.1), diagnosing them as unstable. One is not obliged to listen to a psychiatric patient whose 'truth' amounts to no more than paranoid

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[6] Internal protests conducted within the organization include work stoppages and sabotage, while external protests include street marches and picketing (De Maria 2008:867 table 1). Internal and external whistleblowing was discussed in S.3.3 above.

or malicious ramblings. To listen, says Alford (2001: 105), "would be to recognize the whistleblower as a political actor".

Alford refers to Foucauldian 'discipline'[7] that "works through diagnosis … under which people and things are classified so that they may be subject to expert knowledge" and gives as example bureaucratic diagnosis which says "that is not your department and hence not your proper concern" (2001: 106.) We mentioned earlier that at the heart of whistleblowing dissent was conflict between the individual and the organisation to define wrongdoing as well as what constitutes the public interest (see Section 3). The organisations' attempt to claim this prerogative as belonging to it exclusively is an attempt at diagnosis vis-à-vis the whistleblower. Similarly, what organisational whistleblowing policies do when they classify certain disclosures as protected or certain channels as legitimate, is in effect disciplining the whistleblower, and in so doing, "transforming an existential and ethical act into another piece of behaviour that may be analysed and explained"(2001: 106); behaviour which, as we saw in Section 5, that can be controlled.

How then do we approach what Jones *et al*.(2005: 120) call, "the fundamental issue [of] how to provide a legitimate - if dangerous - social identity for the person who speaks fearlessly?" The whistleblower 'speaks truth to power', what the ancient Greeks called a *parrhesiastes* - a truth teller. In contrast the *rhetor* is one who merely tries to persuade. Rhetoric is a technique that can be learnt, while engaging in *parrhesia* is a way of life (2005: 121). Rhetoric, known as the art of 'spin' and Public Relations in 20th and 21st century boardrooms, is what leads to ethical ambiguity in business, turning praiseworthy notions such as Corporate Social Responsibility into cynical marketing ploys. Corporate rhetoric causes 'moral silence', causing individuals to remain quiet about concerns in relation to their work (Bird 1996). This muting of ones' conscience engenders moral deafness: not hearing and not responding when others raise moral concerns (55). As Jones *et al*. (2005: 121) say: "Whistleblowing is only possible if there are people to hear the whistle being blown". The whistleblower as *parrhesiastes* then, becomes the collective social conscience in the organisation representing the boundary, or limit, of acceptable transgression that will be tolerated by the public in

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[7] In *Discipline and Punish* (1979) Foucault analyses disciplinary power in the prison as a metaphor for how it operates in modern society. Disciplinary power comes about through physical control which is " an uninterrupted, constant coercion, supervising the processes of activity rather than its results and it is exercised according to a codification that partitions as closely as possible time, space, movement. These methods, which made possible the meticulous control of the operations of the body, which assured the constant subjection of its forces and imposed upon them a relation of docility-utility, might be called disciplines" (137).

general, and a specific stakeholder community in particular. The dynamics and implications of conferring this social identity upon the whistleblower will be fully explored in Chapter 3.

7. Conclusion

In the final analysis the politics of whistleblowing end up being inextricably linked to the ethics of whistleblowing. The difficulties in defining and justifying whistleblowing shuttle us back and forward between these two domains, between contemplation and action, between theory and practice. The political issue of the whistleblower's social identity is rooted in whistleblowing's central ethical dilemma: who has the power to define what loyalty is and to whom, or what is it owed? Deciding where the ethics of whistleblowing end and the politics of whistleblowing start becomes impossible when we start asking those questions that go to the heart of whistleblowing: who defines what the public interest is? Who decides whether internal or external disclosure amounts to a legitimate act of whistleblowing? Who decides whether the motive of the whistleblower should be scrutinised, or even whether it should be relevant?

The seeming intractability of these questions points at a more fundamental problem, rooted deeply in the particular ethical theories we turn to in order to make sense of whistleblowing's essential aporia. What these theories all critically depend on is a particular conception of the moral agent as instanced by a particular employee - the employee who can blow the whistle because it is the right thing to do, giving no further consideration as to how that decision might impact upon her life and her family, resulting in the loss of her job and livelihood; the employee who can transcend the precariousness of her daily circumstances and reach an objective and rational decision; the employee who can bracket her identity as an individual while she calculates the optimum course of action. What this demand for an objective rationality requires is a universalism that attempts to transcend time and place. It is this attempt to find fixed principles, what can also be called a rules-based approach, which ultimately fails to produce a satisfactory ethics of whistleblowing.

As we observed in Section 3, fixed principles and the slavish adherence to rules that brook no, or limited, exception fail to provide an acceptable solution to the dilemma of divided loyalties - in some instances organisational loyalty should be given priority, while in other instances the interests of the public should be the overriding consideration. Fixed principles, no matter how numerous, will not allow us to consider all possible scenarios. By extension, a rules-based approach proved inadequate to address the important dichotomy of whether

internal or external disclosure should count as whistleblowing. Similarly, a rules-based approach failed, as we observed in Section 4, to prescribe only moral motives in disclosure, which withered in the face of fierce organisational retaliation against whistleblowing. Section 5 demonstrated how attempts to embed ethical principles by institutionalising them within whistleblowing legislation and policies could inadvertently make employees morally and legally culpable by shifting responsibility, and thus making whistleblowing mandatory.

In section 6, we examined how a rules-based approach kicked up vexing political problems for the whistleblower. At that stage a new conceptualisation of whistleblowing, as the practice of *parrhesia* - truth telling was briefly mooted as a way forward in thinking about whistleblowing. In order to give substance to this new social identity for the whistleblower as parrhesiastes we need to discard the rules-based approach - the Enlightenment ways of thinking about ethics and politics - and situate ourselves within a new ethical framework. In the next two chapters we describe and develop that framework.

Chapter 2: Legitimising whistleblowing within a global context

1. Introduction

Chapter 1 exposed the limitations of a rules-based approach to whistleblowing. We characterised these as Enlightenment approaches which attempt to fix ethical guidelines in order to circumscribe an ethics of whistleblowing. We start this chapter by briefly examining the aims and ideals of the Enlightenment, as well as its flaws and weaknesses which ultimately proved its undoing. As a way forward from that failure we seek to understand whistleblowing as a cultural and historical social practice; thus our focus in this chapter shifts away from the "foundationalist emphasis on the consciences" of individual whistleblowers to "how individual [whistleblowers] are positioned within discourses" (Perry 1998: 240). This chapter then, examines the whistleblower within various cultural and historical contexts, the most pertinent being the context of globalisation within the last thirty years. Examining whistleblowing and whistleblowers in this manner reveals that certain whistleblowing issues such as motive and loyalty, and internal or external disclosure, are understood differently in different cultural and historical contexts. As such, how those issues are approached and resolved also differs markedly. There have however been salient global trends in attempting to resolve the dilemmas posed by whistleblowing, which manifest themselves in whistleblowing protection legislation and organisational whistleblowing policies. These global trends in legitimising whistleblowing policies do not, however, in the final analysis, offer a satisfactory resolution to the dilemmas and dichotomies of whistleblowing, such as whether internal or external disclosure should qualify as whistleblowing, or whether loyalty to the organisation should trump concerns of harm to the public interest.

In Section 3 we examine whistleblowing within the American and South African cultural context. That examination will demonstrate that attempts to posit certain whistleblowing dichotomies, such as whistleblower motive, as universal concerns are bound to fail, and that a satisfactory ethics of whistleblowing will always be sensitive to the contingencies surrounding it. Section 4 expands the examination of whistleblowing as a cultural and historical social practice, seeking to understand whistleblowing within the context of the globalisation of the last thirty years. In order to facilitate that examination we employ Vandekerckhove's 'network perspective', which he equates with autopoietic systems. He builds on Luhmann's (1980, 1995) work to construct a globalisation 'semantic' which he then uses to construct normative legitimisations for whistleblowing policies. We focus in particular on his OSR (organisational social responsibility) legitimisation, which attempts to

eliminate the conflict between society and organisation, a conflict which in turn gives rise to the necessity of whistleblowing in the first place. Ultimately, Vandekerckhove's project falters and in Section 5 this is attributed to his understanding of networks as autopoietic systems. Finally, the outlines of a possible way forward from Vandekerckhove's paradox - that encouraging whistleblowing needs an open and democratic society, but that whistleblowing itself contributes to an open and democratic society - are sketched.

2. Modernism and the Enlightenment ideal

In Chapter 1, our exegesis of whistleblowing ethics revealed several problematic dichotomies, as well as a central dilemma that was not satisfactorily resolved, which we again identified above. Perry (1998: 236) offers his assessment of the current understanding of whistleblowing:

> All [the] studies contribute to the unproblematic reproduction of the legacy of the modern through the replication and naturalization of its narrative conventions. What is foregrounded in these analyses is: the ethico-political stance of the whistleblower versus the governing realpolitik of the system, moral wo/man against immoral organization: the spirited resistance of the precariously sovereign individual against repressive social control. Interpreted in this way, 'blowing the whistle' thus becomes a colloquial and contemporary characterization of the enduring verity of Enlightenment ideals.

In other words the Enlightenment ideal of universal and immutable ethical principles fails to adequately address the essential aporia at the heart of whistleblowing. Reason and objectivity - the legacy of Modernism - cannot always determine whether the welfare of society or organisational loyalty should be the *summum bonum* to which the whistleblower must concede in deciding whether to blow the whistle or not. The whistleblower fails the Enlightenment ideal when s/he cannot put aside his/her personal motives and interests and transcend the contingency of his/her situation to make a rational decision about whether to blow the whistle or not. S/he might fail in this regard for several reasons, most notably because s/he must consider the possibility that in blowing the whistle s/he may well lose his/her job and thus not be able to support his/her family. Before we consider Perry's alternative to whistleblowing as a manifestation of the Enlightenment, we briefly discuss some of the features and failings of Modernism and the Enlightenment.

Modernism was an era commencing in the 18th century and dedicated to infusing knowledge, Man and his institutions with the Enlightenment ideal. The Enlightenment starts with the collapse of the Divine and preordained order, "the withdrawal of God mean[ing] a triumphant entry of man" (Bauman 1992: xii). In other words, in the absence of the certainty of the Divine, certainty must be found in Man and his faculties, primarily the faculty of reason; or if not there, then his senses and experiences. Order, no longer guaranteed by God, would need to be imposed by the institutions of Man. The application of Reason would yield principles that would bracket and make irrelevant the contingencies of Man, like his corporeality and the station of his birth; all these would become subject to an immutable Universalism. Contingency would yield to design; randomness would give way to predictability. The theistic teleology that informed History would now be taken up by the idea of Progress, an inevitable path toward Truth and Utopia. Knowledge would only advance, strengthening the foundations of Reason, on which the modern era built its shelter against uncertainty (Bauman 1992).

In the realm of ethics, Reason would also discover those universal and immutable principles which would govern the conduct of man in his dealings with others. Such interactions would not be left to circumstance, or to the caprice of the individual. Ethical decision-making would be *calculable* and hence rational. Morality would "make sense … Moral acts *are means to an end"* (Bauman 1993: 56) (Italics in original). Whether that end was advancing the greatest happiness of Man as envisaged by Mill, or respecting Man's inherent dignity as proclaimed by Kant, or the attainment of justice through a social contract as envisaged by Rawls, all attempts proceeded "from the implicit general assumption that the world is governed by an orderly system of rules and principles" (Painter-Morland 2008: 51). Reason would discover those rules which any man, in any situation, at any time, could appeal to in assisting him to decide what to do; whether his purported action was 'right' or 'wrong'. He would not need to 'search his soul' or his conscience to decide if his deeds were 'good' or 'bad'; he would merely need to calculate how his choice compared with the particular applicable rule and so discover that indeed his choice was right or wrong. As Bauman (1993: 60) would say: "Rules would tell me what to do and when; rules would tell me where my duty starts and where it ends."

However, one could always postulate an exception to a rule, thereby frustrating any attempt to universalise any precepts of conduct; and a moral dilemma could throw two ethical principles into conflict, thus rattling the foundations so assiduously constructed. In failing to

discover rational, universal principles to justify morality, the Enlightenment project inevitably became vulnerable to the power of the Nietzschean critique: if Reason cannot ground morality, then morality is nothing but the expression of the will of the dominant. Although Nietzsche's notion of the will to power and the Superman might be seen as questionable to some, Nietzsche's value was in showing how "the claim of objectivity masks subjective motivations" (Burrell 1988: 224).

Consequentialism, best exemplified by Utilitarianism faltered because the notion of the commensurability of values into an overarching principle of happiness was inherently flawed. The attempt failed because the abstraction of values needed for a Utilitarian calculus rendered it "incapable of adequately considering the meaning and significance of particular actions as experienced by those who are affected by them" (Painter-Morland 2008: 54). Deontology, best exemplified by Kantianism, faltered because it assumed it was always possible for a moral agent to "retreat from his/her immersion in particular role responsibilities and employ the universalization test in order to judge the categorical validity of various possible courses of action" (59). Similarly, Social Contract theories such as Rawls' notion of Justice as fairness assume an autonomous moral agent who can transcend the contingencies of their existence and knowledge to make an objective evaluation of an ethical situation. All these Enlightenment theories also faltered in their attempts to provide adequate justifications for whistleblowing; and thus to provide satisfactory resolutions to the problems inherent in whistleblowing, such as whether loyalty was owed first to the organisation or the society in which one lived, or under which conditions external disclosure was permissible.

All these failed attempts to discover universal and immutable principles thus opened the door not only to question whether such principles did in fact exist or not, but also, more importantly, whether such a project was at all worthwhile. One such stream of questioning, dubbed the 'Continental tradition', "seek[s] to understand the way in which human subjectivity is shaped and informed in and by the confluence of historical, societal and cultural variables in the lives of individuals" (Painter-Morland 2008: 91). It is to this tradition which Perry turns to understand the ethics of whistleblowing.

3. Whistleblowing as 'historically determined and culturally mediated social practice'

Perry's (1998: 239) solution to the difficulties that result from understanding whistleblowing "as the manifestation of prior ontological certainties or universal truths" is to instead view whistleblowing "as an historically determined, institutionally shaped, culturally mediated

social practice", which is "constituted in and through the social order that generates them, the discourses that articulate them and the subject positions which realize them." Such an approach will thus be more sensitive to context and see "whistleblowing practices as tracers of shifts and realignments within and between discursive and institutional structures" (240).

Perry contends that there are different types of whistleblowing associated with different types of discourses represented by science and technology, the law and ethics (241). Perry, in his paper, restricts himself to analysing only whistleblowing deriving "its impetus from scientific and technological notions of rationality" but states that this theoretical approach has a wider applicability than just scientific whistleblowing (243). Before we turn to an analysis of whistleblowing within the legal and ethical domains, we first conduct an examination of whistleblowing within the social context of two countries, the USA and South Africa, which neatly demonstrates Perry's argument that whistleblowing should be viewed as a historically determined, institutionally shaped, culturally mediated practice which is symptomatic of political processes.

3.1. The American Context

In the USA the False Claims Act (FCA) of 1986 allows a whistleblower who sues in the name of the US government in relation to fraud to also sue for themselves (Vandekerckhove 2006: 173). What this means is that the individual or organisation who files the law suit under the FCA gets a percentage of the money the government is able to recover. The FCA, (also known as the Qui Tam Law) dates to 1863 when it was enacted during the American Civil War to "protect the Union Arms against fraudulent suppliers who sold sawdust for gun powder" (173). The mechanics of the act require the whistleblower to bring the law suit and go to trial first, and only then does the government decide whether it wishes to join the law suit or not. If the government joins, the whistleblower can expect to receive 15-25% of the amount recovered, if the government does not join, that amount increases to 25-30% (173).

While whistleblowing legislation around the world has tended to influence and be influenced by whistleblowing legislation in other countries (292-4), the FCA has not been copied by any other country (at least not yet) (295). Vandekerckhove argues that this anomaly can be explained by two characteristically American cultural aspects. The first is that there exists a litigation culture within the USA, meaning that "taking disputes to court is a commonly accepted practice" (295). Second is the 'employment-at-will' doctrine central to labour practices within the USA (295). Employment-at-will means that "an employer may discharge

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his employee for any reason, or for no reason, … either side is free to terminate it at any time without advance notice or reason" (Shaw 2011: 305). Compare that freedom to hire and fire with the provisions of the South African Labour Relations Act (LRA)[8] 66 of 1995 which under Chapter 8, S.185 require a dismissal to be for a fair reason and in accordance with a fair procedure, on the grounds of an employee's conduct, capacity or the operational requirements of the business. Although the Sarbanes-Oxley Act (SOX), in its whistleblowing protection provisions (see Chapter 1, Section 4.2.), does temper the employment-at-will doctrine, the overwhelming historical context, dating back from the 19th century (Shaw 2011: 305), ensures that the spirit of the doctrine still pervades the employment relationship. SOX thus represents an exception to the employment-at-will doctrine, not an overhaul of it; and in a self-reflexive manner, litigation, as the other cultural aspect affecting whistleblowing in the USA, thus becomes the whistleblower's way to balance the asymmetry of power inherent in the employment-at-will doctrine.

These two American cultural aspects have a distinct influence on the way whistleblowing is perceived in the USA, by the organisation and the would-be whistleblower, and thus impacts how the whistleblowing dilemma of loyalty (see Chapter 1, Section 3.1) and the dichotomy of motivation (see Chapter 1, Section 4.2), are approached. Employment-at-will means that in practice, organisational loyalty will weigh more heavily in the deliberations of the would-be whistleblower, if only because ones occupational livelihood is more precarious and more subject to the caprice of the organisation one works for. Similarly, the corollary of employment-at-will, from the organisation's standpoint, is that organisational loyalty becomes a more pressing consideration, perhaps, in some cases even requiring, as in that other American mythologised institution - the Mafia - an injunction of total obedient silence: the code of *Omerta*.

The FCA and the litigation culture mean that in practice, in the USA, whistleblower motivation is little considered, if at all. Rather what drives whistleblowing is that it is a valuable source of information leading to the capitalistic virtue of efficiency, which has the moral connotation of not wasting (Vandekerckhove 2006: 135) (see also below - Section 4.2). The FCA was supplemented by some of the provisions of the Dodd-Frank Act,[9] enacted in 2010, one of the new laws passed by Congress in the USA in the wake of the global financial

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[8] LRA available at http://www.labour.gov.za/legislation/acts/labour-relations/read-online/document.2008-05-29.2826668274. (Accessed 1 June 2011).
[9] available at http://thomas.loc.gov/cgi-bin/bdquery/z?d111:HR04173:@@@L&summ2=m&#major%20actions (accessed 2 June 2011).

crisis of 2007-9. Amongst other things this required the SEC (America's Securities & Exchange Commission) to announce new rules to encourage whistleblowing on May 25th 2011. The inducements include 10-30% of fines of over $1 million that result from tip-offs. The onerous expenses and time involved in bringing a law suit to trial, as required under the FCA, are now a thing of the past. All the mercenary-motivated whistleblowers, or as the US Chamber of Commerce, in response to the SEC's announcement calls him/her, "amateur sleuths in search of a big payday", has to do is pick up the phone and report suspicion of wrongdoing; collecting hard and actionable evidence is no longer necessary, as was required under the FCA. The US chamber of commerce went on to call the new scheme a "bounty programme." [10] Once again, what this reveals is how such approaches to whistleblowing are embedded in the cultural milieu of the USA - the sovereignty of the individual pursuing the all-American dream of fame and fortune by pushing the frontiers of a ruthless and unsentimental Capitalism. Paradoxically, this leads to the erosion of organisational loyalty, where loyalty becomes just another commodity to be auctioned off to the highest bidder.

3.2. The South African (and African) context

Whistleblowing in South Africa must be understood within the context of the country's Apartheid past. The heavy weight of that damaged and damaging past has "meant that speaking openly and confidently about wrongdoing is not part of the national psyche" (Martin 2010: 1). Waging the Struggle required activists, operating underground, to handle sensitive and incriminating information with extreme caution. Confidentiality and keeping operational secrets from the Apartheid regime was a matter of life and death. Besides the oppression sanctioned against the black majority through legislation, regulation and policy, the Apartheid government also waged a clandestine war against the ANC and numerous other banned political organisations. Aiding the Apartheid regime in this war was the recruitment of '*impimpis*' – informants who, for monetary and other rewards, spied and reported on others to the Apartheid authorities, often with devastating consequences -torture and death. This "connotation of *impimpi* attached to reporting wrongdoing still lingers on" (Vandekerckhove 2006: 221). This history, "not dissimilar to former Soviet Bloc countries … has unfortunately allowed the stigmatisation of whistleblowing as an activity to be despised rather than to be encouraged" (Camerer 2001: 1).

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[10] Quote taken from unnamed author in *The Economist,* May 28th 2011, p. 65, insert entitled 'Corporate Crime: Give a little whistle.'

The result is that when South Africa's whistleblowing protection law, the Protected Disclosures Act (PDA) was promulgated in 2000 and came into operation in 2001 it was only half-heartedly embraced (Martin 2010: 1). Even the trade unions, an influential agent of resistance against Apartheid and still a formidable political force within South Africa, although "in principle supportive of the PDA [are], in practice, cautious to apply its protections" (5). More alarmingly, there seems to be a lack of political will in implementing the PDA. Uys in a 2008 paper (7 years after the enactment of the legislation) laments that "the regulations that should have been published by the Department of Justice are still not forthcoming and the South African Law Commission's investigation into the act seems not to have proceeded beyond asking for public comment on an Issue Paper in 2003" (2008: 918). The Commission did eventually publish a final report in 2009, offering some recommendations, but engagement is now needed with the Department of Justice and Constitutional Development on the way forward for those recommendations (Martin 2010: 6-7).

This ambivalence can be traced back to the origin of the PDA in the Open Democracy Bill (first drafted in 1995). The Open Democracy Bill was eventually split into the PDA and the Promotion of Access to Information Bill, which was also enacted in 2000. Whistleblowing legislation in South Africa was thus "promoted and enacted as part of a democratisation process" (Vandekerckhove 2006: 287). South Africa is one of the very few countries where whistleblowing legislation seeks to legitimise itself by reference to human rights (See Chapter 1, Section 6.1). The preamble to the PDA "explicitly places the provisions in a context of democratization, referring to human rights values of human dignity, equality and freedom" (287). Furthermore and uniquely, the subject element (what type of wrongdoing can be disclosed) includes 'unfair discrimination' (S.1. (i.)(f)), which is befitting of ameliorating the legacy of Apartheid's discriminatory past.

The problem for South Africa however, is, as posed by De Maria (2005), whose argument is summed up by Vandekerckhove (2006: 314), that "whistleblowing policies do not create but rather need democracy." De Maria (2005: 217) raises several misgivings about whether whistleblowers can be adequately protected in developing countries and identifies several prerequisites for effective whistleblowing, amongst them: "ubiquity of the rule of law, the legitimacy of state anti-corruption agencies and public confidence in disclosure as an anti-corruption device". The importation of Western whistleblowing laws into Sub-Saharan

Africa, including South Africa, (the PDA was largely based on the British PIDA[11] - De Maria, 2005: 221) are bound to fail, according to De Maria, because "African corruption is fundamentally different from Western corruption" (225).

Corruption in the West is understood as "the malpractice of individual rogue citizens" and whistleblowing aims "to eradicate essentially discrete acts of non-systemic wrongdoing through individual reporting" (222). Remarkably, points out De Maria, there are no whistleblowing laws anywhere in the world that offers protection to a class, or group of people disclosing. This confirms the value-context of the West: a worldview in which the notion of the individual is supreme (222). De Maria claims that "no commentator on African corruption is prepared to consider it in these individualist terms" (222). If corruption is systemic, i.e. understood and accepted as the way society and government functions then whistleblowing policies will fail simply because few people will be morally outraged and risk being socially ostracized.

Michela Wrong (2007), in *It's our turn to eat: the story of a Kenyan whistleblower* attributes the political violence that followed Kenya's 2007 disputed election, not to citizen outrage at government corruption in general, but to one ethnic tribe - the Luos, who were once again on the verge of being side-lined. Their candidate, Raila Odinga, was being outmanoeuvred into taking up the country's presidency, and thus the Luos were potentially being denied their opportunity to indulge in systemic corruption for their benefit. Wrong continues: "a Raila presidency would surely mean new jobs, fresh investment, new roads, hospitals and schools for the Luos, just as it had for the Kikuyu under Kenyatta and the Kalenjin under Moi" (300). The manipulated election results presented by the incumbent government, "had conspired to rob their community of its rightful turn at the trough" (302). Corruption in Africa is thus not the doings of a few rotten apples, but normal social practice -institutionalised; "generalised and banalised" (De Sardan 1999: 28).

De Maria also calls Western whistleblowing "a child of the city … designed to complement the anonymous spaces of work and urban living" (2005: 223). Whistleblowing is primarily about reporting on strangers engaged in wrongdoing at the workplace, which does not lend itself well as a mechanism when "graft[ed] onto the complex lacework of work-family connections one finds in Africa and equally difficult to apply to close-knit rural

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[11] The Public Interest Disclosures Act 1998 provides for the protection of whistleblowers within the United Kingdom. Available at http://www.legislation.gov.uk/ukpga/1998/23/introduction/enacted.

communities" (224). He cites an illuminating insight by De Sardan (1999: 30): "… In a 'face to face' society the price of open conflicts is too high. It is unthinkable to denounce to the police a relative, a neighbour, the relative of a friend, that is someone with whom one has a personal tie, even a weak one: social disapproval would be too heavy."

The hope therefore that *only* increased whistleblower protections in Africa and South Africa will result in increased levels of disclosures of wrongdoing is thus misguided because it ignores this social context. However, increased whistleblowing protection is still needed in Africa and South Africa. To this end Lewis & Uys (2007: 88-9) offer some suggestions which include treating retaliation against a whistleblower as a criminal offence (as SOX does – see Chapter 1, Section 4.1), and allowing unlimited compensation that can be awarded to a whistleblower, up from the current cap of two year's salary allowed by the PDA. A most perspicacious recommendation, in the light of the immense political power the trade unions command in South Africa and the trust naturally present within the relationship between worker and union, is that union representatives be given a 'prescribed persons' status in terms of the PDA. A prescribed person is a person a whistleblower can disclose to and still enjoy the protections granted by the PDA, as for example a legal adviser (S.5) or a member of cabinet (S.7)   On the other hand, this privilege may be abused; an unscrupulous trade union might decide to leverage information gained from a disclosure made to it by one of its members against the organisation during the wage-bargaining process to extract more favourable concessions.[12]

More worryingly for the would-be whistleblower within the South African context is the current (2011) political climate of fear and suspicion, and the threat posed to the robustness and freedom of the press to report on corruption and impropriety, particularly within the government sector. The proposed Protection of Information Bill[13] grants exceptional discretionary powers to all 'heads of organs of state' (of which there exist roughly about 1000) to classify information as secret and so subject that information to the provisions of the Bill which include mandatory prison sentences for any person who discloses such classified information. The fear is that this power might be abused to cover up impropriety and corruption, the provisions in the Bill against arbitrary classification notwithstanding. Furthermore, the bill does not protect would-be whistleblowers from prosecution if they

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[12] I owe this insight to Woermann from a discussion of whistleblowing held at the University of Stellenbosch in 2011.
[13] The Protection of Information Bill is available at http://www.iss.co.za/uploads/POIBILL.PDF (accessed 11 June 2011).

disclose classified information even if such information is deemed in the public interest.[14] These provisions run contrary to the spirit of the PDA. It seems therefore, that the conditions necessary for effective whistleblowing in South Africa, as identified by De Maria above, still need to nurtured and strengthened.

The examination of whistleblowing within the contexts of the USA and South Africa demonstrate that theoretical attempts to posit certain whistleblowing dichotomies, such as whistleblower motive, as universal concerns, are bound to fail - while some theorists and jurisdictions may agonise over its importance, the Americans are content to bracket the issue of whistleblower motive and move on. Even the central whistleblowing dilemma of divided loyalties cannot be cast as an aporia in monolithic and universal terms. The repressive social order of Apartheid shaped a distinctive notion of trust, and hence to whom, or what, loyalty is ultimately owed. Whistleblowing, understood as a 'historically determined, institutionally shaped, culturally mediated social practice', also influences how we proceed in encouraging meritorious whistleblowing. A demand to increase whistleblower protections against organisational retaliation in a uniform and standard manner will not necessarily lead to the same result; in the individualist West it might lead to more disclosures, but not in a more community-orientated society such as Africa.

4. The normative legitimisation of whistleblowing within the global context

The previous section aimed to demonstrate an understanding of whistleblowing within particular historical and cultural contexts. Such an approach can broadly be said to encompass 'place'. In attempting to understand the evolution (in time) of whistleblowing we turn in this section to Perry's injunction to view whistleblowing "as tracers of *shifts and realignments* within and between discursive and institutional structures" (1998: 240) (emphasis added). Notions of the ethics of whistleblowing as fixed and immutable in time, as the Enlightenment ideal would have it, are ill conceived.

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[14] After mounting pressure from civil society, the media and former prominent members of the ANC, the South African government announced on 25 June 2011 several amendments to the bill, the most important being limiting the power to classify to state security bodies and scrapping mandatory prison sentences for disclosing. However, an exemption for whistleblowers who disclose classified information in the public interest has still not been addressed. The government also extended the deadline for the bill to 23 September 2011. ('Press backs info bill amendments'- Business Report, 27 June 2011, available at http://www.iol.co.za/business/business-news/press-backs-info-bill-amendments-1.1089121 accessed 27 June 2011.

Our understanding of the ethics of whistleblowing must be sensitive to different historical and cultural contexts *and* different periods within those particular contexts. Thus, for example, it was pointed out above in Section 3.2 that within the South African context the trade unions had been reluctant to enlist the protections of the PDA. However, "unions are now turning their attention to tender irregularities among public officials with calls to 'blacklist state looters' and more recently lifestyle audits … unions are leading the way with calls for more disclosures to hold organizations/politicians to account" (Martin 2010: 5). This change, essentially in the understanding of organisational loyalty, can be attributed to the fact that with the Apartheid government overthrown, the interests of the trade unions and its erstwhile political allies, now the ruling power, have increasingly begun to diverge. As the struggle for liberation has moved to the economic realm, the trade unions have started to recognise that their proper role is in civil society, holding the government to account. As a result their attitudes to whistleblowing have changed.

This section aims to explore how the ethics of whistleblowing has evolved over the past thirty years within a global context. Vandekerckhove (2006: 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. (See also Chapter 1, Section 6.1.) Vandekerckhove aims to trace the historical *shifts* in how the categories of individual, organisation and society within the whistleblowing context relate to one another (30). The profile of whistleblowing in the media has certainly increased since the 1970s - witness the naming of the whistleblowers Cynthia Cooper, Coleen Rowley and Sherron Watkins as *Time* magazine's persons of the year in 2002, as well as the Hollywood hagiographies *Silkwood* (1983)*, The Insider* (1999) and *Erin Brockovich* (2000). Similarly, whistleblowing legislation was being enacted in countries around the world in the 1990s, and given further impetus in the wake of the Enron scandal in the early 2000s.

Vandekerckhove sees the increased prominence of whistleblowing 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"(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

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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" (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 (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" (304). In other words, current global trends in legitimising whistleblowing policies attempt to move the debate concerning whistleblowing ethics from the larger societal domain into the domain of the organisation, which includes proxies of society. Vandekerckhove designates as proxies of society such institutions, inter alia, as law enforcement agencies, regulators and Ombudspersons (285). Whether that attempt succeeds is answered in section 5 below. We turn first to delineating the globalisation semantic, within which we examine one central globalisation concept: the network perspective. Thereafter we investigate Vandekerckhove's construction of the normative legitimisations of whistleblowing policies, before returning to an evaluation of whether those legitimisations succeed in eliminating the conflict between society and organisation.

4.1. The globalisation semantic, network perspective and autopoiesis

The globalisation semantic is comprised of the concepts 'stakeholder', 'flexibility', 'decentralization', 'governance', and 'network' (Vandekerckhove 2006: 73). Vandekerckhove (86) builds on Freeman's (1984: 46) definition of stakeholders as "any group of or individual who can affect or is affected by the achievement of the firm's objectives" to include Rowley's (1997) more expansive definition which considers not just "dyadic relationships between stakeholders and organizations but also "multiple, interdependent and simultaneous interactions in stakeholder environments" (2006: 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 (75). In

practice this means employing more temporary workers whose working hours can be scaled up or down according to market demand; and constantly moving production around the globe to where input costs are lowest. 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 (77). Decentralisation not only occurs within organisations, but also at societal level, as in the process of privatization which "can be described as society delegating responsibilities to companies and private organisations" (78). Decentralisation begets uncertainty which then requires governance. The language of governance, as opposed to government, becomes necessary to accommodate the blurring of institutional borders between public and private organizations (80). 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 focussing 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" (82).   The organisational system amounts to "the set of relations between elements, but without fixed distances. Hence processes are dynamic" (81). Also, from a network perspective, "the locus of rationality shifts from the global to the local" (81). Adopting a network perspective on organisations means that interdependency and cooperation are emphasised and "communication and collective action are the key metaphors… rather than conflict and competition" (85).

Vandekerckhove's network perspective is based on his understanding of "organizations as autopoietic systems" (81), of which he gives no further description. Woermann (2010b: 96-100) gives an exposition of autopoietic systems as systems that are "autonomous, self-referential and organisationally closed" (97). She cites Hayles (1999: 136) who explains: "living systems operate within the boundaries of an organization that closes in on itself and leaves the world on the outside." Drawing on the work of Maturana and Varela (1980), Woermann explains that being organisationally closed does not mean being isolated, but rather that the "environment is drawn into the system, in order to facilitate its own production and maintenance" (2010b: 97). This production, or rather self-production, occurs through feedback loops, in a process called autopoiesis (98). Woermann (98) elaborates, drawing on

Maturana and Varela's (1980: 9) description of autopoiesis as " the circularity of its organisation that makes a living system a unit of interactions, and it is the circularity that it must maintain in order to remain a living system and to retain its identity through different interactions."

Niklas Luhmann (1995) appropriated Maturana and Varela's ideas and applied them to social systems. Poli (2009: 9-11) describes how Luhmann achieved this- social systems are self-referential if they display a degree of systemic stability. Social systems, argued Luhmann, reproduced not just by the reproduction of social roles but by the "reproduction of meaning, e.g. through education and other socializing functions" (9). As was described above at the start of this section, in what was called a 'semantic', Luhmann saw the reproduction of meaning as occurring through "endogenous processes of variation, selection and stabilization" (Vandekerckhove 2006: 3). Social systems, for Luhmann, are informationally as opposed to thermodynamically closed, because, argues Poli, (2009: 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" (11).

The notion of autopoietic systems, as operationally closed systems, is however extremely problematic, and Woermann doubts whether the solipsistic and relativistic implications they carry can be overcome (2010b: 100). This problem is returned to in the last section of this chapter.

4.2. Current global normative legitimisations of whistleblowing

Having delineated the concepts which comprise the globalisation semantic - flexibility, decentralisation, governance, 'stakeholder' and 'network' (a concept which was explored in some depth because of what will follow in this subsection) - Vandekerckhove can now construct normative legitimisations of whistleblowing policies. In examining those normative legitimisations, particular attention will be paid to how the network perspective, understood as an autopoietic system, informs those normative legitimisations. The success or failure of a normative legitimisation may well hinge on the understanding of a network as an operationally closed system, as opposed to an open system.

Vandekerckhove considers the six possible ways in which whistleblowing policies are currently normatively legitimised around the globe - through Organizational Social Responsibility (OSR)[15]; accountability; integrity; loyalty; efficiency; and whistleblowing as a human right (73-136). Whistleblowing as a human right was considered in Chapter 1, Section 6.1, while the loyalty construct is that contained in 'rational loyalty' (see Chapter 1, Section 3.1). Vandekerckhove argues that integrity is the unity of "discernment, action and speaking, and that in whistleblowing, this unity [is] present" but as a legitimisation "whistleblowing is 'raising concern' rather than … 'making allegations'"(151).

Whistleblowing policies as a means of getting information about what is going wrong on the 'shop floor' legitimises itself by promoting organisational efficiency (138). This is because "organizational processes can be designed as very efficient, but if they are not carried out the way they were planned or intended, this causes inefficiency - fraud and corruption" (281). The decentralisation of organisations identified in the globalisation semantic above disperses power over the organisation, with the result that there is both a greater risk that those processes will be thwarted, and that it is more difficult to determine where things went wrong (281). Efficiency driven whistleblowing policies then become governance mechanisms which balance flexibility with detectability, as a way to govern the 'human factor' (281). As such, the efficiency legitimation is one of the three most widely used whistleblowing legitimisations around the globe today (279). The other two legitimisations widely employed are the accountability and OSR-network legitimisations.

Accountability, which includes responsibility, legitimises whistleblowing policies, in that within the decentralised organisation, it makes lower managers answerable to their superiors for their actions (114). In so doing it also protects the subordinates of those managers from internal office politics and those manager's subjective whims (115). A whistleblowing policy "as an accountability mechanism is assigning a position to particular agents in a chain of accountability" (282). This is usually achieved by adopting a tiered approach. A tiered approach acts as a 'filtering mechanism' which allows an organisation control over its

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[15] 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 (2006:104).

practices as long as they stay in line with the public interest as defined in the subject element (283). Vandekerckhove continues (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 there is 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.

Vandekerckhove argues that the accountability legitimisation is widely used today, because it "stabilizes the globalisation semantic by conceptualizing whistleblowing in a way that reduces the risk of organizational practices to come under judgement or direct control of society" (284). The problems surrounding this tiered approach, which can be attributed to understanding networks as autopoietic systems, are discussed in the next subsection on the OSR-network legitimisation.

The OSR-network legitimisation is also widely employed around the globe today for a similar reason, which we discuss below. Vandekerckhove constructs two normative legitimisations of whistleblowing around OSR: 1). OSR and the network perspective, and 2). OSR, Stakeholders and purpose, which we examine in turn.

4.2.1. The OSR-network legitimisation

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 (274). Calton and Lad argue for a conception of networks "as an emerging alternative to market transactions and hierarchical governance" (1995: 274.) 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"(274). Trust, being "the essential glue and lubricant for long-term, value-creating organizational interactions" (274), is thus at the heart of network governance, especially "in the absence of formal, explicit governance mechanisms that safeguard against malfeasance" (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 (283). Calton & Lad's solution to this problem is to promote "a consent-based, dialogue-driven, micro social-contracting process of collaborative governance" (284). To facilitate this requires "a recasting of managerial discretion into a new form of 'moral agency'" (286) which they identify with Carol Gilligan's (1982) 'ethic of care'[16]. An ethic of care eschews applying universal rules of justice in balancing stakeholder interests (Calton & Lad 1995: 288). Instead, maintaining trust-based network-relationships "calls for a more *particularist* application of discretion as an agent's responsibility to serve the interests of network participants. Trusted long-term customers, employees, and suppliers expect special consideration, not standard procedural responses" (288) (Italics in original).

Trust however, can only guarantee so much. Although we can agree with Ghoshal (2005) that the 'gloomy vision' of individuals as *Homo Economicus* - purely self-interested maximizers - that pervades so much of economic and business life, ultimately impoverishes and destroys good management practices, we should not overcorrect by assuming that opportunism and even duplicity are always, or mostly, exceptional occurrences in corporations.

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 resolving the power differentials between all these various actors. The organisation naturally exerts an asymmetrical power over its

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[16] Gilligan uses the metaphor of 'voice' to describe the difference between male and female approaches to and traditions of morality. The 'voice' traditionally associated with women speaks primarily of *relationships* and the responsibilities those relationships give rise to, which she designates as an 'ethic of care'. The patriarchal 'voice' on the other hand, which Gilligan calls an 'ethic of justice' is "geared to arriving at an objectively fair or just resolution to moral dilemmas upon which all rational persons could agree …" (1982:149).

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: 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: 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[17], network actors are empowered to receive information which otherwise would not get to them" (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 then choose to hide or manipulate that information to their benefit if they were opportunistically or maliciously inclined. As an example, let us take a corporation that has a certain, higher, rate of tax on its profits above a certain threshold. In order to remain below that threshold, and avoid the higher tax rate, the corporation purchases equipment that is strictly speaking unnecessary for its current operations and size. Only the corporation will know that the purchase is unnecessary, but if information regarding the procurement policies, or depreciation periods of equipment, were made known to certain stakeholders, such as the local municipality, then that impropriety - tax avoidance - could be stopped. If that information was passed onto, or ended up with, the corporation's trade union for example, the union could use that information to extract greater wage concessions; or if that information was received by the organisation's suppliers, those suppliers could extort higher prices for materials or equipment it supplied the organisation.

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 (284). This is because the OSR network legitimisation contains that conflict within the organisation or within the limited space of a

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[17] 'Specifying the recipient element' refers to who can legitimately receive a disclosure of wrongdoing. See Chapter 1, S2.

proxy of society, such as a regulator or an Ombudsperson, which it does by adopting a tiered recipient approach, which we discussed above.

The problems associated with a tiered approach however, mirror exactly the problem of defining whistleblowing as internal or external disclosure (See Chapter 1, Section 3.3), i.e. the superior that one attempts to disclose to may ignore or thwart these attempts, and approaching a proxy of society such as an Ombudsperson places a heavy burden on the whistleblower to procure evidence. It also exposes the whistleblower to potential organisational retaliation. 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 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, 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, making the mechanism impotent.

A possible solution then seems obvious - there should be no restrictions on the whistleblowing recipients. How this is achieved is explored by Vandekerckhove in his OSR-stakeholder legitimisation, to which we now turn.

4.2.2. The OSR-stakeholder legitimisation

Vandekerckhove builds his OSR-stakeholder legitimisation around business purpose. Under the OSR-stakeholder legitimisation whistleblowing aims at "stakeholders warning other stakeholders about organizational practices differing from organizational purpose" (157). He agrees with Solomon (1993) that the purpose of business is "to enrich society as well as the pockets of those who are responsible for the enriching" (1993: 181). Enrich is perhaps a troublesome word to use, as its root - *rich* - has unfortunately become too closely associated with money and thus goes against the very spirit Solomon argues for. A much better definition, to my mind, comes from Painter-Morland (2008: 237) who argues that the purpose of business is "the enhancement of life."

Nonetheless we can continue with Solomon's thesis which Vandekerckhove (2006: 107) elaborates on - distinguishing between goals and purposes - "business as a practice has a

purpose, and goals are internal to the practice." Thus, taking the national lottery as an example, we could say that its goal would be to maximise the sales of its lottery tickets and so increase its profits, but its purpose is to distribute those profits back to local charities. Unfortunately however, as evidenced by the Enron scandal of the early 2000s and the Global Financial crisis of 2007-9, we see how often business goals usurp business purpose; the pursuit of profits at all costs destroying the society it is meant to serve and mutilating the life it is meant to enhance.

It is within this disjuncture that Vandekerckhove, rightly, 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 (108). This way of putting things recalls Vandekerckhove and Commers' (2004) notion of rational loyalty (Chapter 1, Section 3.1) which posits organisational wrongdoing as any action, emanating from the 'physicality' of an organisation - the management structures, functional positions etc. which is in violation of the explicit mission statement of the organisation, whose legitimacy is sanctioned by society. Vandekerckhove brings the stakeholder concept into his OSR-stakeholder legitimisation, thus differentiating it from the rational loyalty construct, by arguing that in the sense that "the abstract notion of 'society' can be *concretized into the stakeholders of an organization* ... the well-being of society requires organizational practices coinciding with organizational purpose" (Vandekerckhove 2006:148) (emphasis added).

What follows from this, argues Vandekerckhove, is that information must be allowed to be disclosed to *all* stakeholders (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" (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.

It is at this stage that we must recall Jubb's definition of whistleblowing (Chapter1, Section 2.1), specifically the part, "disclosure … to an external entity *having the potential to rectify the wrongdoing*", as well as the problems we associated with this requirement (Chapter 1, Section 5). The problem was that even if the would-be whistleblower did have the requisite

access to the incriminating evidence, the whistleblower might not have been able to convince a reasonable impartial observer that the organisational action in question did in fact amount to wrongdoing and pose a potential harm, because of the highly technical or scientific nature of the evidence. In other words, the OSR-stakeholder legitimisation can make disclosure less effective if such disclosure is made, say, to the media, "who is only interested in reporting the wrongdoing, not correcting it" (Vandekerckhove 2006: 312). It is better to disclose to an organisation that can interpret and analyse the evidence and so make a more informed judgement on whether wrongdoing has been committed and the likely extent of the harm to follow. 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.

What is needed then perhaps 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,[18] 3) cases in court are on public record (312).

The problem though, which we identified at the end of Section 4.2.1, is that even without these restrictions, a tiered approach still faces the same problems as those facing a more traditional external/internal disclosure dichotomy (See Chapter 1, Section 3.3). 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 (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: 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 (312). However, Vandekerckhove anticipates a problem, which he describes as a paradox, a paradox similar to that identified by De Maria

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[18] An example of the extra criteria Vandekerckhove is referring to can be found in S.9 of the South African PDA. S.9 stipulates that a general protected disclosure, i.e. one not made to recipients as specified in Sections 5-8, is a protected disclosure only if i)the employee believes he/she will be subjected to occupational detriment (S.9(2)(a)); and/or ii) there is no prescribed body/person in relation to the relevant impropriety or the employee believes the employer will destroy or conceal evidence relating to the impropriety(S.9(2)(b)); and/or iii) the employee has made a previous disclosure to his/her employer or specified recipient and no action was taken after a reasonable time had elapsed after the disclosure(S.9(3)(c)).

(2005) concerning whistleblowing within the African and South African context (see Section 3.2 above). The paradox for Vandekerckhove "lies in the fact that openness of the recipient element requires as well as makes a strong civil society" (2006: 313). He elaborates further:

> 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.

The outlines of a possible resolution to this paradox is offered in the next section and fully fleshed out in the next chapter.

5. The network perspective *as an autopoietic system* fails to stabilise the globalisation semantic

Vandekerckhove (2006: 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 (organisational social responsibility) 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. In other words, the network perspective as argued for by Vandekerckhove does not satisfactorily 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 environment leads to other problems - such as stakeholders who receive information but who then, due to a lack of expertise, cannot effect any changes as a consequence of receiving that information.

Critical Complexity theory, like the theory of autopoietic systems, also focuses on the interactions in the system but crucially, is not operationally closed. Critical Complexity theory allows the system to generate meaning *only if* the system remains open to its environment. Critical Complexity does not however require that that system be completely open - if it was completely open then there would be no way to distinguish between the system and its environment. Critical Complexity will allow the organisation and organisational network to be understood as an open system that is nonetheless still bounded. Critical Complexity, it will be argued in the next chapter, will allow the concept of 'network' to maintain relevance in our meaning-making and so stabilize the globalisation semantic i.e. eliminate the conflict between the organisation and society. An exposition of Critical Complexity and the ethics of Critical Complexity will be undertaken in Chapter 3. Critical Complexity will also allow us to posit a resolution to Vandekerckhove's paradox by conceiving of organizational and social identity as coterminous, i.e. that the identity of the whistleblower as *parrhesiastes* is not ontologically prior to the identity of the corporation and/or civil society.

6. Conclusion

The shifts in understanding, and legitimising of whistleblowing over the last thirty years marks an attempt to understand whistleblowing as a historically determined and culturally mediated social practice within the context of globalisation. We saw that trends in legitimising whistleblowing attempted to eliminate the conflict between society and organisation, manifesting as organisational wrongdoing harming the public interest, by trying to contain that conflict within the organisation, or a proxy of society. Society opts not to exert direct control over the organisation and its practices, but instead to mediate its influence over organisations through various governmental agencies as well as legislation.

Ultimately, this compromise has proven unsatisfactory. Globally, whistleblowing still remains a highly problematic issue, in so far as organisational retaliation against the whistleblower has not been eliminated, and the internal/external disclosure issue has not been resolved. The conflict between society and the organisation over organisational wrongdoing remains. Locally, within the South African context, whistleblowers are in an even more

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precarious position. The historical weight against those who disclose seems to be becoming more burdensome as our society moves into a politics of suspicion.

Our analysis has showed that one of the principal reasons for these failures is conceiving of the organisation and the stakeholders in its environment - the network perspective - as an operationally closed system. This conception leads directly to the problems and paradoxes involved in opening up the recipient element. These were that stakeholders who, due to lack of expertise, could not action the information contained in the disclosure and the fact that encouraging whistleblowing needs an open and democratic society, but that whistleblowing itself contributes to an open and democratic society. What is needed is a conception of the network as an open system. It was briefly outlined that critical complexity theory can conceive of an organisational network in this manner. We now turn to a full exposition of Critical Complexity and show how, by allowing us to reconceptualise the whistleblower as *parrhesiastes*, Critical Complexity can resolve the conflict between society and the organisation.

Chapter 3: Reconceptualising the whistleblower in a complex world

1. Introduction

In the previous chapter we examined whistleblowing as a historically determined and socially mediated practice, which came unstuck when we enlisted Vandekerckhove's analysis of whistleblowing within the context of globalisation of the last thirty years. The principal weakness in Vandekerckhove's analysis, it was argued, was his conception of organisations, and networks of organisations, as autopoietic systems, i.e. operationally closed systems. Vandekerckhove's' legitimisation strategy aimed to eliminate the conflict between society and the organisation by containing that conflict within the organisation. In this chapter we attempt to recast that conflict by a reconceptualisation of the whistleblower, with the organisation conceived of as an open system at the heart of that reconceptualisation. What follows from that reconceptualisation is that the distinction between internal and external disclosure becomes inconsequential, while the central dilemma of whistleblowing loyalty is dissolved.

The chapter starts by introducing Critical Complexity theory, which posits that the properties of complex systems emerge from the interactions between the systems' components which form the system in a self-organising process. A complex system is constrained by the boundaries with its environment which cannot be clearly defined. Defining such boundaries is a function of the system *and* a function of a framing strategy, which always leaves some features of the system out in order to reduce the complexity and model the system. Framing has important implications for our knowledge of complex systems, which are explored in the remainder of Section 2. Section 2 is thus descriptive and serves as the theoretical underpinning to Section 3 which goes on to make the claim that organisations can be understood as complex systems. I examine how the identity of corporations and corporate members emerge through cooperative and competitive activities in the workplace which coalesce into 'iterative themes', which, in a process of 'normative congruence' bound the organisation's purpose and identity. This understanding of corporate identity then affects how we understand corporate responsibility, which is presented as a notion of 'relational responsiveness'.

Section 4 then applies these insights directly to the ethics of whistleblowing, primarily as a means to render the distinction between internal and external disclosure as obsolete.

Reframing organisational boundaries also encompasses individual corporate members reframing their corporate roles and thus the extent of their responsibilities. Section 5 extends the reframing of the organisation's boundaries to encompass the bigger boundary issue between society and the organisation. The contentious nature of the boundary between society and the organisation is revealed in the uneasy relation between business and ethics. Despite some theorists' claims, most notably that of Milton Friedman (1970), that the only responsibility of business is to make profits, society has intervened in this regard. In the wake of corporate scandals such as Enron it has attempted to institutionalise ethics in the organisation. This attempt has failed to stop corporate wrongdoing and thus the conflict between society and the organisation persists. The final part of this chapter employs Critical Complexity to conceive of 'business ethics as practice' (instead of business ethics as rules and universal, immutable principles) which in the instance of the whistleblower as *parrhesiastes*, aims to demonstrate that the act of whistleblowing is an act of loyalty to *both* the organisation and society simultaneously.

2. Critical Complexity[19]

We commence our exposition of Critical Complexity with a quote: "Complexity is not something that can be pinned down by analysing the properties of a certain part of the system or by taking the components of the system apart and seeking for traces of complexity within the isolated parts" (Preiser & Cilliers 2010: 266). Complexity arises because of the *interaction* between the components of a system and the *interaction* between those components and the system's environment; a complex system is constituted through *both* the sum of its components and the *relationships* between those components and the *relationships* between those components and its environment (Cilliers 1998: 2).

Before continuing my exposition I need to note the distinction between systems that are complex from those that are merely complicated (3), such as the brain versus the space shuttle. The latter can in principle be given an exact description, while the former resists the analytical method. Cilliers acknowledges that this distinction can sometimes be difficult to draw and depends on the state of our present knowledge - what is considered complex today,

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[19] Cilliers (2010) develops a critical theory of complexity, which against other forms of complexity, does not harbour the hope of finding essentialist descriptions of reality. He cites Edgar Morin's (2007) distinction between 'restricted' and general' theories of complexity; the former which "acknowledges the relational nature of complex systems, but hopes that essential characteristics of these systems can be positively identified", and the latter which avoid this reductionism (Cilliers 2010: 4). Cilliers' theory of Critical Complexity is thus identifiable with Morin's 'general' complexity.

might tomorrow, with the aid of some new technology, be revealed as merely complicated (Cilliers 2008: 44). Despite the possibility of this epistemological, as opposed to ontological, complexity (complexity as a function of our descriptions as opposed to inherent characteristics of the system), "given the finitude of human understanding, some aspects of a complex system may always be beyond our grasp" (45). Nonetheless complex systems tend to share certain characteristics, as identified by Paul Cilliers (1998: 3-4):

2.1.The characteristics of a complex system

1). Complex systems consist of a *large amount of elements.* Systems with a small amount of elements can usually be described in conventional, analytical terms (3).

2). The elements must interact with one another and the *interaction must be dynamic*. There is thus a temporal dimension to all complex systems (4).

3). The *interactions* between the components are *fairly rich*. This means that any element in the system influences and is influenced by many other elements (3-4).

4). The *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" (4). This characteristic has implications for how we model complex systems, which we discuss below.

5). The *interactions usually have a short range*. Elements of a system usually interact with other immediately neighbouring elements, although long-range interaction is not precluded. More importantly, wide-ranging systemic influence is still possible (4).

6). There are *loops in the interactions*. The "effect of any activity can feed back on itself, sometimes directly, sometimes after a number of intervening stages" (4).

7). Complex systems are usually *open systems*. This means that a complex system interacts with its environment. Usually, where the system ends and the environment begins cannot be definitively demarcated. Describing a complex system thus involves a framing strategy, which depends in part on the purpose the observer of the system intends it for (4). The marking off and function of boundaries in complex systems is dealt with in depth in the next subsection.

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8). Complex systems operate under *conditions of disequilibrium*. A system under homeostasis would not be able to respond to its environment. That the system is in constant flux is necessary for the capability of self-organization as the system seeks to adapt to changes in its environment (4).

9). Complex systems have a *history*. They evolve over time and their past activity and interaction co-determines the present state of system (4). A system must be able to 'learn' from past experience and previous encounters if it is to be able to adapt and reconfigure itself to new and ever-changing demands made by its environment (92.) However, in order for the system to sustain itself, "at least part of the system [must change] at a slower rate than changes in the environment" (Cilliers 2005: 257). This part functions as the 'memory' of the system.

10). Each element in the system is ignorant of the behaviour of the system as a whole, responding only to information that is available to it locally. This point can be tied to point 5 above. More importantly, "if each element 'knew' what was happening to the system as a whole, all of the complexity would have to be present *in that element*" (Cilliers 1998: 4-5).

These characteristics lead to some interesting features which are commonly associated with complex systems, most notably the ability of self-organisation, which enables complex systems "to develop or change internal structure spontaneously and adaptively in order to cope with, or manipulate, their environment" (1998: 90). Self-organisation is "a process whereby a system can develop a complex structure from fairly unstructured beginnings" (12). Crucially, this structure "can evolve without the intervention of an external designer or the presence of some centralised form of internal control" (89).

The interactions also produce the 'emergent' properties of the system, "the higher order properties which make the system what it is" (Cilliers 2010: 4). As an example, Cilliers cites the property of consciousness which *emerges* from the interactions between the neurons in the brain (5). Emergence should not, however, be viewed as a passive product of interactions (Woermann 2010a: 170). The presence of feedback loops as identified above in point 6 ensures that "the products and the effects are at the same time causes and producers of what produces them" (Morin 2008: 49). From the interactions also emerge the system's structure, comprising boundaries and hierarchies. How these boundaries and hierarchies emerge is explored in detail in the following subsection.

2.2. Structure, boundaries and hierarchies

The interactions between the components of a complex system are also asymmetrical, which is "another way of stating that the relationships between the components are relationships of difference" (Cilliers 2010: 7). Difference is necessary for any interesting behaviour to arise, indeed, "*without difference there can be no meaning*" (7). However there needs to be an "economy of difference": not unlimited difference, but bounded difference (8). Another way of saying this is that in order for a system to behave in complex ways there must be neither too little, nor too much *structure* (Cilliers 2008: 46).

Complexity, argues Cilliers (2010: 15), "is not simply a function of the interactions between many components, but of their organisation." 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: 46). However, too much structure and the system becomes rigid, incapable of complex behaviour either (46). This is because if it is too tightly constrained it will not be able to adapt to its changing environment.

Constraints, however, should not be seen as something negative, they are also enabling, argues Cilliers (2001: 139). Elsewhere, Cilliers (2010: 10) elaborates on this point: "The fewer constraints, the more possibility, but possibility left empty. The more constraints, the better we can get at the meaning, but the more bountiful it is." Constraints "provide a framework that enables descriptions to be built up around it" (Cilliers 2001: 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, because complex systems are open systems, deciding where or how to draw the boundary between one system and the next, or one system and its environment, becomes problematic (Cilliers 2001: 140). Boundaries are "simultaneously a function of the activity of the system itself, and a product of the strategy of description involved" (141). The problem however is that because "we can never be sure that we have 'found' or 'defined' [the boundary of the system] clearly … the closure[20] of the system is not something that can be

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[20] Cilliers (2010: 140) maintains that it is acceptable, when dealing with complex systems in an 'operational' way, to introduce 'operational closure' as a way of dealing with the problems of boundaries, as is the strategy

described objectively" (141). Instead, Cilliers urges us to understand boundaries not as something which separates things from one another, but rather as "something that *constitutes* that which is bounded" (141). This shift in perspective allows us to see boundaries as enabling instead of confining (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 (141). Social systems, however, may be composed of parts existing in different spatial locations. Indeed, the parts may be located in virtual space (142). One only has to think of the obvious example of the social networking website Facebook, to understand this. An important consequence of this way of understanding boundaries is that "non-contiguous subsystems could be part of many systems simultaneously" (142). Thus, within the virtual system that constitutes Facebook, there are many smaller communities which usually form around a particular social cause, or trend. These virtual communities, or subsystems, are also simultaneously parts of other systems, which are other social networking sites, such as Linked-In. Under these conditions, locating the 'place' of the boundary thus becomes a futile exercise.

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" (142).

Just like boundaries, systems need, and produce hierarchies. Hierarchies allow asymmetry into the structure of a system (143). Asymmetry is closely related to non-linearity (Cilliers 1998: 120) and operates as a mechanism "to exploit the magnifying power of non-linearity" (120). However, viewing hierarchies as clearly defined and permanent becomes problematic (as was the case with boundaries). In the classical understanding, hierarchies are seen as 'nested', but in reality, hierarchies, argues Cilliers, 'interpenetrate' each other - "there are relationships which cut across different hierarchies" (2001: 143). These interpenetrations can be so extensive that it becomes impossible to distinguish which part of the system is subordinate to which (143). Instead of viewing these interpenetrations as 'messy' but unavoidable, Cilliers invites us to see them as indispensable to the adaptability of the system

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employed in autopoiesis (see Chapter 2, Section 4.1.1). For our purposes, as identified in Chapter 2, Section 5, this will not do.

(143). Interpenetrations allow cross-communication between hierarchies which is necessary if dominant or obsolete hierarchies are to be dislodged (143). Hierarchies cannot remain unchanged - they must change as the context of the system changes. Transforming hierarchies does not necessarily always entail their destruction, though. A shift, changing an existing hierarchy into a different one, is sufficient enough to ensure the vitality of the system (144).

With the nature of boundaries and hierarchies in mind we can now turn to the difficult task of modelling complex systems. As we mentioned above, the demarcation of a boundary or a hierarchy 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 we choose to employ in describing that system.

2.3. Describing and framing complex systems: the ethics of Critical Complexity

When we decide to model a complex system, 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: 5). For example, in describing the organisation as a complex system do we consider the detail of the micro-level - the individual employee within the organisation, the meso-level - the organisation as a whole interacting with other organisations, or the macro-level - organisations within the economic system and society? We will in the course of this chapter consider all three levels. Different descriptions will decompose the system in different ways and "the knowledge gained by any description is always relative to the perspective from which the description was made" (Cilliers 2008: 46). But in order for our descriptions to be functional as models, and not be mere repetitions of the system, those models *have to reduce* the complexity of the system (Preiser & Cilliers 2010: 269). Some aspects of the system will be left out when we choose one particular description, other aspects when we choose another description but, ultimately there is no "a priori procedure for deciding which description is correct" (Cilliers 2008: 46). Any and all descriptions of a system will thus always result in some characteristic of that system being excluded.

The problem arises then 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: 138). What we leave "out interacts with the rest of the system in a non-linear way and

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we cannot, therefore, predict what the effects of our reduction of the complexity will be, especially not as the system and its environment develops and transforms in time" (Cilliers 2005: 258). Nonetheless, we cannot step outside complexity- we cannot know everything all at once, we are 'rationally bounded' - we *have to* choose our frameworks (259). Framing 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 & Cilliers 2010: 270).

To choose not to choose is also a choice, and is therefore not a viable strategy, argues Cilliers, de Villiers & Roodt (2002: 12):

> We are doomed to make choices; [however,] the choices we make cannot be purely arbitrary. The complexity we are trying to understand is not featureless. There are patterns and structures that constrain our descriptions. 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. Since our descriptions are never purely objective, we are *responsible* for them. (Emphasis added).

What follows from the above considerations is that we have to accept that our knowledge of complex systems will always be provisional (Cilliers 2005: 259). "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 & Cilliers 2010: 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 an argument against relativism. As the quotation from the previous paragraph makes clear - "the complexity we are trying to understand is not featureless" - knowledge, although never objective, is nonetheless contingent upon, and constrained by context (see Chapter 2). Furthermore, our knowledge of complex systems need not be vague. In making truth claims that are able to be differentiated from other truth claims, our knowledge becomes intelligible (Cilliers 2005: 262). Therefore, argues Cilliers, this modest position - that we can have only limited knowledge of complex systems - is not a weak position, but a responsible position (262).

This modest position has an important consequence in regard to our actions. If our decisions are necessarily based on limited knowledge, then the information we can marshal in weighing up a particular course of action will always be incomplete (Preiser & Cilliers 2010: 270). Action then, becomes more than just a choice, but a wager (Morin 2008: 54). This wager involves "an awareness of risk and uncertainty" because our "actions escape our intentions

[because of non-linearity: J.A. Andrade] … and often the action will fly back at our heads like a boomerang" (55). Nowhere is this element of risk and uncertainty more clear than in the whistleblowing act. The whistleblower intends to arrest corporate malfeasance and be hailed as a loyal employee, (Uys 2000) only for the company to ostracise and expel him/her from the organisation. Our wagers should then not be reckless and hubristic, or naïve, but the outcome of "careful and critical reflection" (Preiser & Cilliers 2010: 271).

In order to give more substance to these guidelines, Preiser & Cilliers (2010: 274-276) develop an ethical strategy along the lines of Kant's Categorical imperative (See Chapter 1, Section 4.2), which they call the Provisional imperative, turning Kantian logic on its head. The Provisional imperative also requires us to adopt a certain attitude but instead of proposing an immutable and universal injunction it calls on us to:

1. justify our actions only in ways which do not preclude the possibility of revising that justification,
2. Make only those choices which keep the possibility of choice open,
3. Our actions should show a fundamental respect for difference, even as those actions reduce it,
4. Act only in ways which will allow the constraining and enabling interactions between the components in the system to flourish (275-276).

Having mapped out the characteristics and properties of complex systems and ethics of Critical Complexity we can now turn to the project of understanding organisations as complex systems.

3. The organisation as a complex system

In order to understand organisations as complex systems it is useful to draw certain parallels. This will be done by mapping certain organisational characteristics onto the ten characteristics of complex systems as identified in Section 2.1 above. We will move between the level of the organisation and the individual employee as the points call for them.

1). Complex systems consist of a *large amount of elements.* Organisations, specifically Multi-National Corporations (MNCs), usually have a large amount of employees[21], and are linked with a similarly large amount of other MNCs in global supply chains.

2). The elements must interact with one another and the *interaction must be dynamic*. Organisations and employees interact by selling and buying, marketing and developing new products and services. These relationships change continuously.

3). The *interactions* between the components are *fairly rich*. Employees interact with many other employees, both from their organisation and others. Organisations interact with competitors, suppliers, customers, government agencies, the communities within which they find themselves, in short, a very diverse stakeholder set. Points 2 & 3 are developed further below when we discuss corporate identity.

4). The *interactions are non-linear*. Millions can go into developing and marketing a new product, only for it to 'flop' upon release to the market. Similarly, a small, independently and cheaply produced game or movie can go 'viral' generating huge returns.

5).The *interactions usually have a short range*. Employees usually interact with employees within their own department, and corporations increasingly 'buy local' to both save transportation costs and to reduce their carbon footprint, which is not to say they do not interact with more distant parties. Indeed, in the age of globalisation, corporations compete with other corporations all over the globe not only for customers, but for resources and talent. Similarly, in the age of e-mail and Skype, interacting with a colleague in another time-zone is becoming increasingly common.

6). There are *loops in the interactions*. Feedback from the shop floor to management and from the board to the coal-face is the crucial driver of efficiency in corporations. It allows the corporation to tweak and perfect its products. Efficiency is one of the most widely employed legitimisations of whistleblowing today (see Chapter 2, Section 4.2), because it aims to control the 'human factor' in production. The Panoptican effect[22] illustrates how the

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[21] Wal-Mart, the global retailer, for example, has some 2.1 million employees (which they call 'associates') worldwide. http://walmartstores.com/AboutUs/ (accessed 2 July 2011).

[22] The term 'Panoptican' comes from Jeremy Bentham who proposed designing prisons such that the guards could see everything and everyone, without (most importantly) themselves being seen. Because the prisoners could never be sure if they were being watched or not, they would be hesitant to commit acts of wrongdoing. Foucault (1979) developed the Panoptican vision as a metaphor for the disciplinary society (see footnote 6, Chapter 1).

complexity principle of recurrency can play out in an organisation. Employees are made responsible for reporting wrongdoing and so, in an attempt to cast off responsibility, report any and all suspicions of impropriety to a superior (See Chapter 1, Section 5). As a result, a climate of distrust develops, which may then feed back into the employee's sense of themselves (in the eyes of their superiors) as untrustworthy. Feeling thus, the employee may then decide that an act of transgression against the organisation is necessary to restore their identity, which facilitates, in a process of downward causation, acts of impropriety. Similarly, in an opposite scenario, giving recognition to an employee's contributions, by say including his/her recommendations into a new product or service is likely to feed back into that employee's morale, who then along with his/her colleagues then invest even more energy into coming up with new ideas which are then included in the next version of the product.

7). Complex systems are usually *open systems*. An organisation interacts with many stakeholders in its environment. This point will form the crux of our analysis in Section 4 below.

8). Complex systems operate under *conditions of disequilibrium*. An organisation is under constant pressure from both internal and external factors - employees leave and are replaced by new hires, departments are incorporated into other departments while new departments are created. The strategic threats posed from one competitor are countered with a price war, while others are co-opted by buying the competition out.

9). Complex systems have a *history*. Organisations certainly have a history, constantly evolving. Today's products depend on yesterday's - the smartphone of today incorporates the cell-phone, digital camera and internet connectivity of yesterday.

10). Each element in the system is ignorant of the behaviour of the system as a whole, responding only to information that is available to it locally. A local 'no-frills' airline will lease or purchase more aircraft if there is an increased demand on a particular route, say JHB-Durban, even if national statistics indicate a decline in overall passenger numbers.

In addition to the above mapping of the characteristics of a complex system onto an organisation, we can also understand some of these characteristics more specifically in relation to whistleblowing:

4) Non-linearity - the lone whistleblower's disclosure which results in the company going bankrupt, or even precipitating industry wide regulation as was the case with SOX, which

was enacted in response to the political fallout from Enron's failure (the failure in turn exposed in the internal disclosure made by the whistleblower Sherron Watkins).

5) Short range interactions - we see that most often in whistleblowing that the whistleblower first makes a disclosure to his/her immediate supervisor, although there is always the possibility of the quick 'jump' outside of the organisation to the media.

9) History - If an organisation has a history of retaliating against employees who 'raise concern' then it is highly likely that employees observing corporate wrongdoing today will turn a blind eye, leading to an organisational culture of 'moral silence' (see Chapter 1, Section 6.2; cf. Bird 1996).

While the above exercise of mapping organisational characteristics onto complexity characteristics is illuminating, we also need to posit how the corporation's identity, as well as the identity of individual employees as corporate members, *emerges*, as an instance of complexity, from the interactions between different corporations and the corporation and its corporate members. At this point it is important to note that because of the feedback loops within a complex system, "emergence … implies that the identity of systems and components are coterminous" (Woermann 2010a: 171). In the context of the organisation this means that the identity of the corporation and its corporate members "arise and die together" (168).

The subsection directly following this one, which delineates a complex notion of corporate identity, will be largely descriptive, but will serve two purposes: firstly it will allow us to reconceptualise moral agency with direct implications for corporate responsibility. This allows us to address the problem identified in Chapter 1, Section 5 which assumed that a direct causal relationship between an act of corporate wrongdoing and a particular employee, or group of employee's could be established, and thus that someone, or some corporate policy or procedure could be held responsible; and Chapter 2, Section 4.2.2 which was concerned with attributing responsibility such that a whistleblowing disclosure could correct organisational wrongdoing. Secondly, and more importantly, delineating a complex notion of corporate identity allows us to reconceptualise the notion of the boundaries of the organisation which has direct bearing on the central internal/external disclosure dichotomy of whistleblowing. This is undertaken in section 4.

3.1. Identity formation in corporations

Difference in the organisation equates to diversity of roles and functions; and in order for an organisation to deal with new challenges and a changing environment, it needs to be as diverse as possible (Cilliers 2010: 40). We have 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 2010a: 171). Corporate identity thus refers to "role identities, constituted by acts and events" (Seabright and Kurke 1997 in Woermann 2010a: 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: 16 in Woermann 2010a: 172). An individual corporate member can therefore have multiple, simultaneous group identities. An engineer can thus also be part of management, while a typist may belong to an organisational subcommittee that arranges team-building events; 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 2010a: 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. A corporation can benefit the local community by providing jobs and taxes while also hollowing out the very community those workers live and work in by eliminating smaller, local businesses operating in the same industry.

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 2010a: 173). Over time group identities and corporate identity, constituted in work practices coalesce into "coherent patterns of being-together" (Stacey 2003 in Woermann 2010a: 174). Woermann (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 2010a: 175). In a similar vein, Painter-Morland (2008: 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 organization together in a meaningful and significant, but non-coercive way." Painter-Morland uses the concept of *congruence* instead of *consensus* because normative congruence captures the organisation's "ability to accommodate difference and dissensus, without losing its functional unity of purpose or sense of identity" (224).

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 2010a: 175). How the identity of the corporation is perceived has important implications for corporate responsibility, to which we now turn.

3.2. Corporate responsibility, distributed agency and 'relational responsiveness'

Woermann (2010a: 177) frames the question of corporate responsibility thus: "can corporations be morally responsible for their actions in the same way that individuals are?" Traditionally that question has been answered either in the affirmative, by some proponents such as French (1979)[23], or the negative as for example by Ladd (1984)[24]. Woermann (2010a: 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: 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: 225). This conception of moral agency led directly to such problems as those identified in Chapter 1, Section 5 which concerned mandatory whistleblowing (which had the unintended consequence of making employees liable for wrongdoing if they could not prove they did not know who was responsible for the wrongdoing); and Chapter 2, Section 4.2.2 which was concerned with

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[23] French locates corporate agency in a CID structure (Corporations Internal Decision structure) which he argues "licenses the predication of corporate intentionality" (1979: 232).
[24] 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: 249).

attributing responsibility such that a whistleblowing disclosure could correct organisational wrongdoing.

Our analysis of identity formation in the organisation, understood as a complex system, has shown that 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: 93). Accountability has traditionally been viewed as being accountable *for* something (93) and therefore been focused on "retroactive appropriation of blame" (Painter-Morland 2008: 226). If instead we understand accountability 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: 93). The corporation's (or corporate member's) failure to act appropriately is therefore to fail *someone*, allowing us to understand corporate failures as a breakdown of stakeholder relationships (Painter-Morland 2008: 225).

Understanding accountability in this way thus removes an element identified as crucial to whistleblowing - dissent, more particularly accusation (see Chapter 1, Section 3.2). Recall that it was this element, identified by Bok (1980) and Jubb (1999), which rendered internal disclosure as whistleblowing questionable. However, accountability as relational responsiveness eschews apportioning blame. Let us posit an example of corporate wrongdoing, say exceeding permissible pollution emissions, to examine how the focus of the disclosure would change under this new conception of accountability.

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. It would be responsible to the local farmers who drew water from that river to irrigate their crops; it would be responsible to the visitors of the nature reserve through which the river flowed, who came to picnic along its banks. Correcting the failure towards these stakeholders would not just entail reducing emissions back to the levels permissible - these levels, acceptable for regulatory purposes might not ensure a flourishing or bountiful crop for the farmers, or the regulatory levels may technically be safe but produce an unpleasant odour, thus destroying the aesthetic appeal of the nature resort.

This particular corporate failure could then be seen, in the light of relational responsiveness, as not a deliberate policy to exceed, or just meet the threshold level of acceptable emissions, but as a failure to engage with those stakeholders - the farmers and nature resort visitors - to whom the corporation was responsible. A disclosure of this fact, that it had specifically failed the farmers and the nature resort visitors, would thus not be an accusation of the corporation. Relational responsiveness would thus facilitate normative congruence - by allowing blame to be reconstrued as responsibility, it would allow the corporation to accommodate dissent.

Let us consider a possible counterargument: we can agree with the strategy outlined above, but all that is achieved is that the problem is merely shifted to another level. The corporation can agree to be relationally responsive but plausibly maintain that it alone, as opposed to the would-be whistleblower who, under this scenario now discloses that stakeholder X is being failed, has the prerogative to identify this particular stakeholder as having being let down. This move recalls the problem surrounding identifying the subject element of whistleblowing (see Chapter 1, Section 2), where the tension manifested in who decided *what* constituted wrongdoing - the organisation or the whistleblower? The problem has been recast, rather than resolved.

A rejoinder to the above counterargument as well as a more general warning concerning accountability as 'relational responsiveness' is necessary at this point: it should not be viewed as an endorsement of moral relativism. Corporations and corporate members "are obliged to build relationships of trust, confidence, and respect with stakeholders. This imposes important limitations on what they can justifiably do" (Painter-Morland 2008: 228). Trust, confidence and respect thus act as constraints on an organisation's purpose and work practices. Trust construed as bounding the organisation also ameliorates the problems associated with Vandekerckhove's OSR-network legitimisation of whistleblowing (Chapter 2, Section 4.2.1) which attempted to safeguard trust between the corporate members within the organisation and the organisation and between the organisation and its environment by resolving the power differentials between the various stakeholders and the organisation. Resolving those power differentials entailed channelling information to specific recipients who were designated in a tiered-approach.

The problem with that specification was that moving up the tier entailed successively more burdensome requirements on the whistleblower - more concrete evidence of wrongdoing for example. The root of this problem, it was argued, lay in viewing stakeholder networks as

autopoietic systems i.e. operationally closed systems (Chapter 2, Section 5). We can now elaborate on that failure. In allowing disclosure to a proxy of society, such as an ombudsperson, the organisation does not so much 'open' its boundaries as it extends them. The boundaries of the organisation widen as it attempts to include parties not 'central' to its operations.

But the very process of specifying extra requirements on the whistleblower as s/he moves progressively through the tiers in attempting to unload his/her disclosure implies that trust is *not* assured and thus that that particular proxy of society is still *not* inside the organisation's network. So although the organisation's boundaries are wider they are *still* closed. With the insights of Critical Complexity now firmly in mind we can say that the problem with boundaries is not how wide they are construed, but how *fixed* they are. Trust as that which *bounds* the organisation, as opposed to that which tries to resolve power differentials within the organisation through a tiered approach, ensures that the boundaries of the organisation remain flexible , i.e. relationally responsive to its stakeholder concerns. This also means that who qualifies as a recipient of a disclosure of wrongdoing is flexible, dependant on what response is required to a particular stakeholder.

We have demonstrated that our descriptions of complex systems are fallible and thus in attempting to describe the organisation, i.e. draw its boundaries, we "could end up harming a stakeholder group that did not factor into the particular strategy that we employed when demarcating the system" (Woermann 2010a: 177). It has also been demonstrated that where, and how, we draw the boundaries of the organisation has profound implications for how we conceive the responsibilities of the organisation. We now turn to the implications that opening the boundaries of the organisation, and understanding organisational boundaries and hierarchies as complex structures, have for whistleblowing.

4. Reframing organisational boundaries and the implications for whistleblowing

In light of our delineation of organisations as complex systems we can say that, in general, internal disclosure amounts to understanding the organisation as a closed system, while external disclosure allows the organisation to function as an open system. More specifically, internal disclosure, because it allows only disclosure to recipients who form part of the

organisation, closes the organisation to those would-be recipients not part of the organisation. Similarly, external disclosure, by reaching to those recipients not part of the organisation, opens the organisation to those recipients. The crux of the matter, as we have seen, is who the organisation decides is 'part of it', i.e. where it decides it draw its boundaries. More importantly, as was argued above, these boundaries must be flexible. Thus extending the boundaries of an organisation to include proxies of society, such as an ombudsperson, to which a disclosure can be made to, and therefore to still count as an internal disclosure, fail because it attempts to fix the boundaries of the organisation at that proxy. From the analysis of complex systems undertaken in this chapter thus far we can say that such an understanding is 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 2010a: 182).

Remaining open and responsive to stakeholder concerns would entail that the designation 'internal' or 'external' to the organisation should be flexible and thus who qualifies as a recipient of a disclosure of wrongdoing remain flexible, dependant on what response is required to a particular stakeholder. To employ terminology from the ethics of Critical Complexity, we would say that a designation of 'internal' or 'external' to the organisation is provisional. One injunction of the Provisional Imperative was to "justify your actions only in ways that do not preclude the possibility of revising that justification" (Preiser and Cilliers 2010: 275). So, as we have seen, the organisation will usually justify designating an internal disclosure procedure they expect the would-be whistleblower to follow, because it allows the organisation the opportunity to rectify that wrongdoing. But an *ethical* organisation, following the Provisional Imperative, would still allow - in the sense that it would still extend its protection mechanisms to the whistleblower - a disclosure that went against these procedures if there were reasons which justified that exception. Thus we have seen (Chapter 1, Section 3.3) that the whistleblower who bypasses his immediate superior and goes to the board because his superior is the one involved in the wrongdoing, or because of the urgency of the matter, is justified.

Keeping the designation 'internal' or 'external' to the organisation flexible and thus the status of who qualifies as a recipient of a disclosure of wrongdoing as flexible, would thus justify an 'external' disclosure in violation of the organisation's procedures (whether that be a strictly 'internal' disclosure or a tiered approach) not because of an overriding public interest

(although this reason should not be discounted either), but because in revising its justification - that it be given the opportunity to rectify the wrongdoing - the organisation acknowledges its responsibility as relational responsiveness. In other words, in permitting the 'external' disclosure to stand (in this particular instance) it is acknowledging that that party (the 'outside' party the 'external' disclosure was made to) is included in the considerations of the organisation; that the boundaries between the organisation and that 'external' recipient are fluid and that they are open to one another. Part of the reason for that revision would be that only by acknowledging that particular 'outside' party as included in the considerations of the organisation would the organisation be able to be accountable in the sense of acting to correct harm to *someone*. Disclosure to the 'external' party in the instance allows the organisation to be relationally responsive because that 'external' party has the resources 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, it did not have the resources to either contain the spill quickly, or to mitigate the harm being done to both the wildlife and residents in the area. Only by allowing 'external' parties such as environmental protection and wildlife groups, normally parties it would be quite antagonistic to, to become part of its response to the spill would it be able to ameliorate the harm done to the bird and sea-life and residents of the area, and thus to remain relationally responsive to those stakeholders.

If BP had allowed more flexibility in designating who qualified as 'internal' to its organisation in the first place and not "operate[d] as a self-contained entity that freely interact[ed] with stakeholders on its own terms" (Painter-Morland 2006: 90), then the spill might possibly have been avoided, but certainly the damage to the environment lessened. This is because disclosures to those stakeholders - the environmental protection and wildlife 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 taking 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. Thus by allowing flexibility in disclosure to that 'external' stakeholder a major disaster may have been avoided. Such an outcome may strike some as overly optimistic but we should never

forget that in a complex system, such as the organisation, characteristics such as non-linearity mean that small causes can have large results.

In order for the organisation to remain open, flexible and responsive to its stakeholders and environment it needs "planning as open systems" (Collier & Esteban 1999: 176). Woermann (2010a: 182) describes this

> … [not as] a once-off organisational intervention [but] a process of continual re-organisation in an effort to create greater flexibility. Greater flexibility allows organisational structures to become more loosely coupled, in order to better deal with current concerns such as globalisation, increased communication possibilities, technological change, financial innovation, freer trade possibilities, and heightened competition for market share.

'Planning as open systems' would, *inter alia*, require continually reorganising the hierarchies of the organisation, which would impact on internal disclosures and tiered approaches which rely on hierarchical structures for them to be effective. These disclosures are either made to an immediate superior in the organisation, who then escalates it up the chain of command, or made to a series of proxies (regulators, Ombudspersons) arranged in a particular sequence. However, as we demonstrated (in Section 2.2 above) hierarchies understood as 'nested' constrains the system such that complex behaviour becomes impossible. Hierarchies in an organisation understood as a complex system make escalation of a disclosure up a chain of command very difficult, because the 'interpenetrativeness' of complex hierarchies make distinguishing which part of the system is subordinate to which very difficult. Recall King's (1999) empirical study (see also Chapter 1, Section 5) in which it was found that an organisation with numerous hierarchical levels may discourage internal disclosure, while clear and open communication channels enhances trust between superiors and subordinates, facilitating disclosure of wrongdoing. Nonetheless, complexity can still subvert these channels no matter how clear or open, because of feedback loops within the organisation. Hierarchies thus need to be continually transformed to ensure that the organisation remains open and flexible. This does not necessarily always entail their destruction; (as we saw in Section 2.2 above) a shift, changing an existing hierarchy into a different one, can be sufficient. Thus a particular hierarchy for an internal disclosure - superior, divisional manager, board member may be deemed unsuitable in particular circumstances and thus altered to - ethics officer, board member, regulator. Continually transforming hierarchies will

help ensure that the recipient one can disclose to remains flexible and responsive to the stakeholder affected by the disclosure.

If Critical Complexity requires that the boundaries and hierarchies of the organisation should be fluid and provisional, then positing the question of whether internal or external disclosure should qualify as whistleblowing is thus ultimately futile. As such, the central dilemma of whistleblowing, whether the whistleblower owes his/her loyalty to the organisation or to society, also becomes rather less polarising. The basis of that dilemma also rests on a framing issue - the question of where the boundaries of business and society lie. As a segue to that bigger question, which we tackle in this chapter's penultimate section, we first consider how corporate member's framing of their corporate roles (as against how organisations frame their corporate boundaries) might impact upon their understanding of their corporate responsibilities.

If corporate members perceive their boundaries too narrowly, they might underestimate the scope of their responsibilities with the result that they neither "recognise [nor] accept accountability towards stakeholders who are affected by their actions" (Woermann 2010a: 185). To illustrate this effect Woermann (184-5) cites a study by Frew (1973) in which employees of a corporation, notorious for its pollution, recognised and deplored the corporation's polluting activities, yet continued daily to contribute to the problem through their work practices. Woermann attributes such schizophrenic behaviour to the way their work practices were delineated (185). The solution would be to widen the employees' corporate identities such that they also perceived themselves as belonging to the community affected by their polluting activities (even if they did not live in that community or have children who went to school in that community) and that "their work identities (which are formed through practice) cannot be incongruent with their community identities" (185).

Let us restate the above solution: If the employees understood themselves, not just as employees of the polluting corporation but also as members of the affected community then their wrongdoing, polluting, would be rectified. Let us recall the last part of Jubb's (1999) definition of whistleblowing (see Chapter 1, Section 2): "disclosure… to an external entity *having the potential to rectify the wrongdoing"*. Thus if the whistleblower's disclosure results in his/her fellow employees widening their corporate identities such that they become congruent with their community identities then that disclosure would (potentially) rectify the wrongdoing in the present case (in light of the above findings we can now say whether that

disclosure be an internal *or* external disclosure). The disclosure by itself would not be sufficient for that congruence to take place. We can repeat (from Chapter 1, Section 6.2) Jones' *et al*. (2005: 121) warning: "Whistleblowing is only possible if there are people to hear the whistle being blown." What are the conditions then, which enable the corporate member to widen his/her corporate identity such that it is congruent with his/her community identity?

5. The whistleblower as parrhesiastes: dissolving the boundaries between society and the organisation

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). At this stage Milton Friedman (1970: 39) is usually invoked - "… there is one and only one social responsibility of business - to use its resources and engage in activities designed to increase its profits." If this is indeed the case then the competitive nature of business being what it is, all corporations will reach a stage that the only way to increase profits is by harming someone else (Duska 2000: 113) - whether that be a group of employees that are made redundant, a community which loses tax revenues (because the corporation threatens to shift operations elsewhere if local taxation rates are not lowered), or a supplier who is overlooked because s/he sources only goods with the lowest possible carbon footprint, which naturally cost a bit more. Eventually, says Duska this "bottom-line myopia … builds up a habitual single-minded view that has no room for justice when it conflicts with strategic profit-making" (113). According to this redundant, conventional view profits thus preclude ethics, or rather there is a boundary which surrounds business, within which ethics has no part to play. That boundary is like the boundary of a game, a poker game if you will, and actions we would in society at large call deceitful - plain and simple lying - within the boundaries of business are simply called 'bluffing' (Carr 1968).

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 strategy is no longer viable. Governments around the world have decided it needs to inject justice into the corporation and get it to focus not just on the bottom line of profits but on the triple bottom line of profit *and* society *and* the environment.[25] To this end, legislative and regulatory interventions such as SOX in the USA

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[25] 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.

and the King III Code (IoD 2010) on corporate governance in South Africa has required corporations to institute ethics programmes in their organisations. Part and parcel of these ethics programmes has been to institute an organisational whistleblowing policy (see Chapter 1, Section 5 and Chapter 2, Section 4), which it was hoped would contribute to creating a more ethical organisation. Sadly, the global financial crisis of 2007-2009, and the on-going debt crisis continuing in its wake has served to confirm our worst fears - ethics has become just one more operational risk to be managed, like allocating capital or fostering innovation. Friedman and Carr's ideologies are not just still with us, but apparently, still rude in health.

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: 2). A 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 fix-up. We observed how this rules-based approach, a method characteristic of the Enlightenment, failed to address satisfactorily ethical dilemmas in general (Chapter 2, Section 2) and whistleblowing dilemmas in particular.

We need to recall that the counterpart to the *parrhesiastes* as truth-teller is the *rhetor* (Chapter 1, Section 6.2). The *rhetor*, we said, is one who merely tries to persuade. Persuade us of what? That the code of conduct rule 7.A.i does not apply to the case at hand because element X is absent? Persuade us that the whistleblower is ineligible to get compensation for his/her dismissal because s/he disclosed first to a senior executive in a different department rather than his/her immediate supervisor? Jones *et al.* (2005: 121) told 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 (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: 87). "Ethics as practice is all about participation, relationships and responsiveness" (87).

In living a life of *parrhesia* ethics becomes integrated into the identity of the *parrhesiastes*. When business enacts a similar integration ethics comes to inform corporate members'

"perceptions of events from the start and plays an important part in shaping their responses" (Painter-Morland 2008: 2). Understanding organisations as complex systems allows us to envisage how such integration is possible. Our examination, in Section 3.1 of this chapter, of how corporate identity is formed demonstrated that "ethics is not only something the organisation 'does'; the organisation is *constituted* through normative processes" (Cilliers 2010: 16) (italics in original).

At this point we should return to Vandekerckhove's analysis of the shift in the ethics of whistleblowing from one which saw it as a dilemma: the conflict between society and the organisation; to one in which that conflict was to be contained within the organisation (or a proxy of society) resulting in a paradox (Chapter 2, Section 4). The 'network perspective' would maintain relevance in our sense-making of the globalisation semantic only if it could stabilise that semantic - i.e. could eliminate the conflict between the organisation and society. Our analysis in this chapter has attempted to demonstrate why Vandekerckhove's project failed: because he understands networks of organisations and organisations in society as *closed* systems. Such an understanding sees the formation of 'society' as ontologically prior to the subsystems, such as organisations, that comprise society. This misunderstanding is analogous to the one which understood the identities of individuals as corporate members as ontologically prior to the identity of the corporation as a whole.

If we understand identity formation as a complex phenomenon, as this thesis argues, then we must accept that the identity of society and organisations are coterminous. As such there can be no society versus organisation. Attempts to contain conflicts within an organisation, or society's proxies fail because the boundary between society and the organisation are permeable and fluid. The organisation has to remain open to society for it to survive *and* for it to be ethical: it cannot survive if it is not ethical, because society cannot survive if it is not ethical. Ethical in the sense as Painter-Morland understands it - as responsiveness and relationships, not just to and with one another but to and with the environment and the planet.

Returning to Vandekerckhove's characterisation of the globalisation semantic we can say that understanding society and organisations as complex systems (instead of autopoietic, closed systems) 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. Understanding identity formation in society and organisations as complex phenomenon also resolves Vandekerckhove's paradox identified at the end of Chapter 2:

Effective whistleblowing policies, which entail a broad scope in their actor, subject and recipient elements, need 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.

A 'broad scope' equates to an organisation planned as open systems. The paradox is overcome because if an organisation remains open to its stakeholders, it nonetheless still remains constrained and hence remains ethical, which precludes an abuse of power. Remaining open to its stakeholders ensures that the organisation remains 'relationally responsive' to its stakeholders - annulling the need for whistleblowing.

'Annulling' is perhaps 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. Concern that animals 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 (52-61). Coupled with a growing animal welfare activism, (a tie-up strategy advocated by De Maria 2008; see chapter 1, Section 6.1) most corporations in the cosmetic industry no longer test their products on animals. There will thus always be disagreements about what constitutes harm and who counts as a stakeholder, but as described above, normative congruence allows the organisation to accommodate difference and dissensus while maintaining the "organisation's unity of purpose and sense of identity" (Painter-Morland 2008: 224).

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 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. Business should make profits, but profit is not an end in itself (Painter-Morland 2008: 291). Profits contribute to creating the environment in which the things we value, such as health and happiness, can be achieved. We need to be reminded of this so that in the legitimate pursuit of profit we do not inadvertently harm the very things we wish to safeguard and promote. The whistleblowing act, as an act of *parrhesia*, is thus an

act of loyalty to *both* the organisation and society simultaneously because such an act, as an act of relational responsiveness, ensures not just the continued survival, but the continued flourishing of *both* the organisation and society.

6. Conclusion

The pariah stands at the periphery of society. Critical Complexity shows us that "meaning is located at the periphery, rather than the core of a corporation" (Woermann 2010a: 187). In representing the periphery of a corporation, the 'outside' of society, the whistleblower *becomes* its meaning; Critical Complexity allows us to reconceptualise the whistleblower: from pariah to *parrhesiastes*. Critical Complexity also allows us to disband whistleblowing's essential aporia; one can be loyal to one's organisation *and* society at the same time. To the classical way of thinking, as exemplified by the proponents of the Enlightenment ideal, this is a contradiction. And a contradiction reveals a flawed reasoning (Morin 2008: 45). However, from a complex view, a contradiction "points not to an error but rather to the fact that we have reached a deep layer of reality that, precisely because of its depth, cannot be translated into our logic" (45).

This chapter commenced by describing the logic of Critical Complexity; how the boundaries of systems are both constraining and enabling. We examined the ethics of Critical Complexity which amounts to a provisional imperative to always and continuously revise our knowledge of complex systems because our framing strategies *will* always get something wrong. In Section 3 we demonstrated how using complexity's insights allowed an understanding of the identity of corporate members and the corporation as coterminous. Corporate purpose and identity was achieved, inter alia, through a process of normative congruence which allowed a conception of accountability as relational responsiveness. Relational responsiveness broadened our notion of responsibility to include stakeholders previously ignored. One way of achieving this is through corporate members widening their corporate identities to include a community identity. More importantly, it requires the organisation to plan as open systems which requires, inter alia, extending protection to the whistleblower even if an external disclosure has been made.

Finally, in order for a broadening of corporate member's identities and the organisation's identity, such that responsibility as relational responsiveness can take place, a deeper and more profound reconceptualisation is required. If we take Critical Complexity's central insight regarding organisations seriously - that an organisation is *constituted* by its ethics -

then we must move away from business ethics as a set of rules to be followed and instead see business ethics as practice. Only then will the whistleblower as *parrhesiastes* be seen as the organisation's saviour and not its failure.

Conclusion

1. Summary of the argument

This thesis commenced with an exploration of the ethics of whistleblowing as traditionally understood, describing the ethical dilemma at its centre - remaining loyal to one's organisation against alerting society to organisational wrongdoing that threatens its welfare. The positions on several problematic issues in the literature such as dissent, organisational retaliation, whistleblower motive and mandatory whistleblowing were presented and evaluated. The key internal/external disclosure dichotomy was also examined. The failure to achieve satisfactory resolutions to these issues, as well as whistleblowing's central dilemma, was attributed to the adoption of an Enlightenment rules-based approach to the ethics of whistleblowing. An Enlightenment rules-based approach seeks to posit universal and immutable ethical standards that transcend context.

As corrective to the above failings, the ethics of whistleblowing was investigated from the view that saw it as a historically determined and culturally mediated social practice. Within the contexts of the USA and South Africa it was shown that key whistleblowing issues, and even the central whistleblowing dilemma of divided loyalties, cannot be cast in immutable and universal terms, and are influenced by the contingencies that accompany them. Understanding whistleblowing in the context of the globalisation of the last thirty years proved more difficult however. Vandekerckhove's project of seeking to place the normative legitimisations of whistleblowing legislation and organisational whistleblowing policies within a globalisation semantic, able to contain the conflict between society and the organisation, proved ill-conceived because of his particular understanding of the organisation as an autopoietic system, i.e. an operationally closed system.

Moving the argument forward was undertaken at the hand of Critical Complexity theory, which made the case for understanding the organisation as an open system. This allowed us to recast corporate responsibility as relational responsiveness to a particular stakeholder, which in turn allowed us to see as flexible who qualifies as a legitimate recipient of a disclosure of wrongdoing. Consequently the internal/external disclosure dichotomy proved unsustainable. Further opening up the organisation rendered the boundary with society meaningless because the identity of society and organisation are inextricably tied together. As such the notion of society versus the organisation disappears and whistleblowing can be

reconceptualised as loyalty to *both* society and the organisation simultaneously, thus rendering the central dilemma of whistleblowing obsolete.

2. Key ideas and insights

In the introduction it was stated that one of the goals of this thesis was to provide a legitimate social identity for the whistleblower. Having argued that the identity of society and the organisation are coterminous, we can say that if we have succeeded in providing a legitimate social identity for the whistleblower then we have also succeeded in providing a legitimate organisational (corporate) identity for the whistleblower. Conventionally the whistleblower is either scorned or praised, labelled either a saint or a snitch; polar attitudes that reflects the central dilemma of whistleblowing. What both, opposing, attitudes betray is a belief that the whistleblower is an anomaly, someone who does not and cannot fit into the organisation. However, this thesis argues that the whistleblower is firmly part of the organisation, indeed fundamentally part of the organisation. The whistleblower is no longer seen as a boundary-violator, and hence a pariah, but the very boundary of the organisation.

The whistleblower-as-*parrhesiastes* is more specifically the *ethical* boundary of the organisation who represents the limit of acceptable transgression that will be tolerated by society in general, or a specific stakeholder in particular, at any given point in time. All business activity, by its very nature disrupts and thus has the potential to harm, but as a collective, society decides what trade-offs are necessary in that process. The whistleblower-as-*parrhesiastes* synthesises dissent within the organisation, particularly dissent over what constitutes potential harm to society or a particular stakeholder and who needs to be informed about that potential harm. As such 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* thus embodies the process of normative congruence which allows the organisation to accommodate difference and dissensus, while maintaining the "organisation's unity of purpose and sense of identity", an identity, to repeat once again, that is coterminous with the identity of society.

The whistleblower-as-*parrhesiastes,* as the ethical boundary of the organisation, is what allows the organisation to remain an open system. The whistleblower-as-*parrhesiastes* is what allows the organisation to keep the demarcation of its boundaries flexible and thus to remain relationally responsive to its stakeholders. The whistleblower-as-*parrhesiastes* allows

us to render the internal/external disclosure dichotomy void because s/he demands that who qualifies as a legitimate recipient of a disclosure of wrongdoing remains flexible, dependent on what response is required to a particular stakeholder.

The whistleblower-as-*parrhesiastes* embodies ethics as practice within the organisation, which ensures that normative questions come to inform organisations' "perceptions of events from the start and plays an important part in shaping their responses" (Painter-Morland 2008: 2). Only if such normative questions are asked, from the beginning, will the organisation be able to remain relationally responsive. Furthermore the answers to those questions should always remain provisional, subject to the evolving needs of stakeholders and the challenges presented by a globalised and information-technology driven society, an increasingly complex society. The whistleblower-as-*parrhesiastes* serves as a constant reminder to the organisation of that provisionality, thus ensuring that the boundaries between the organisation and society remain open, fluid and flexible.

Returning once again to the ambivalence that has thus far characterised our attitudes towards whistleblowers - saint or snitch, hero or traitor - we are now in a position to agree with Alford (2001: 34) when he says that: "It is not the acts of heroes that will save the republic. It is the acts of citizens, men and women who remember the public when they are acting in private." The whistleblower-as-*parrhesiastes* is that citizen, or rather, that employee who remembers that as a citizen one has duties towards the public that cannot be checked at the door of the organisation. The whistleblower-as-*parrhesiastes* ensures that the organisation contributes to the political struggles contested in society, and in turn embraces the political victories won by different segments of society. The whistleblower-as-*parrhesiastes* guards against Alford's fear that "the associations that make up civil society will have the quality of a hobby" (35), because the whistleblower-as-*parrhesiastes* ensures that there is "ethical commerce between the organisation and civil society" (35). The whistleblower-as-*parrhesiastes,* particularly in South Africa's young and fragile democracy, ensures that the institutions of civil society are strengthened, which in turn ensures that the whistleblower-as-*parrhesiastes* goes from strength to strength within the organisation.

When discussing whistleblower motives in Chapter 1 we saw that the notion of 'narcissism moralized', which postulated that "Whistleblowers [are] loyal not to principles but to ideal selves who embody those principles" (Alford 2001: 84), was too stringent an ethical standard for most to follow. It was argued that this idealism helps explain why the whistleblower is

cast as a pariah - the whistleblower may come across as self-righteous, revealing the timidity and/or hypocrisy of his/her colleagues, forcing upon them a questioning of their own values and norms. It is not that the whistleblower's colleagues do not have values or norms but, rather that the organisation can create a culture of moral silence in which there is no outlet to express those values. This moral muteness, says (Bird 1996: 7):

> often has the effect of dampening our moral convictions. [However] when people speak up for their convictions, these commitments at the same time tend to become more articulate, clearer, and stronger. Hence we would expect that the range and strength of our moral convictions would become wider and stronger as we find ways of voicing them.

The whistleblower-as-*parrhesiastes* spearheads finding new ways of voicing moral convictions within the organisation because s/he ensures that the organisation remains open to society in general, and relationally responsive to its stakeholders in particular. As such the whistleblower-as-*parrhesiastes* is not one that should inspire shame in those who choose not to 'speak-up', but rather serve as motivation to those who "speak only with a whisper" (Bird 1996: 42), or not at all.

Alford (2001:3 5) remarked that "the fate of the whistleblower is not the worst problem our society faces, but it illuminates many others." One such problem, it was shown, is the separation of ethics from business, which silences ethical discourse within the organisation. Alford (36) issues a stark warning: " If everyone has to hide in order to say anything of ethical consequence, then we will all end our days as drivers on a vast freeway: darkened windshields, darkened license plate holders, dark glasses, speeding aggressively to God knows where." Reconceptualising the whistleblower-as-*parrhesiastes* shines a light not only on what the organisation does or does not do, but more importantly a light on the values of our society. In embracing the whistleblower-as-*parrhesiastes* we may in time come to see more clearly where we, as society, are going.

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