A photograph of the Flinders Street Station in Melbourne, Australia, featuring a large central dome and ornate facade. The station is surrounded by a crowd of people and has several signs, including 'Star Day' and 'Flinders Street Station'.

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Editorial

Ethics and Values in the Corporate World

A purpose of good governance is to reinforce accountability in organisations, and by doing so to improve their efficiency and endorse an ethical approach to commercial decisions and enterprise. The five papers in this volume of the Journal address values and ethics in relation to these issues. The first two criticise the mode of government regulation, the first of casinos and the second of the lack of the collaboration between government, industry and business schools that might change the ‘system’ to one that endorses ethics and moral leadership. The following two papers address the lack of recognition of stakeholder interests in regulation. A final paper returns to the theme that some of the problems identified in the corporate world could be addressed by recognising the importance of community values and ethics in contrast to the current emphasis on competition.

Hancock analyses the Government reviews of Crown casinos, using narrative analysis, a form of story telling used “in the context of public reporting, that is ultimately selective and reflective of certain power relations”. The paper identified a shift in government policy, particularly in regard to Crown’s Asian location, from encouraging casinos as a form of tourism and economic development, through to a focus on the individual gambler and “harm minimisation”, to a current focus on “responsible gambling”. It argues that the current regulatory monitoring is inadequate and that the priority given to profit maximising is at the cost of harm to a significant group of regular gamblers who represent some of the most vulnerable groups in society.

Despite the resurgence of interest in business ethics evidenced by the changes in US Federal government guidelines and regulations designed to promote ethics in the workplace, Clarke & Bassell argue that these measures largely fail. Business operates in a “viciously competitive world” where immoral decisions are made by people whose personal morality may be beyond reproach. The problem is the environmental system that breeds the culture that supports these decisions. A corporation is an ecosystem and also a learning organisation in which unethical decisions are made because of the corporate culture. In this context the decisions people make depend on the corporate culture and by extension, corporate boards. Clarke and Bassell’s solution is to change to the system. That involves collaboration by business schools and corporate boards to change the system to give more commitment and credence to ethics and moral leadership.

Theoretical support for CSR is found in stakeholder theory which suggests that companies have a social “license to operate” and consequently responsibility to the societies in which they pursue their enterprises. The third paper in this volume by Kapor, Higgins and Goddard assert that a significant weakness of stakeholder theory is the lack of attention to the views of stakeholders themselves and that, in most cases, stakeholders’ perspectives are simply assumed to be negative. They addressed this issue in a study of the OK Tedi Mining Company that analysed data from focus groups of members of local communities. The mine, in Papua New Guinea, is typical of mining companies that because of the size of their operations have a major impact on local communities particularly in developing countries where the extraction of mineral resources displaces indigenous people from traditional lands and affect their cultural social lives. The qualitative data provided some contradictory results which

the researchers suggested mirrored a “love-hate” relationship. Participants were frustrated by the slow response of the company to compensation payments and resented the company for polluting their river and destroying the surrounding environment. However, they realised that the mine had introduced modernity and the western world and led to vital health and education services. Kapor et al concluded that despite good intentions, CSR initiatives were largely unsuccessful because of the difficulty of meeting the expectations of people in a 30,000 strong community and the practical difficulties of implementing CSR initiatives.

The paper by Heenetigala and Lokuwaduge argues that the evidence from five case studies suggests that the Corporations Act should include explicit obligations towards stakeholders affected by the activities of a firm. The authors support this argument with six case studies of disasters that had major impacts on the environment and the societies in which they occurred. These were Bhopal in India, Exxon in Alaska, BHP in New Guinea, BP in Mexico and James Hardie and Telecom in Australia. In each case, although the circumstances differed, a dereliction of legal duties by the directors in the companies resulted in penalties but the compensation offered to other stakeholders affected by the company decisions was inadequate. The authors suggest that this issue should be addressed by changes in company law.

In the final paper in this volume Nardo and Francis note that ‘future shock’, due to the rate of change in society, is as real today as when Toffler first identified it. The effect of rapid change is accentuated by the growing complexity of society, international political instability and contemporary problems such as climate change. The authors argue that solutions to these problems depend upon how the problems are conceptualised and the infusion of community values into the discussion. They propose five principles that could guide an approach to solving these types of problems and conclude that cooperative behaviour is a better way forward than competitive behaviour. Rather than economic self-interest, decisions should be guided by moral values. In this way legitimacy is given to goals valued by a majority in society and, as they imbed community values, they are more likely to be understood and accepted. This volume of the Journal includes articles examining each of the topics that are the focus of the Journal: ethics, business systems and governance. They demonstrate the multidisciplinary nature of the Journal and of course how almost every discipline claims ownership of these areas of

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Editor

Giving Dracula the Keys to the Blood Bank? Interrogating the Fifth Crown Casino Licensing Regulatory Review

Linda Hancock
Deakin University, Australia

Abstract

Drawing on narrative analysis, this paper analyses the 2013 Fifth Regulatory Review of the license of an Australian casino as a case study focused on the framing and articulation of ‘responsible gambling’ (RG) in the Review. Part 1 sets out the policy and regulatory context for the licensing review of Melbourne’s Crown Casino. Part 2 overviews the structure/content of the Review; the key messages of the Reviewers’ narrative and its main recommendations. In reflecting on the Review in Part 3, analysis focuses on the investigation and recommendations regarding Responsible Gambling, which has gained recent policy priority. The analysis interrogates the Review’s findings, narratives, processes and evidentiary base in relation to how it presents and assesses casino performance on RG. In doing so, it focuses on the Victorian Commission for Gambling and Liquor Regulation’s Review’s framing of RG; sources of evidence drawn on by the Review; an assessment of the casino’s loyalty club feature ‘Play Safe’, as an RG measure; the Review’s assessment of casino performance on RG and its Code of Conduct in particular; and the Review’s framing of RG recommendations. It concludes with reflections on governance issues raised by the Review, the need for more focus on the neglected area of regulatory licensing and enforcement (OECD, 2011; 2012; OECD & European Commission, 2009) and the need for independent regulatory reviews that address conflicts of interest on the part of both Government and the Regulator.

Keywords

Regulatory Review, regulatory inspections, casinos, responsible gambling, dangerous consumptions, electronic gaming machines

Introduction

Gambling constitutes a site of explicit state regulation as the state decides and negotiates license-to-operate conditions along with the degree of significance accorded to harmful impacts, regulatory monitoring and enforcement, harm prevention and state/operator duty of care. For many years, governments eschewed the idea of allowing casinos; or for that matter, gambling machines and casino games that were associated with Las Vegas-type organized crime and scandal. Although two of Australia’s 13 casinos were opened in the 1970s (Wrest Point in Hobart in 1973 and Sky City in Darwin in 1979), it was only in the 1980s and 1990s in Australia, that casinos really took hold; as did

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suburbanized gambling in clubs and hotels. But, casinos were treated with caution and many States have so far allowed only one to be established. In selling the idea to communities, government rhetoric has been that casinos would be regulated to prevent crime, conduct gambling honestly, prevent minors from gambling and be run with transparency, high probity standards, integrity and in the public interest. State/Territory laws and regulations reflect

these core purposes.

State Regulators are charged with the responsibility of monitoring licensee performance and with conducting periodic reviews of casinos. They have wide powers as independent statutory authorities. While casinos may have first been seen as a means of encouraging tourism, regional development and employment, “responsible gambling” (RG) (with all its ambiguity) superseded “harm minimization” to become the new paradigm emphasized in Australia by legislators, regulators and the gambling industry since the early 2000s. As argued later, not only is the RG focus limited, but the interpretation of RG has followed conservative lines, emphasizing individual rather than industry responsibility for harms .

In contrast, conceptualizing the regulation of gambling and casinos in particular in terms of ‘dangerous consumptions’, has gained more emphasis nationally and internationally in countering the individualized focus of RG and the need for a public health harms prevention approach. The key message is that dangerous consumptions demand tougher regulation and stricter enforcement than more benign products. These new public health approaches challenge vested interests to ‘stop the harms’, with more structural reforms that limit the rapacity of products designed to entrap or addict by requiring licensed providers to exercise ‘host responsibility’ and a duty of care to their customers . A public health up-stream prevention of harms approach has been prompted by questions raised in two national Productivity Commission reviews of gambling in 1999 and 2010; recent national Parliamentary inquiries into gambling (2012/13) and the (failed) national campaign for electronic gambling machines to be pulled back to a maximum of \$1 per button press with losses capped at \$120 per hour .

In this context, State Regulators bear a hefty responsibility to use their wide discretionary powers to regulate gambling, and casinos in particular, as potentially high-risk activities. This needs to be done in a manner that upholds public interest and good governance practices within an adaptive regulatory response that responds to and reflects research, evidence and community sentiment.

This paper focuses on the 2013 Fifth Regulatory Review of the license of an Australian casino as a case study of how a State regulator approaches and conducts a license review of one of the biggest casinos in the Southern hemisphere - Crown Casino, Melbourne (CCM) . Drawing on narrative analysis, the article focuses on the framing and articulation of ‘responsible gambling’ in the Review. The Fifth Review was completed in August 2013 and released/ published on 14 August 2013 , in the midst of the federal election campaign and barely rated a mention in the media. All five Reviews have been carried out by the Victorian gambling Regulator (previously the VCGA and VCGR); which since its launch on the 6th of February 2012, has combined gambling and liquor licensing regulation under the Victorian Commission for Gambling and Liquor Regulation (VCGLR).

Part 1 of this article sets out the policy and regulatory context for the licensing review and then outlines the governance structure of the review process and policy changes since the Fourth casino licensing Review in 2008. In Part 2, the analysis of the Fifth Review overviews the structure/content of the Review, the key messages of the Reviewers’ narrative and its main recommendations. In reflecting on the Review in Part 3, analysis focuses on the investigation and recommendations regarding Responsible Gambling, which has gained policy priority since legislated amendments from 2000 and particularly from 2008 when Codes of Conduct were mandated for all licensees in Victorian clubs, hotels and the casino. The analysis interrogates the Review’s findings, narratives, processes and evidentiary base in relation to how it presents and assesses casino performance on RG. In doing so, it focuses on the VCGLR Review’s framing of RG; sources of evidence drawn on by the Review; the Review’s assessment of Play Safe as an RG measure; the Review’s assessment of casino performance

on RG and its Code of Conduct in particular; and the framing of RG recommendations. In the final Part 4, it reflects on governance issues raised by the Review and onus on research and policy makers to focus on the relatively neglected area of regulatory licensing enforcement (OECD, 2012). Finally, regulators and governments need to ensure independence of the review process that ensures freedom from conflicts of interest.

1. The Policy and Regulatory Context and the Casino Licensing Review Process

1.1 Policy context

Australia's 13 casinos are governed by casino-specific legislation as well as legislation that applies to gambling generally. Under Australia's federal system, casino licensing is a matter for States/Territories, each of which has specific licensing and regulatory authorities set up under specific legislation (Allan Consulting, 2009). In most States/Territories casino games are mainly restricted to licensed casino premises. Casinos also typically broker numerous concessions from governments and exemptions or departures from the rules that prevail in gambling-licensed clubs and hotels. At the same time, casinos are regarded as more intensive gambling environments and are subject to stricter oversight under dedicated legislation. The larger scale of gambling in casinos compared to smaller suburban club and hotel gambling venues means that the risks associated with crime and corruption, money laundering, loan sharking and probity are higher; and that such venues are in need of greater scrutiny and tighter regulatory oversight.

In terms of community sentiment, in the 30 or so years since casino gambling was legalised in Australia, the public has stayed relatively critical of the impact of gambling; and especially electronic gambling machines. A reason for this is recognition of the harms caused by gambling and its negative impacts; articulated clearly by two national inquiries conducted by the Productivity Commission in 1999 and 2010; a range of national Parliamentary inquiries, debates on gambling in 2012-2013 with the Gillard-Wilke Agreement and numerous State/Territory reports on the social impact of gambling.

Crown Casino is the largest casino in Australia. It is under an obligation to run a 'world-class casino' and has been subject to regulatory international benchmarking on its operational practices in this and previous Reviews (VCGA 2000, VCGA 2003, VCGR 2008, VCGLR 2013). Crown expresses its commitment to being a 'world leader in responsible gambling practices' (Crown Melbourne Limited, 2010, Crown Code, p. 2). A number of features of CCM's operations merit mention:

- Special conditions relate to its license to operate (Crown is subject to state laws and casino-specific legislation (the Casino Control Act 1991 and the Casino (Management Agreement) Act 1993) and to regulatory reviews by the combined gambling and liquor regulator, the VCGLR.
- There are regulatory and compliance challenges posed by its size and complexity of operation as an 'entertainment complex'.
- Crown Melbourne Limited is part of a larger transnational corporation (Crown Limited) with two casinos in Macau and casino interests in Canada, the US and the UK. Crown Limited Management and Board are therefore cogniscent of international differences in regulatory environments and presumably, best practice. Crown Limited's expansion into new Asia Pacific markets in Sri Lanka and the Philippines raises issues related to transnational corporate responsibility; in jurisdictions with widely recognized probity risks.
- Location of Crown Casino complex on the Southbank entertainment precinct in close proximity to the central business district, raises expectations that ease of public access to such a large venue necessitates vigilant regulatory oversight and high standards of internal operations on responsible gambling, responsible service of alcohol and security. Governments have embraced industry self-regulation via Codes of Conduct that are framed in terms of 'responsible gambling'. But how 'responsible' are casino host responsibility and responsible gambling programs

Reviews of Crown Casino Melbourne are conducted by the Regulator with the four previous Reviews conducted by the VCGR and VCGR (VCGA 1997, 2000, 2003; VCGR, 2008) and the Fifth Review conducted by the newly merged combined gambling and liquor licensing regulator, the VCGLR. It is worthy of note that the VCGLR conducts both 'extensive day-to-day regulation of casino operations and the casino operator, as well as conducting periodic casino Reviews under section 25 of the Casino Control Act' (VCGLR, 2013 p. 11). Reviews were previously three-yearly, changed to up to every five years on August 21 2005 . The Fifth Review is the second five-yearly Review, which includes the period 1 July 2008 to 30 June 2013. Only two Reviews within a decade poses weighty obligations on the review body, the VCGLR.

The formal requirements of the review are stipulated in Section 25 of the Casino Control Act 1991:

S 25(1) Not later than 3 years after the commencement of operations in a casino, and thereafter at intervals not exceeding 5 years, the Commission must investigate and form an opinion as to each of the following matters—

- (a) whether or not the casino operator is a suitable person to continue to hold the casino licence;
- (b) whether or not the casino operator is complying with this Act, the Casino (Management Agreement) Act 1993, the Gambling Regulation Act 2003 and the regulations made under any of those Acts;
- (c) in the case of the Melbourne Casino Operator, whether or not the casino operator is complying with—
 - (i) the transaction documents ; and
 - (ii) any other agreements between the Melbourne Casino Operator and the State, or a body representing the State, that impose obligations on the casino operator in relation to gaming;
- (d) whether or not it is in the public interest that the casino licence should continue in force (Casino Control Act, 1991).

In terms of methodology and focus of the Fifth Review:

The VCGLR has scrutinized Crown Melbourne Limited's records, systems and outcomes in relation to its obligations concerning the conduct of casino operations; the status of the Melbourne Casino; its finances and structure; the prevention of criminal activity at the Melbourne Casino; and the welfare of patrons, including minimising the harm of problem gambling (VCGLR, 2013 p. 12).

The Review report is presented under headings: Suitability, Compliance with Obligations, Melbourne Casino Operations and Recommendations.

1.3 The shifting policy and regulatory context of the licensing Review

During the five-year period under review, a number of legislative and policy shifts have occurred in Victoria of relevance to regulatory review of the casino. The most significant of these are:

- December 1, 2008 ban on gambling whilst intoxicated (under provisions of section 81 of the Casino Control Act 1991 linked regulatory enforcement of gambling and liquor licensing laws;
- RG a priority - June 2009 Responsible Gambling Codes of Conduct mandated for implementation in clubs, hotels and Crown Casino ;
- Variations to the license including additional gaming tables licensed at Crown Casino Melbourne (CCM) in December 2009 .
- Concessions granted to Crown Casino in taxation (a high roller taxation rate), and defining 'automated table games' as table games, rather than gambling machines in 2009 .

There were also a number of changes to the corporate interests of Crown Limited and its domestic and international growth between 1 July 2008 and 30 June 2013:

- Developments at Burswood Casino, Perth ;
- April 2009 Crown Limited bought shares in Cannery Casino Resorts, Las Vegas;
- June 2009 City of Dreams casino opened in Macau;
- April 2010 Crown Metropole Hotel opened at Southbank Melbourne.
- May 2011 Crown Limited purchased Aspinal's Club in London.
- May 2013 NSW regulator approved up to 23 percent stake in Echo Entertainment Group in NSW and Queensland regulator approves up to 24.99 percent share. Crown Limited sells its ECHO shares in May 2013.
- 2013 Crown Limited negotiating new casino licences in Sri Lanka and Philippines (VCGLR Review, 2013, p. 9).
- July 4 2013 the NSW Government approved Crown Limited's bid for a second Sydney casino license at the Barangaroo site to proceed to stage 3 of the development process (Nichols, 2013).

2. Analysis of the Fifth Crown Casino Licensing Review

2.1 Making 'meaning' from the narrative of the Fifth licensing Review

Narrative analysis is drawn upon in analysis of the Review. As May argues, narrative studies are frequently holistic in nature and focus on the 'sequencing of themes within narratives', focus on both form and content and present findings in the form of case studies' (May n.d.). Social scientists draw attention to the role of narrative in story-telling and in reinforcing particular power and interest relations (May, n.d; May 2008; McBeth 2005). Narrative review is multi-disciplinary and its legitimacy for the study of public/policy documents is well established (Feldman et al., 2004; May, n.d; Reissman, 2008). Narrative method draws attention to the constructed nature of how narratives are selective, how they include and exclude particular groups and interpretations, sanction certain forms of knowledge and construct social identities (De Fina & Georgakopoulou, 2008: 382) and reflect power inequalities in how processes are legally framed and how narrative is constructed to achieve social consequences (Pedriana, 2006; Squire et al., 2008: 4). Narrative analysis is used here in the context of public reporting as a form of story telling, that is ultimately selective and reflective of certain power relations.

Narrative analysis can be used to examine how narratives both reflect and shape social contexts. How collective narratives reflect power relations whose narratives 'stick' and why, whose narratives are excluded, and what the effects of this are (May n.d.).

The purpose of narrative analysis is agreed in terms of being an interpretive research approach aimed at discovering underlying meaning and the construction of reality, where language is analysed as instrumental and related to power structures and how they work to reinforce certain structural interests. As outlined below, narrative analysis focuses on 'meaning making'.

The current popularity of narrative analysis is largely due to the 'narrative' or 'linguistic' turn in the social sciences. This has brought about a renewed interest in the role that language plays in social interaction and society: language is not neutral but rather is a means to accomplish social ends and is thus implicated in structures of power. Such an interpretive approach does not seek to analyse narratives in order to access underlying events but rather focuses on meaning making. Much of narrative analysis is based on the notion that how experiences are reconstructed and interpreted is important in itself (University of Manchester, 2013).

2.2 The Fifth Crown Casino License Review – constructing a narrative for positive review

The structure/content of the Review

The Review is described by the Regulator as ‘largely a compliance review’ but one that is shaped by VCGLR’s ‘assessment of the key regulatory risks’ associated with ‘the changing international and local casino environment and regulatory obligations that may not align with the casino operator’s commercial incentives’ (VCGLR, 2013 p. 11). The Review is structured according to assessments of CCM’s suitability to hold the license, compliance with statutory and contractual obligations and in terms of its Operations — focused on core gaming functions and security and surveillance. It is structured around the four key areas investigated: suitability, compliance with statutory obligations, compliance with contractual obligations, and public interest.

Key messages of the Reviews’ narrative

The report explicitly sets the Review in the context of the rise of Asian gambling markets and shifts in the global casino market from the USA to Macau, Singapore and Asia, since the 2008 CCM license Review was conducted. It foreshadows significant growth, with PwC estimating the Asian gaming market to comprise 43 per cent of the global market by 2015 (VCGR, 2013, p. 10). The Review is sympathetic to Crown’s capacity to compete internationally.

It is important that the operation and management of the Melbourne Casino keeps pace with the changing risks and commercial pressures of the international casino market. The VCGLR considers that the management team of the Crown Group is acting to meet those challenges (VCGLR, 2013, p. 10).

The Review is also clear that such trends and Crown’s involvement in the Asian markets, which may be less well regulated, poses risks.

Equally, the VCGLR’s regulation of the Melbourne Casino and casino operator must continue to evolve to ensure it is attuned to these changing risks and meeting the purposes of Victorian gambling legislation (VCGLR, 2013, p. 10).

Key risks include:

- The financial and probity risks arising from the Crown Group’s significant Australian and international expansion plans;
- The increase in responsible gambling obligations and the potential for these to conflict with commercial obligations; and
- Criminals attempting to engage in illegal activities at the Melbourne Casino (VCGLR, 2013, p. 11-12).

The Review is also mindful of risk factors related to Crown Ltd.’s involvement in the Macau gambling market (33 per cent investment in Melco Crown) in terms of:

- Any travel restrictions to Macau imposed by the Chinese Government;
- Further restrictions by the Chinese Government on the movement of money out of China;
- Melco Crown’s current sub-concession extends until 2022 and there is no guarantee the sub-concession will be extended beyond this date; and
- Relaxation of gaming laws in other regional economies that would compete with the Macau market (VCGLR, 2013, p. 71)

Even though from a financial risk point of view, there are protections of CCM:

The Deed of Cross Guarantee binds the financial position of Crown Melbourne Limited to the other Crown Group companies and does not include any of Crown Limited's international operations, and presents a low risk to the short to medium term position of Crown Melbourne Limited (VCGLR, 2013, p. 71).

The main thrust of arguments in the early part of the Review report is to emphasize the importance of expansion into the Asia-Pacific region and Crown Group's and CCM's capacity to compete in the international VIP market.

Crown Melbourne Limited's financial performance and strength is increasingly dependent on the prosperity of the VIP market; and given its location in the world, its continued ability to attract participants to this market. Revenue and EBITDA growth is fundamental for Crown Limited to achieve its expansion plans and is highly dependent on the growth of the commission based player market (VCGLR, 2013, p. 71).

2.3 The main recommendations pertaining to the CCM license renewal

The VCGLR's opinion under section 25 of the Casino Control Act. Following the VCGLR's investigations and for the reasons set out in this report, the VCGLR has formed the opinion that:

- a. the casino operator, Crown Melbourne Limited remains a suitable person to hold a casino licence;
- b. the casino operator, Crown Melbourne Limited is complying with the Casino Control Act 1991, the Casino (Management Agreement) Act 1993, the Gambling Regulation Act 2003 and the regulations made under any of those Acts;
- c. the casino operator, Crown Melbourne Limited is complying with the transaction documents and any other agreements between the Melbourne casino operator and the State, or a body representing the State, that impose obligations on the casino operator in relation to gaming;
- d. it is in the public interest that the casino licence should continue in force (VCGLR, 2013, p. 9).

The Review makes ten recommendations with six of these in the area of Responsible Gambling. Other recommendations relate to enhancing Crown's corporate governance arrangements to implement best-practice auditing, better display of game rules at the casino and an investigation into making them available via smart phones (VCGLR, 2013b).

The next section deals in more detail with some elements of the Review's treatment of Responsible Gambling (RG). In the words of the Chair of the Review Commissioner Robbie Kerr, 'VCGLR regulates the casino with a strong emphasis on harm minimisation and responsible gambling,' (VCGLR, 2013b). The Review therefore recognizes the increased importance of RG since the 2008 Review

3. Responsible Gambling

Part 3 of the Review focuses on the VCGLR framing of RG; sources of evidence drawn on by the Review; assessment of CCM's loyalty program Play Safe Limits; the Review's assessment of CCM's Code of Conduct performance; and the Review's RG recommendations.

3.1 VCGLR Review's framing of "RG";

CCM approach to RG is focused on a mix of mandated and voluntary measures that are consistently described by both the Review and by CCM in its submission (Crown Melbourne Limited, 2012) as including:

- compliance with state government requirements on signage (including information, clocks on machines etc.)
- voluntary establishment of the Customer Support Centre (established as a voluntary commitment in 2002) and more recently its Chaplaincy Support Service
- CCM's establishment of a Responsible Gambling Committee
- restriction of credit to international players with verified identity as a condition of participation in commission based play arrangements (VCGLR, 2013 p. 91)
- implementation of a self-exclusion process
- maintenance of a Responsible Gaming Contact Register to record complaints about a patron's gambling by family or friends (VCGLR, 2013, p. 92)
- the Play Safe Limits program which enables Signature (loyalty) club members to voluntarily set time or spend limits for each session prior to playing the machines on a daily or annual basis (VCGLR, 2013, p. 90). This is described by CCM as its 'voluntary pre-commitment program' (Crown Melbourne Limited, 2012).
- Player activity statements are provided to Crown Signature Club members in accordance with requirements related to loyalty programs
- CCM's obligations to implement a Responsible Gambling Code of Conduct under 2008 amendments to the Gambling Regulation Act 2003.

From a regulatory perspective, RG was approved as a focus for the Regulator's Reviews of CCM in the Third Triennial Review (VCGA, 2003) following legal and regulatory policy changes to governing legislation. In its briefing to Hanks QC the VCGA (below) noted the change in legislative priorities with the dropping of 'promoting tourism, employment and economic development generally in the State' from S 140 of the Casino Control Act and the fostering of RG in casinos as a priority (a policy re-direction introduced in 2000 by the Bracks government took over from the previous Kennett Liberal government):

- (a) ensuring that the management and operation of casinos remains free from criminal influence or exploitation; and
- (b) ensuring that gaming and betting in casinos is conducted honestly; and promoting tourism, employment and economic development generally in the State. fostering responsible gambling in casinos in order to—
 - (i) minimise harm caused by problem gambling; and
 - (ii) accommodate those who gamble without harming themselves or others (VCGA, 2003, p. 33-34, policy briefing cited by Hanks QC).

Under the Third Triennial Review, 'Responsible gambling was defined as 'the social and personal damage that may be attributable to gambling (VCGA, 2003, p. 5) and was one of the terms of reference for the Operational Compliance Subcommittee, including investigating Crown's performance in delivering responsible gambling in the casino and Crown's responsible gambling management, security and service and surveillance' (Hancock, 2011, p. 129).

The Fourth 2008 Review placed emphasis on an investigation of 'gaming activities' under which it included 'responsible gambling obligations'. In terms of its key focus on whether or not Crown Casino had breached its statutory obligations, the Fourth Review states:

The Commission recognises that the comprehensive approach by Crown Melbourne to responsible gambling (while there is still room for improvement) makes Crown Melbourne a world leader.

The Commission examined Crown Melbourne's compliance with relevant harm

minimisation (responsible gambling) legislation and its corporate approach to the provision of problem gambling services, such as counselling services, patron exclusion processes, the provision of problem gambling services information and how Crown Melbourne informs itself of problem gambling research.

The examination confirmed that Crown Melbourne has not breached its statutory obligations in relation to responsible gambling and Crown Melbourne's participation in responsible gambling working parties and its establishment of complementary programs indicate a commitment to deliver its gaming products in a responsible manner (VCGR, 2008, P. 21).

In its Fifth Review VCGLR (2013, p. 81) sees RG as 'an important element' of the CCM operations, and makes reference to the way that '(g)ood responsible gambling practices can ameliorate or prevent some of the harms caused by problem gambling. They also demonstrate good management and show a commitment to patron welfare.'. They also demonstrate good management and show a commitment to patron welfare' and the increasing importance of RG as reflected in 'the growing list of obligations within the Casino Control Act and the Gambling Regulation Act, designed to protect gamblers from harm' (VCGLR, 2013, p 81).

However, compared to previous Reviews, the Fifth demonstrates a shift in the way RG is framed. In terms of its evaluation of CCM performance, the Review frames RG in individual terms rather than in the broader remit of operator responsibility, beginning its assessment of CCM performance on RG with a reference to Crown's framing of RG, which also reinforces an individual rather than an operator responsibility focus.

As Crown Melbourne Limited notes in its Responsible Gambling Code of Conduct, gaming is enjoyed by the vast majority of their customers, but some people have difficulties with gambling responsibly and this may cause them, and those around them, harm (VCGLR, 2013, p. 81).

The Review cites a definition of RG obtained from The Victorian Responsible Gambling Foundation and defines responsible gambling as 'gambling in a way that is controlled, is within the gambler's financial means and does not interfere with the gambler's life or the lives of those around them. As shown below, this definition has framed the subsequent Review.

This definition informed the way the VCGLR conducted its investigations and the way the issues were approached. In particular, the definition provided context when considering the processes and procedures Crown Melbourne Limited uses to meet its responsible gambling obligations (VCGLR, 2013, p. 82).

Curiously, the definition used above does not appear from searches of Foundation publications and the VCGLR Review does not draw on the major document published by the Responsible Gambling Foundation in its Guide to Responsible Gambling, which differentiates what RG means for individuals and providers. According to the Foundation:

For individuals it means:

- they may gamble for pleasure and entertainment but are aware of their likelihood of losing, and understand the associated risks
- they exercise control over their gambling activity
- responsible gambling occurs in balance with other activities in their lives and is not causing problems or harm for themselves or others

For providers it requires:

- shared responsibility for generating awareness of the risks associated with gambling
- creating and promoting environments that prevent or minimise problem gambling
- and being responsive to community concerns around gambling (Responsible Gambling Foundation n.d. p. 8)

Notably, the elements of importance to providers including host responsibility to prevent harms, are not emphasized in the guiding definition adopted by the VCGLR Review; but rather a reverse-onus on the patron or customer, urged to control their gambling .

Crown's Review submission outlines its approach to RG:

Crown has been committed to Responsible Service of Gaming (RSG) since inception. Crown has led the way in RSG initiatives, including Crown's voluntary

pre-commitment program (in place since 2003) and its unique array of available services comprising dedicated and specially trained staff of RGLOs, RGPs and

Chaplaincy support, all available from its Responsible Gaming Support Centre

(RGSC) 24 hours a day, 7 days a week. Crown's initiatives place it at the forefront

in Australia and arguably the world, in relation to RSG. Crown Signature Club members have access to a kiosk facility to view their Player Activity Statements (PAS). Members can sign up for Crown's voluntary precommitment program (named Play Safe Limits), where they can voluntarily nominate predetermined time and loss limits (Crown Melbourne Limited (Crown Melbourne Limited), 2012, p. 7-8).

Crown frames its submission in terms of 'responsible service of gaming (RSG)'. Such use of language focuses on the more benign term 'gaming' rather than 'gambling' and is not a term usually associated with the framing of Responsible Gambling (RG). Two elements of this phraseology merit comment. Use of the word 'gaming' is ambiguous as it may be taken to encompass gaming that is not gambling, i.e., that is not conducted for money and is purely for fun. Its terminology 'responsible service of gaming' [ital added] delimits its remit to that of a provider of a service implying the consumer has certain opt-in choices, but where its own obligation to provide a safe gambling environment and provision of safe gambling products is not acknowledged. Crown Melbourne has a 'Senior Manager Responsible Gaming' and from 2010 Crown Ltd. set up a Responsible Gaming Committee .

In accordance with its Charter, the Committee:

- Monitors and reviews the operation and effectiveness of responsible gambling programs;
- Recommends responsible gambling policies and procedures;
- Promotes improved responsible gambling practices; and
- Promotes awareness of responsible gambling (VCGLR, 2013, p. 85).

The use of language is important in promoting a normalization of gambling by eliding it into 'gaming'. Notably, the term 'Responsible service of gaming' is used only once in the two-volume Productivity Commission (2010, 2010, 12.35) report and that reference is to training programs in responsible service of gaming for hotels, clubs and casinos citing the submission of the gambling industry peak body, the Australasian Gaming Council [previously the Australian Gambling Council]. This would imply the industry is keen to promote a change in terminology that is in its own interest and has had some element of success with the term being embedded in section 58A of the Casino Control Act in reference to staff training in an approved Responsible Service of Gaming Course and the Review has picked up the term in its heading 'Responsible service of gaming training'.

3.2. Sources of evidence drawn on by the Review, in addition to its own information;

Data relied on by the Review included Crown Melbourne Limited's (2012) submission to the VCGLR and responses to questions, data from CCM relating to RG procedures and RG surveys it undertook, presentations from Crown and a tour of the RG Support Centre, Interviews with Chair of Crown Limited's Responsible Gaming Committee, agendas and minutes, Crown Melbourne Limited and Crown Limited committees and the annual reviews conducted by Crown Melbourne Limited of its Responsible Gambling Code of Conduct, consultations with gambling experts and a third party round table including Gambler's Help counselors, research material from the Victorian Responsible Gambling Foundation; responsible gambling initiatives at other casinos; and international gambling regulators (VCGLR, 2013, p. 81-82).

In the absence of a formal hearings and longer more inviting submission process, for example, in response to a discussion paper or draft report (which were absent from the recent review process), the level of detail on whom was consulted, and the thoroughness of the research and consultation process is lacking. Apart from the public advertisement at the start of a 9-month process, giving a six week window to make a submission it is not surprising that the only submission was that of Crown Melbourne Limited (and that a similar result pertained to all five reviews so far). This should raise questions about the Regulator's community engagement strategy on casino licensing Reviews and the lack transparency on which experts and third parties were consulted and to what extent. In terms of the Review drawing on information from within the Regulator, there is a lack of insight into its findings drawing on unpublished data from day-to-day monitoring of the casino and matters raised by Inspectors and others during the five-year Review period. The Review brings to light the lack of transparency of detailed reportage of the inspectorial and enforcement activities of the Regulator.

3.3 Assessment of Play Safe as RG

Play Safe, introduced in June 2003, lets members of Crown's Signature club voluntarily set time and spend limits for each session prior to playing EGMs (VCGLR, 2013, p. 90). PlaySafe Limits is also the conduit through which players can opt to play machines in "restricted areas", that are exempt from state government limits on spin rate, note acceptor limits, spin rates, bet limits and payout by check that apply to other gambling machines in Crown and to machines in club and hotel venues in Victoria. (VCGLR, 2013, p. 90). Once the time or spend limit is reached the 'machine emits an audible tone and displays a written message, explaining that the patron can no longer accrue membership points for the Signature Club' (VCGLR, 2013, p. 90). Consistent with their mutual emphasis on the individual control of gambling, the Review notes, 'Play Safe Limits provide an opportunity for patrons to approach Crown Melbourne Limited staff for assistance, if required' (VCGLR, 2013, p. 91).

It would appear that CCM continue to record patron play data session and spend that is automatically recorded, so they would still be aware of whom the big EGM spenders are. The fact that the Operator (CCM) does not intervene or shut off play once the limit is reached, considerably weakens the efficacy of the program as a problem gambling risk management mechanism. The Review presents data supplied by CCM showing that the Play Safe Limits program has had a significant increase from approximately 12,500 members in 2010 using it increasing to approximately 37,000 in 2012, but says Crown does not know the reasons for the increase and this is not the subject of Review investigation (VCGLR, 2013, p. 90). The Review does not interrogate a matter of some concern that up to 1000 of CCM's 2,500 electronic gambling machines are approved for virtually unrestricted gambling that is not subject to state limits designed to protect consumers and that the facility of \$100 bank note acceptors and exemption from pay-out by cheque on these machines, renders them at risk of use for money laundering purposes.

The Review recognizes money laundering as a risk, however the detail of the Review does not adequately examine the extent to which opportunities (such as unregulated EGMs played under Play

Safe exemptions) that exist for such activities are being used nor does it explore better means of preventing such activities by for example, not allowing such exemptions. This represents a serious public interest gap in the Review's investigation. Of course, that such machines can be played with perhaps no player tracking is also a concern that is not addressed by the Review's recommendation that Crown trial player tracking of Signature Club members in VIP rooms .

3.4. The Review's assessment of CCM's Code of Conduct performance

From 1 June 2009, all gambling licensees in clubs, hotels and the Melbourne Casino are required to implement a Responsible Gambling Code of Conduct, as required of CCM under section 69 of the Casino Control Act 1991. Codes need to comply with the requirements set out in Division 2 of Part 6 of the Gambling Regulation Act, need approval from the Regulator and must conform to Ministerial Guidelines. The Crown Casino RG Code as it will be referred to here, has had three amendments approved by the Regulator.

The latest amendment - not dated but 'recent' (VCGLR, 2013, p. 85), modified 'the observable signs of distress' on which staff receive training to guide their implementation of the Code. The amendment as said to draw in particular on Identifying Problem Gamblers in Gambling Venues: Final Report (Delfabbro et al. 2007); and Current Issues Related to Identifying the Problem Gambler in the Gambling Venue (Australian Gaming Council, 2002). The Review also made the observation that 'Crown Melbourne Limited's Responsible Gambling Code of Conduct and general responsible gambling intervention framework relies heavily on staff identifying observable signs of distress' (VCGLR, 2013, p. 85). Below table 1 lists changes to the list of observable signs of distress in Crown Melbourne Limited's Responsible Gambling Code of Conduct.

Table 1. The Review's outline of Crown Melbourne's Amended Code of Conduct

List of observable signs of distress

PRIOR to amendment

- Either gambling every day or finding it difficult to stop gambling
- Gambling for extended periods without a break
- Avoiding contact while gambling
- Communicating very little with anyone else
- Barely reacting to events going on around them
- Displaying aggressive, antisocial or emotional behaviour while gambling
- Making requests to borrow money from staff or other customers or continuing to gamble with the proceeds of large wins

List of observable signs of distress

FOLLOWING amendment

- Self disclosure of a problem with gambling or problems related to gambling
- Request to self-exclude
- Distorted and irrational attitudes about gambling
- Barely reacting to surrounding events
- Intolerance to losing, displayed as bad temper or distress
- Significant variation in mood during a gambling session
- Children left unattended whilst parent/ guardian gambles

- Regular complaints to staff about losing or blaming the venue/staff for their losses
- Requests to borrow money for gambling
- Showing a pattern of gambling for long periods without a break
- Progressive reduction of self-care e.g. appearing unkempt or fatigued
- Requests for assistance from family and/ or friends concerned about an individual's gambling behaviour (VCGLR, 2013, p. 87; Table 5 [bold added]).

While the Review emphasizes Crown's reliance on 'an accepted and researched premise that observable signs are the best indicators of potential problem gambling behaviours', six of the signs in the amended Code (shown in bold above) rely on a communication from the patron or family/friends rather than externally observable signs. This is consistent with the CCM promotion of the individual control model discussed above and relies on proactive behaviour on the part of the patron (that involves some recognition of gambling-related problems and necessitating some interaction with staff); rather than the observable signs cited in the research upon which the amendments are purportedly based (that of Delfabbro, 2007 and Australian Gambling Council, 2002; shown in information box 4 [VCGLR, 2013, p. 86]).

Here we have a situation where the Reviewer is understandably uncritical of the content of a Code, which it has already previously approved. In Box 6 (VCGLR, 2013, p. 98), it refers to much more specific signs in the New Zealand code but does not undertake a comparative analysis of the amended code against what might be considered best practice and against which CCM's latest Code of Conduct compares very poorly.

Is there enforcement of the Code of Conduct?

To ensure its employees can make an assessment, CCM has developed a Senior Manager Responsible Service of Gaming training session for managers and senior floor staff as an additional measure to the mandatory Responsible Service of Gaming course that all gaming staff must complete. If a patron displays observable signs of distress, Crown Melbourne Limited staff are instructed to contact a Responsible Gaming Liaison Officer or the Responsible Gaming Support Centre. There appears to be no assessment of whether this system is implemented effectively.

The crucial question about codes is whether or not they are enforced (OECD, 2012; Monk, 2012). The Crown Casino Code of Conduct comes under state provisions making codes mandatory (but free-form) and approved by the Regulator under general Ministerial Direction (Victorian Commission for Gambling Regulation [VCGR], 2009). Under this self-regulatory system, Crown Casino is reliant on its workers to know its Code of Conduct and to act as the first link in the chain to effectively identify problem gamblers and initiate interventions, albeit in an 'upward report to supervisor' model.

Notably, the Review relies on evidence provided by CCM in its submission, which it does not subject to independent review. For such a significant review and only the second in a decade, the lack of research specifically conducted for the review is notable. On the matter of staff training on RG, the Review is descriptive of routine processes, but has not undertaken its own analysis of the effectiveness of training. It draws extensively on Crown Melbourne Limited's (2012) submission for the evidence on which it draws. On this basis it concludes:

Crown Melbourne Limited conducts a formal review for all staff twice a year. As part of this review, Crown Melbourne Limited evaluates its staff's adherence to their Responsible Gambling Code of Conduct. Crown Melbourne Limited has advised the VCGLR that since 1 January 2008, the performance management system has raised no issues in relation to staff adherence to the Responsible Gambling Code of Conduct (VCGR, 2013, p. 85).

The Review cites evidence from internal Crown Casino surveys of customers and staff in relation to the Code, but there is no disclosure of the questions asked, the number of respondents or whether the survey was anonymous. In any event, the survey does not specifically test staff awareness or implementation of the specific ‘signs of distress’. The questions do not test application of RG or the Code or the efficacy of current practices.

The Review does not engage with counter evidence (Hancock, 2011), where data from 225 Crown Casino employees interviewed in their own time via private contacts from the Union, give rare insight into problems with the way the Code of Conduct works in practice. Interviewing casino employees gives valuable insight into what actually happens ‘on the floor’, how the Code of Conduct ‘works’ and how self-regulation works in practice. Staff reported that financial imperatives often led to compromise on implementation of the Code and that the Code was not enforced very well.

That study also tested casino employees’ understanding and implementation of the Crown Code of Conduct [prior to amendment in table 1 above, when the Code had nine signs of problem gambling (shown below)]. It is also noted that the Code compares unfavourably with the 32 signs of problem gambling used in New Zealand and the 20 signs used in Switzerland (Hancock, 2011); and could be regarded as minimal in terms of best practice.

In the study by Hancock (2011), staff indicated inadequate knowledge of the codes they are meant to be enforcing. Based on the ‘signs of distress’ of the code prior to amendment (Table 2), questions to staff about awareness of code items showed some concerning low levels of awareness of the Code they were meant to be implementing.

Table 2. Crown Casino staff awareness of RG Code ‘signs of distress’

Low awareness levels of problem gambling signs by staff

- 55.6 % ‘communicating very little with anyone else’
- 59.3 % ‘continuing to gamble with the proceeds of large wins’
- 61.2% ‘avoiding contact with others while gambling’

Mid-level awareness

- 72.9% ‘barely reacting to events going on around them’
- 76.2% ‘gambling every day’
- 80.8% ‘gambling for extended periods without a break’

Higher level awareness

- 89.3% ‘displaying aggressive, antisocial or emotional behaviour while gambling’
- 92.5% ‘finding it difficult to stop gambling’ and
- 92.5% ‘making requests to borrow money from staff or other customers’. (Hancock, 2011, p. 79)

Consistent with the research literature on the ability of gaming venue staff to identify problem gambling behaviours (Delfabbro 2007, 2008), almost 70 percent (69.1%) of casino staff in this study said they ‘find it easy to identify who the problem gamblers are’ (and an additional 13.5% were unsure). However for Codes of Conduct to be effective, they need to identify the right signs and they need to be consistently implemented.

Staff are trained to report patrons exhibiting signs of problem gambling to supervisors. Apart from the fact that knowledge of some of these signs is wanting, the ‘upward report-to-supervisor’ process is ambiguous and results in low rates of floor staff interventions in problem gambling – because many staff do not follow the Code of Conduct; and some do not see the point as little comes from their notifications. Asked why they do not intervene, 71 percent said “it’s not my place to do it”; 25 percent said “I’m not trained to do it”, Twenty-five percent said “I’m told not to” and twelve percent

said “I am told to wait for a customer to ask for assistance”. This is despite research cited above, confirming that venue staff can reliably identify problem gamblers on the basis of visual and behavioural cues. Almost 70% (69.1%) of casino staff in this study said they “find it easy to identify who the problem gamblers are”. In the same study:

- 65.3 percent of casino employee interviewees say they do not advise customers to take regular breaks in play.
- 55.3 percent say they would not intervene when customers are in a distressed state while they are playing; and
- 81.2 percent say they do not approach people they think are having problems with their gambling.
- 17.6% -answered YES to the statement: “ I sometimes feel under pressured by management to keep people gambling” (Hancock, 2011, p. 83).

Commenting on these findings, Canadian Alberta Gambling Research Institute Prof. Garry Smith (2012) states: ‘The “regulatory failure” verdict stems from the wilful blindness exhibited by both Crown Casino senior management and Victoria regulators. Management, for fostering a corporate culture where profit maximization trumps other considerations, including following the Responsible Gambling Code of Conduct; and regulators, whose ‘light touch’ oversight allows the Code’s tenets to be violated without serious consequence, are the enablers...’ and refers to ‘poorly defined outcomes, deficient information gathering, monitoring, and assessment procedures, and the superficial ‘light touch’ manner adopted by government regulators’.

Clearly, Codes of Conduct need both the right ‘signs’ and a culture where risk and problems from gambling are seen as preventable and where gambling environments are operated with enforcement of host responsibility and a culture that prioritizes responsibility to prevent harms before commercial goals.

3.5 The Review’s RG Recommendations

The Review found positively on RG: ‘that Crown Melbourne Limited generally has robust and detailed systems and processes for dealing with responsible gambling issues and that since 2008, it has generally complied with its obligations under the legislation (VCGLR, 2013, p. 93). However a number of its recommendations were directed at RG matters.

The Review observed that for better Board oversight and management of RG issues, governance structures need improvement to address the fact there are no formal links between the Crown Board and the Crown Limited Responsible Gambling Committee (VCGLR, 2013, p. 93-94). As the Review noted: ‘there is no formal consideration of responsible gambling issues by the Crown Melbourne Limited Board at its meetings’ (VCGLR, 2013, p. 94). It also recommended trial of player tracking using well-established methods used in Canada and approved for use under Auckland Casino’s licensing conditions by the New Zealand Regulator. The Review was critical of a paper by Schellinck and Schrans (2011) on grounds it was not peer reviewed (although it appeared in a peer reviewed journal).

With player tracking analysis now a well-developed technique for interventions on both risk and harm, the 18-month time frame for a trial is over-generous (given that player data can be retrospectively dropped into such analysis).The lack of specification on how the program would run and be audited, leaves central questions unaddressed. For example, it does not address whether patrons found to be experiencing problems would be excluded from gambling, in a manner analogous to the provision on not serving intoxicated patrons under liquor licensing laws. In respect of preventing minors entering the casino or for detecting self-excluded patrons, the recommendation for face recognition technology is long overdue and the 12 month implementation timeframe and absence of any requirement for independent evaluation, is overly generous to the Operator.

4. Critiquing the Review

4.1 Critiquing excusatory narratives

The focus on the competitive Asian gambling market as a key driver of Crown's growth and the interpretation of the local market as 'mature' (implying it lacks importance), can be read as directing attention to the role of the Review in supporting measures that enable Crown's growth based on growing international markets. This directs attention to the growing and increasingly competitive international VIP market (both within Australian casinos and internationally). This positions the expenditure on Perth and Melbourne's Crown Casino refurbishments within the context of international tourism and growth, rather than the impact of casino operations on local communities. The Review focus is on the International VIP Asian market to the exclusion of analysis of the segmented markets (for example, youth, senior citizens, migrant communities), that contribute to CCM's overall financial performance. In addition to the high roller, private suites and select VIP rooms, the main gaming floor attracts local Asian communities to table games, senior citizens in particular, to electronic gambling machines and young males, particularly from construction and trade industries to sports bars, table games and poker. Local patrons at lower level restricted areas (such as Teak Room) requiring loyalty club entry off the main floor, also contribute significantly to revenue and are also matters for 'responsible gambling' and host responsibility focus.

Questions raised by the review is whether the Commission uses its powers adequately to formally propose conditions upon the licensee or to invoke sanctions is at issue. Under the Casino Control Act 1991, the Regulator has wide powers to amend the conditions of a licence under Section 16 (Amendment of conditions) the Regulator has the power to cancel suspend or vary the license and impose fines up to \$1 million (Section 20), to give a casino operator written direction that relates to the conduct, supervision or control of operations in the casino (Section 23) and to report its findings to the Minister and 'take whatever action it considers appropriate in the light of its findings' (Section 26 (2)).

The Regulator thus has wide on-going powers of discretion that can be invoked at any time during casino monitoring and not only at the periodic (five-yearly) Reviews. As noted by the Victorian Responsible Gambling Foundation '

The Gambling Regulation Act 2003 is the main piece of legislation governing gambling in Victoria. It empowers the Victorian Commission for Gambling and Liquor Regulation to set standards for venues and machines, to licence companies and venues to provide gambling and to lay down codes of conduct and self exclusion tools. Regulations have a role to play in minimizing harm from gambling and promoting responsible gambling (RGF, n.d. p. 10).

Interrogating regulatory inspections, the Review relied on the Regulator's own monitoring data and activities/data generated by the Review itself and resourced from within the VCGLR over a nine month period. As previously discussed, narrative review is concerned with both inclusions and exclusions. The Review gives very little insight into the data it routinely collects or the issues it may from time to time take up with CCM. In terms of the Regulator's monitoring, the Fourth Review disclosed that:

Commission inspectors are stationed onsite 24 hours a day to monitor gaming activity and Crown Melbourne's compliance with its regulatory obligations. The Commission conducts weekly meetings where any issues can be raised and matters addressed as they arise. A Monthly Report of Casino Activities is provided to the Commission, which acts on any issues as they become known (VCGA, 2008, p.2).

Much of the regulatory focus of Casino Inspectors appears to focus on exclusion of minors, gambling machine payouts, operational probity of games and tax collection probity, rather than on licensee RG

and host responsibility obligations. From the available data in the Review and VCGLR annual reports, the formal sanctions resulting from casino inspectors' activities do not seem to draw on the more serious end of their wide-ranging powers that include criminal prosecutions, written warnings, and disciplinary action.

The lack of research on regulatory enforcement has been noted internationally (Monk 2012; Blanc 2012). A 2012 OECD workshop report noted:

(C)onclusions of the workshop confirmed that regulatory enforcement and inspections is a relatively new and underestimated element of regulatory policy that has been gaining importance recently. Only a few OECD countries have introduced significant cross-cutting reforms in this area, despite the fact that there are many opportunities to improve effectiveness and efficiency of inspections and therefore regulatory efficiency through better targeting of inspections and making enforcement more outcome-oriented (OECD, 2012 n.p.).

Inspectors 'are often experts without a set of common competencies or frameworks for inspection, (T)hey can be influenced by politicians, (P)oor salaries can lead to corrupt behaviour, (P)erformance targets can lead to perverse incentives (OECD, 2012 n.p.).

The main thrust of the OECD work in this area is that regulatory inspections play a crucial role in the regulatory governance cycle, inspectorial delivery needs to be based on assessments of risk and evidence, performance should be assessed against clear benchmarks, 'Inspection authorities should be able to clearly demonstrate that they are truly independent from political interference' (OECD, 2012).

This raises a number of questions:

- how do Reviews inform on-going monitoring of Crown Casino in light of the findings of previous Reviews, of legislative changes and the findings of inquiries into gambling and evolving evidence base on the impact of gambling and of gambling operations involved in sale of liquor?
- are the timelines for VCGLR recommendations overly generous, given the issues at stake and the late implementation of well-developed technology such as face recognition, crowd assessment and casino player tracking technologies?
- transparency - will CCM's responses to recommendations from the VCGLR be publicly reported and made public or will the public have to wait until the next Review in 2018?
- do the biases and omissions in the Review merit independent audit by the Auditor General or other independent statutory third party with regard to an overhaul of the regulatory process and attention to conflict of interest?
- should the methods of the Review be overhauled, given the questions raised as to the adequacy of the VCGLR routine practices in oversight of RG and RSA at CCM?

Conclusion

With the NSW State Government giving the go-ahead for a new Crown casino license in Sydney CBD and the Queensland government announcing its consideration of extending its casinos to seven, the issue of social impact of casinos and how they are licensed, monitored, regulated and reviewed, brings up crucial governance, probity and public interest issues. Although governments have expressed a focus on harm minimization and 'responsible gambling', concerns about problem gambling, and (in some States) public health approaches to harm prevention, the dominant prevailing approach is one of individual blame for problem gambling impacts and a lack of focus on governance system surrounding the safety of gambling products (especially electronic gambling machines and automated table games), and the safety of gambling environments characterized by industry self-regulation via unmonitored Codes of Conduct on Responsible Gambling and a lack of emphasis on

consumer protection from preventable harms related to gambling and gambling environments. Within this mix, gambling regulators tend to focus on tax collection probity, gambling machine pay-outs and perfunctory rule compliance, rather than regulation for safe and sustainable gambling.

Current discourses on ‘problem gambling’ and ‘responsible gambling’ are bounded within an individualized informed consumer model, that draws on medicalized typifications of individual pathology. As Bacchi argues, the ‘problem gambler paradigm’ (demand for gambling) precludes examination of the complex reasons why people gamble and supply factors related to production, packaging and promotion of gambling. It precludes examination of inequitable power relations that underpin gambling-related transactions (Bacchi, 2007 p. 91, 89). Recent research on addiction help-seeking has found that problem gambling is treated as a moral failing, whereas drug or alcohol addiction are regarded more sympathetically than gambling (Jean, 2013). Such typifications of ‘the problem’ as one of individual weakness divert attention from the responsibility of the State in regulating gambling as a dangerous consumption.

As argued by Gerda Reith (2008, p. 150-151) responsibility is focused on the individual gambler (seen as having freedom and choice) rather than the responsibility of State regulation. This, she argues, reflects the shift under neo liberalism away from production-side issues (supply, availability, accessibility of products) towards the consumption side (individual consumers with choices, freedoms and habits). Similarly, Cosgrave & Klassen (2009, p. 60) critique ‘responsible gambling’ as ‘neo liberal individualism used rhetorically to obscure the reality of industry (and governments’) priority on profit maximisation’. They argue that ‘anyone is at risk of gambling irresponsibly’.

A consumer protection and public health lens exposes the bounded rationality of dominant discourses on ‘responsible gambling’ as the servant of industry and government profit maximization. Underlying current priorities is a callous acceptance of harm to a predicable but significant group of mainly regular gamblers; who are quite frequently also drawn from some of the most vulnerable groups in the community. This is at the expense of precautionary risk aversion, early prevention, safer products and improved safety within gambling environments; that are now within easy reach for governments with the will to implement.

Governments are beholden to the gambling industry to raise much-needed taxes that contribute substantially to revenue (nationally in Australia at about ten percent of State/Territory revenues and about 12-13 percent in Victoria). When the Regulator is responsible both for day-to-day casino monitoring as well as periodic reviews of the licence, it is to a great extent, relying on its own, rather than third party or independent data, which represents a clear conflict of interest and potential compromise of the Review process. This is clearly in contravention of recent critiques of regulatory enforcement highlighted by the OECD (2012; Monk, 2012; Cary 2012) and of the Victorian Government’s own policy as articulated in *Improving Governance of Regulators: Principles and Guidelines*.

References

- Allen Consulting Group (2009) *Casinos and the Australian economy*. Melbourne: Australian Gaming Council.
- Australian Gambling Council (2002) *Current issues related to identifying the problem gambler in the gambling venue*. Melbourne: Australian Gambling Council.
- Bacchi, C. (2007) *Analysing Policy: What’s the Problem Represented To Be?* Melbourne. Pearson Australia.

- Cary C. (2012), "Measuring regulatory performance: evaluating the impact of Regulation and Regulatory Policy", OECD Expert Paper No. 1, August, available at: www.oecd.org/gov/regulatorypolicy/1_coglianesse%20web.pdf.
- Cosgrave, J. (2009) 'Governing the Gambling Citizen: The State, Consumption and Risk', Cosgrave, J. F. and Klassen, T. R. eds. *Casino State: Legalized Gambling in Canada*. Toronto: University of Toronto Press Inc.
- Crown Melbourne Limited (2012) Submission to the Victorian Commission for Gambling and Liquor Regulation by Crown Melbourne Limited – Section 25 Casino Operator and Licence Review, 19 October 2012.
- De Fina, A. and Georgakopoulou, A. (2008) 'Analysing narratives as practices', *Qualitative Research*, 8(3): 379-387.
- Delfabbro, P. (2008) *AGR 4: Australasian Gambling Review Fourth Edition (1992-2008)*. Adelaide: Independent Gambling Authority
- Delfabbro P., Osborn A., Nevile M., Skelt L. and McMillen J. (2007) *Identifying Problem Gamblers in Gambling Venues: Final Report*, prepared for Gambling Research Australia.
- Feldman, S. Skoldberg, K., Brown, R., Horner D. (2004) *Making Sense of Stories: A Rhetorical Approach to Narrative Analysis*, *Journal of Public Administration Research and Theory*, Vol. 14, no. 2, pp. 147–170
- Government of Victoria (2013) *Casino Control Act 1991, Version No. 079, No. 47 of 1991*. Version incorporating amendments as at 15 September 2013. Melbourne: Parliamentary Government Printer.
- 'Government of Victoria (2013) *Casino (Management Agreement) Act 1993 (Vic)*. Melbourne: Parliamentary Government Printer, Version incorporating amendments as at 15 September 2013. Melbourne: Parliamentary Government Printer..
- Government of Victoria (2010), *Improving Governance of Regulators: Principles and guidelines*. Victoria, Australia: Department of Premier and Cabinet.
- Hancock, L. (2011) *Regulatory Failure: The case of Crown Casino*. Melbourne: Australian Scholarly Publishing.
- Hancock, L., Schellinck, T. & Schrans, T., (2008) 'Gambling and corporate social responsibility (CSR): Re-defining industry and state roles on duty of care, host responsibility and risk management', *Policy and Society*, 27, pp. 55-67.
- Jean, P. (2013) 'Gamblers blamed for addiction', *The Age*. November 17.
- Livingstone, C. (2013) 'Responsible gambling and the spectacle of the 'problem gambler'', *The Conversation*, 26 April.
- Livingstone, C. & Woolley, R. (2007). 'Risky business: A few provocations on the regulation of electronic gaming machines', *International Gambling Studies*, 7(3), pp. 361-376.
- May V. (n.d.) *What is... Narrative Analysis? Realities (Part of the ESRC National Centre for Research Methods)* Accessed October 21 at: <http://www.methods.manchester.ac.uk/events/whatis/narrativeanalysis.pdf>

- May, Vanessa (2008) 'On being a 'good' mother: The moral presentation of self', *Sociology*, 42: 470–486.
- McBeth, Mark K., Shanahan, Elizabeth A. & Jones, Michael D. (2005) 'The science of storytelling: Measuring policy beliefs in Greater Yellowstone', *Society & Natural Resources*, 18(5): 413-429
- Macreadie, R. (2009) 'Casino Legislation Amendment Bill 2009', Research Brief No. 5, Parliamentary Library Research Services. Melbourne: Parliament of Victoria.
- Monk, (2012) *Reform of Regulatory Enforcement and Inspections in OECD Countries*. Paris, OECD.
- Needham, K. (2013) 'Outrage as casino games to be rolled out across suburbia' *Sydney Morning Herald*, 12 May.
- Nichols, S. (2013) '\$1.3b gamble pays off', *Sydney Morning Herald*, July 5.
- OECD & European Commission (2009), "Better Regulation in Europe: An assessment of regulatory capacity in 15 member states of the European Union – Better Regulation in the Netherlands", available on line at: www.oecd.org/regreform/regulatorypolicy/43307757.pdf.
- OECD (2011), "Report: Internal Control & Internal Audit: Ensuring public sector integrity and Accountability OECD", available at: www.oecd.org/governance/47638204.pdf
- OECD (2012) *OECD Workshop on Regulatory Enforcement & Inspection*, hosted by the Israeli Government. Jerusalem: October 29-30. Accessed September 2 2013 at: <http://www.oecd.org/gov/regulatory-policy/regulatoryenforcementandinspections.htm>
- Pedriana, Nicholas (2006) 'From protective to equal treatment: Legal framing processes and transformation of the women's movement in the 1960s', *American Journal of Sociology*, 111(6): 1718-61.
- Public Health Association of Australia (2010) *Gambling Industry Funding Policy*. Accessed on September 1, 2013 at: http://www.phaa.net.au/documents/policy/101216_Gambling%20Industry%20Funding%20Policy.pdf
- Reith G. (2008) 'Reflections on Responsibility', *Journal of Gambling Issues*, 22, p. 149-155. Responsible Gambling Foundation (n.d.) *Guide to Responsible Gambling*. North Melbourne: Responsible Gambling Foundation.
- Riessman, Catherine Kohler (2008) *Narrative Methods for the Human Sciences*, Los Angeles, CA: Sage.
- Schellinck T. and Schrans T., 2011, *Intelligent design: How to model gambler risk assessment by using loyalty tracking data*. *Journal of Gambling Issues*: Issue 26, pp. 51-68.
- Smith, G. 2012. 'Review: Regulatory Failure: The Case of Crown Casino', *Australian Journal of Political Science*, 47 (2): 319-320.
- Squire, C., Andrews, M. & Tamboukou, M. (2008) 'Introduction: What is narrative research?' in Andrews, M., Squire, C. & Tamboukou, M. (eds), *Doing Narrative Research*. London: Sage.
- The Australian (2012) 'Wilke drops support for Gillard after pokies backflip', *National Affairs*. The Australian, January 22 Accessed September 29 at: www.theaustralian.com.au/...wilkie.../story-fn59niix-1226250124066

University of Manchester(2013) Narrative analysis: Methods @ Manchester: research methods in the social sciences. Accessed October 20 2013 at:
<http://www.methods.manchester.ac.uk/methods/narrative/>

Victorian Casino and Gambling Authority (VCGA) (1997) First Triennial Review of the Casino Operator and Licence, Melbourne: VCGA.

Victorian Casino and Gambling Authority (VCGA) (2000) Second Triennial Review of the Casino Operator and Licence. Melbourne: VCGA.

Victorian Casino and Gambling Authority (VCGA) (2003) Third Triennial Review of the Casino Operator and Licence. Melbourne: VCGA.

Victorian Commission for Gambling and Liquor Regulation (VCGLR) (2013) Fifth Review of the Casino Operator and Licence, June. Melbourne: VCGLR

Victorian Commission for Gambling and Liquor Regulation (VCGLR) (2013b) 'Review of Crown Casino licence released', Media Release. Wednesday 14 August. Melbourne: VCGLR.

Victorian Commission for Gambling Regulation (VCGR) (2008) Fourth Review of the Casino Operator and Licence, June. Melbourne: VCGR.

Victorian Commission for Gambling Regulation (VCGR) (2009) Ministerial Direction: Responsible Gambling Codes of Conduct, Gambling Regulation Act 2003. Accessed at
<http://www.vcgr.vic.gov.au/CA256F800017E8D4/Legal/392991D99D9EE300CA2574D600020E9D?Open>

The Financial Debacle Necessitates a Systematic Approach to Achieving Ethical Behaviour in the Corporate Workplace

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Abstract

The current vitriolic discourse over the financial scandals implicating Wall Street and its satellite institutions dictates a fresh look at strategies intended to eradicate or prevent unethical practices in business activities. The spate of recently published unethical behavior among business executives in the United States confirms, unequivocally, that past and current strategies have failed. This paper reviews and evaluates the impact of some of these strategies. It found that the strategies focus on legislation, written corporate codes of ethics and assorted activities in business schools. It found that these strategies are largely isolated and missed the fact that unethical business conduct is systemic, reflecting the ethical lapses of two systems: a public system (consisting of governmental bodies, business schools, and the general citizenry) and a corporate system (consisting of boards of directors, executives, managers and employees). It found that there is a significant gap between the rhetoric of corporate executives and their attention to unethical conduct in the workplace. It concludes that isolated legislative actions, apathetic business schools' policies, complacent and complicit corporate boards, contribute to the failure. It also concludes that, the implementation of business ethics in the workplace requires a transformation of attitude within and between these systems and posits that a system approach is the only strategy that can successfully transform these systems and that business schools are uniquely capable of leading this transformation.

Keywords

Ethics, financial crisis, corporate workplace, transformation, culture, business schools, casuistry, public policy, government regulation, unethical conduct

Introduction

Hearings held by a subcommittee of the Banking and Finance Committee of the United States Senate on certain practices of financial institutions, particularly those practices that might have contributed to

the economic collapse in 2008, revealed the disconnect between the public's and corporations' perception of ethical conduct (Hauser 2010). Several of the questions posed to the Chief Executive Officer, and the Executive Director of Structure Products Group Trading of Goldman Sachs Group, Inc., focused on the company's ethics. For example, the senators wanted to know whether it was ethical for the company to sell investments that its own trading team knew were "worthless". In their defense,

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this and other questionable practices were an integral part of their company's business model. Similarly, Morganton (2011), of the New York Times reported that the former Chief Executive Officer of Countrywide Financial, then the largest mortgage lender in the United States, knowingly developed and sold questionable loans. He reported that "E-Mails and other documents supplied to regulators in the Security and Exchange Commission's (S.E.C.'s) case against Mr. Mozilo showed him discussing the company's lending practices and describing some of its loans as 'toxic' and 'poison'. Nevertheless, the company kept selling the types of loans Mr. Mozilo was denigrating". For Mr. Mozilo the benefits of his action outweigh the cost, noting that "Countrywide was helping to breakdown the racial and economic barriers to homeownership. This approach went a long way to avoiding a serious social problem down the line" (Protests 2011). From the perspectives of these executives their actions were well within the boundaries of the free market system, a view rejected by the general public who saw the market ideology defense as a ruse to obfuscate their unethical, if not illegal practices. The public's position is consistent with that of Gras (1939), who argues that exploitation is an abuse of the capitalist system and is not inherent in the system itself. The contradictions alluded to are symptomatic of the discord between normative and practical ethics. It is not surprising that the conduct in question has resurrected the age-old debate over ethics, and in particular, business ethics and the role of business schools.

Context and Definitions

The advocacy for the integration of ethics into business and accounting education dates back many years. An editorial in the Journal of Accountancy posited that "Ethics should be a subject of study for every accounting student" (Journal of Accountancy 1953, p. 293). The American Accounting Association's Committee on Future Structure, Content and Scope of Accounting Education recommended *inter alia* that accounting education should provide students with the knowledge to "appreciate ethical standards and conduct" (The Bedford Committee 1986, p. 179). The National Commission on Fraudulent Financial Reporting calls for changes in accounting education to ". . . include ethics discussions in every accounting course" (The Treadway Commission 1987, p. 83). Derek C. Bok, former president of Harvard University urged the Harvard Business School to introduce ethics into their MBA curriculum (Bok 1983). In 1982, The Wall Street Journal reported on the proliferation of fraudulent and questionable financial reporting practices (Morris 1982). Recently, the highly publicized cases of fraudulent activities associated with the securities market and financial accounting reporting and practices (Bernard Madoff, Enron Corporation, The Galleon Group, Primary Global Research, Arthur Andersen, WorldCom) to name a few, has fueled a chorus of demand for ethical conduct from individuals in business. As the public looks for remedies to this seemingly corporate cancer the question as to the role of corporate boards in stemming these behavior in the workplace and the role of business schools in molding the character of their graduates grows louder and more pervasive. However, the precise actions expected from businesses and business schools have been evasive.

Philosophers and politicians have struggled with the concept of ethics for centuries with conflicting conclusions on how to define and implement it. Theodore Roosevelt (1858-1919), 26th President of the United State is reported to have said "To educate a man in mind and not in morals is to educate a menace to society" (Roosevelt, n.d.) It is interesting to note that this was said in a period of U.S. history that is known for 'political discrimination', 'economic exploitation' and 'social segregation'. Despite their campaign for a just and moral society, Plato and Aristotle concurred that slavery was necessary for the success of their society (Taeusch 1931). Likewise the literature is saturated with debates and discussions on the need to improve ethics in business. Although there is a consensus that ethics should be at the core of business transactions, there are chasms among the myriad of interpretations and applications. The inconsistencies alluded to above reflect the challenge to wed general or normative ethics and situational or practical ethics. Critical questions such as what is ethics, are there two ethics (business and personal), what role the extant culture plays in decision-making, and what role can business schools effectively play in implementing ethics in the workplace, have not been sufficiently answered.

A generally accepted definition of ethics is that it is the study of what is good and bad, right and wrong, just and unjust. Others such as Kohlberg described it as moral judgment and argued that “the exercise of moral judgment is a cognitive process” (Reimer et. al. 1983, p. 3). According to Cavanagh “ethics is a system of moral principles and the methods for applying them; ethics thus provides tools to make moral judgments. It encompasses the language, concepts, and models that enable an individual to effect moral decisions” (Cavanagh 1984, p. 137). De George (1987) defines ethics as the study of morality and immorality. Kaviya (2011) offers this explanation “ethics is the discipline dealing with that which is good and bad and with moral duty and obligation. Business ethics is concerned with the behavior of a businessman in doing a business and . . . developed by the passage of time and custom. Custom differs from one business to another”. Ethics, for some executives, has more nuances. It is casuistry, a cost-benefit calculation based on whether their behavior accrues benefits to their shareholders (Drucker 1983). This view point is consistent with the utilitarian theory of ethics (Bentham 1789) and (Mill 1863). Obviously, civil rights (Locke 1690) and justice (Aristotle 1953) are not factors in their decision set. These normative concepts are easily understood. The challenge is to implement them in tangible ways, that is, to construct strategies which promote business creativity and innovation, while simultaneously protecting all stakeholders.

The interpretation and therefore implementation of ethical principles are further complicated by social concerns. Since ethics involves the interaction among people, it functions in a social system, whether that system is the general society or the workplace or both. A social system undergirds culture, which may be defined as the values and ideology that influence decision-making. Values determine the basis on which choices are made. An ideology is comprised of the integrated values in a social system. It provides purpose, directions and identity to that system. Thus an ideology determines goals, strategies and reputation of a system. The implication is that ethics is communicated through social systems. The ideologies and strategies that government, corporations and business schools employ to combat unethical business conduct and their results are evaluated against this backdrop.

Government and Ethics

The solutions for unethical business conducts have evaded both federal and states governments for decades. The origin of governments’ involvement in business ethics can be traced to the Sherman Anti-trust Act of 1890 (Taeusch 1931). The objective of that and subsequent laws is to prevent or to deter unethical conduct “through strengthening systems and controls, and promoting transparency, accountability and informed citizenry” (Chene 2010). The central features of major federal legislation discussed in this section illustrate the extent of governments’ anti-fraud interventions. These legislative actions may be divided into two categories; those designed to protect consumers on the one hand and investors on the other. The Sherman Anti-trust Act of 1890, and the Clayton Act of 1914, are among the first set of consumer protection legislations (Taeusch 1931). The former aims to prevent restraint of interstate and foreign trade while the later prohibits price discrimination in contracts and other agreements that restrict competition. The Foreign Corrupt Practices Act (FCPA) of 1977 and revised in 1988 has anti-bribery prohibitions and accounting and record-keeping requirements (Gaetti 1997). The anti-bribery prohibitions “make it illegal for U.S. persons to bribe a foreign government official for the purpose of obtaining or retaining business” (Gaetti 1997). The record-keeping provisions require publicly traded companies in the U.S. “to devise and maintain an accounting system which tightly controls and accurately records all dispositions of company assets” (Gaetti 1997). The Credit Card Accountability Responsibility and Disclosure Act of 2009 (the Credit Card Act) prohibits predatory practices in the credit card industry and confirms certain consumer rights (Detweiler 2009). The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 were enacted to protect both consumers and investors. It, among other things, regulates transactions in products such as home mortgages, car loans, credit cards and certain derivatives. The oversight of these legislations is distributed among a maze of governmental agencies which oftentimes have overlapping objectives and contrary enforcement practices.

The securities markets are subject to the oversight of the Securities and Exchange Commission (SEC). The purpose of the SEC is to protect investors and maintain market integrity. The online publication

“How the SEC Protects Investors, Maintains Market Integrity” discusses the main legislations in pursuit of this objective. The Securities Act of 1933 requires publicly traded companies to register their securities and accurately disclose financial and other information that will influence investors’ decisions. It also prohibits deceit, misrepresentations, and other fraud in the sale of securities. The Securities Exchange Act of 1934 regulates companies and individuals engaged in the sale and exchange of securities. It also authorizes the SEC to require periodic reporting of information by companies with publicly traded securities. The Investment Company Act of 1940 regulates the organization of companies engaged primarily in investing and trading in securities offered to the investing public. The Investment Advisers Act of 1940 and amended 1996, with certain exceptions, requires investment advisers to register with the SEC and comply with rules designed to protect investors. Finally, the Sarbanes-Oxley Act of 2002, was enacted in response to the Enron, WorldCom and other similarly high profile scandals. It, among other things, mandated several reforms to guard against corporate and accounting fraud. Since 1991 the enforcement strategies have been augmented by the federal sentencing guidelines designed to encourage ethical conduct in the workplace (Desio 2004). Despite these strategies by government, unethical business behavior continues in various forms. The strategies employed by corporations have produced no better results.

Corporate Culture and Ethics

The origin of unethical business practices is unknown. However there are events in history which indicate that it is not a recent phenomenon. These events demonstrate that unethical behavior is not a victimless activity. Unfortunately, it usually takes egregious incidents to expose the injury it inflicts on individuals and society. One of the earliest reported incidents is in the Holy Bible (Mathew 21: 12), where it is reported that Jesus in a rage directed mainly at the moneychangers (bankers), drove the merchants and moneychangers out of the temple (Scripture Backdrops). The moneychangers were notorious for charging pilgrims exorbitant foreign exchange rates and fees (Scripture Backdrops). Tausch (1931) opined that business ethics emerged at the peak of the westward migration. He asserts that “from this time on, excess social, political, and economic energies could no longer expend themselves on a virgin territory, but reacted more and more upon established human communities. It is in such reflective situations that ethical considerations arise; and so they arose in our economic life, first in the form of labor disturbances and agrarian readjustments, and later in the sharper conflicts of business competition” (Tausch 1931, p. 53). De George (1987) and Gras (1939) suggested that attention to ethics in business has its origins in religious values; the expectation that one should be concerned about the wellbeing of others.

While there may be a universal expectation of corporations to do what is good, right and just, the question remains as to what is good or bad, right or wrong, just or unjust in business. Drucker and others have expressed skepticism of the very idea of a business ethics. He asked, “. . . if there is indeed something that one could call business ethics and could take seriously, what could it be?” (Drucker 1993, p.195). There are two main theories of business ethics. One is the theory of moral unity which holds that business actions can be judged by the general ethical standards of society (Steiner and Steiner, 1985). This point of view is consistent with those of moralists such as F. H. Bradley (Ethical Studies, 1876), Edmond Cahn (The Moral Decision, 1955) and Aristotle (Ethics, 1953). However, moralists do allow for unethical behavior in “extenuating” and “aggravating” circumstances based on social and cultural mores. For example, they accept that a poor widow who stole bread to feed her starving children should receive clemency. In Nicomachean Ethics, Aristotle suggests that unethical behavior caused by ignorance and incapacity to perform an action should be excused. As Gras (1939) observed, “Unhappy lies the head of the moralist, for he must try to fit parts that do not match” (Gras, 1939, p. 315).

Another school of thought, the amoral theory argues that business activity is amoral and so decisions should be based solely on considerations of economic self-interest (Steiner & Steiner 1985). This economic theory and its contaminant business practices flourished in the nascent period of capitalism under the doctrine of Social Darwinism (survival of the fittest) and laissez-faire economics. This doctrine underpins the philosophy of Adam Smith (1904) and others who believe that the common

good is best achieved by individual pursuit of their self-interest. This line of thinking is the central tenet of corporate practices. The financial crisis of the U.S. in the 1930's and the subsequent intervention of the federal government in the economy (the New Deal) at least modified the scope of business autonomy and thereby the behavior of individuals in business. The resurrection of the doctrine of 'survival of the fittest' saw a resurgence of business practices that are obviously not good, not right and not just. Some of the purveyors of these practices have been prosecuted. Others such as those associated with certain practices related to subprime mortgages and credit swaps and the subsequent collapse of the housing market are being investigated. Both the moral and amoral theories have some validity. Groups of all kinds need a set of principles that guide the behavior of their members. However, individuals must have the space to create, innovate, and to benefit from the fruits of their action.

Ultimately, ethics is practiced by individuals, and so it cannot be evaluated in a vacuum. The challenge individuals face is how to apply general principles of ethics in the context of the situation that confront them. A survey conducted by Merchant (1987) suggests three reasons for the spate of fraudulent and questionable financial reporting experienced then and which seem appropriate now. The first reason is that incentives and other inducements, such as the 3P's – Pay, Promotion and Praise, have become ends. Managerial performance is measured in terms of results. Results are what justify means. "The means-ends ethics" is often associated with the Italian political philosopher Niccolo Machiavelli. In the Prince he wrote that worthwhile ends justify efficient means, that when ends are of overriding importance or virtue, unscrupulous means may be employed to reach them. The second reason is temptations, the ineffectiveness or nonexistence of corporate controls to detect managers' deceptive practices. The third reason is the lack of moral guidance and leadership from top management.

Merchant (1987) concluded that corporations could resolve these problems by using strong penalties for violations, by using realistic performance targets, and by deemphasizing short-term goals. The implementation of these suggestions may serve as deterrents for some employees, but they missed the salient point and that is, unethical behavior is system induced and nurtured. A system will produce the best product it is designed to produce, the saying goes. Corporate systems are designed to produce profits, first and foremost. If ethical behavior generates profits, businesses will provide incentives and rewards to employees who adhere to ethical standards.

A study of businesspeople by Baumhart shows that most believe a code of ethics would help them clarify their own standards and decisions (Baumhart, 1961). In essence, business executives are not against the concept of ethics and a large majority have developed written codes of conduct for their own firms. The struggle between normative and practical interpretation of ethics is a challenge for business executives in a viciously competitive world. They need successful models, that is, proven practices and processes that produce measurable outcomes. Ethics, as a discipline, lacks these attributes and therefore it does not offer the confidence executives need to plan. Planning is about the future. The future is a dark place and no executive will enter there without some protection. It was probably in recognition of this vagueness that Blumenthal, former chair of Burroughs Corporation and Bendix, and secretary of the United States Treasury, proposed the establishment of a national code of business ethics among Chief Executive Officers (Blumenthal 1975). It was in the same vein that The Caterpillar Tractor Company developed and distributed its own code of conduct to its managers worldwide (Caterpillar 1974). These proposals were widely accepted as evidenced by the growth in the number of firms that subsequently created ethics committees within their boards of directors (Cavanagh 1984).

The number of firms with written codes of conduct has grown since the 1970's. Kerin, et al (2007), estimated that "80 percent of United States companies have some sort of ethics code and one of every five large companies has corporate ethics officers" (Kerin et al. 2007, p. 84). However, the actions of some companies could have been driven by the plethora of damaging disclosures regarding unethical and illegal acts in which of some of the largest American firms engaged during the 1970's (Ross 1980). Such conduct was not confined to activities in the United States. According to Clinard & Yeager (1980), many corporations were implicated in the practice of paying bribes to

officials. The growth in corporate ethics programs might also be motivated by the 1991 Federal Sentencing Guidelines for Organizations (Joseph 2003). It provides for a significant financial incentive to corporations who implement these guidelines. Programs that follow the sentencing guidelines may receive a reduction of up to 95 percent in Federal Government fines (Desio 2004). Regardless of the reasons companies develop codes of conduct; the evidence shows that their strategies are not succeeding. As recent as April 2010 the U.S. Justice Department and the Security and Exchange Commission were investigating whether Hewlett Packard Company executives paid millions of dollars (US) in bribery money between 2004 and 2006 to the Prosecutor General of Russia to win a large contract to supply computer equipment throughout Russia (Crawford 2010). More recently, Tyson Foods settled bribery charges with the Justice Department (Neuman 2011). Surprisingly, or maybe not, there is no evidence that the executives of the accused companies have ever conceded that their conduct was unethical.

Although these practices are reprehensible, they do not confirm that business executives are necessarily unethical. Their priority is to maximize the wealth of their shareholders in a highly competitive environment. This requires them to make assumptions about the future based on tested and proven models. Ethics is an amorphous concept and is often discussed in normative rather than practical terms. For a short time ethics was synonymous with social responsibility a concept embraced by business executives. However, it can also be morphed into self-justification. Wright, quoting a former corporate executive wrote “the system of American business often produces wrong, immoral and irresponsible decisions, even though the personal morality of the people running the business is often above reproach” (Wright 1979, p. 61). This comment can be summed up with this piece of cynicism: “An ambassador is an honest man, lying abroad for the good of his country” (Wotton, n.d.). The case of the CEO of Galleon Group exemplifies this conundrum. The prosecution accused him of knowing “tomorrow’s business news and traded on it” but his lawyer countered that he obtained information through “shoe-leather research, diligence and hard work” (Lattman 2011). Bridgeport Education, an online education company, is another example of normative versus practical ethics. The company obtains 86 percent of its revenue from the federal government. Its dropout rate ranges from 63 to 84 percent depending on the degree program and they paid little attention to job placement, a crucial promise to students. Their per student costs were allocated as follows: \$700 went to instruction, \$2,700 went to recruiting and \$1,500 went to profit. Their justification for this perceived abuse of students was that they provide education at a lower cost to taxpayers than public colleges (Lewin 2011).

Despite the heightened awareness, there is no noticeable impact on corporate unethical practices. A possible reason is an absence of leadership on this issue among business executives. Leadership is reflected in the perceived message from top management and not necessarily in a written code of conduct. The ethical tone set by top executives should be the doctrine of the workplace, that is, every employee should be indoctrinated in those values. The positive effects of indoctrination will outweigh any negative concerns. A review of surveys conducted by the Ethics Resource Center (ERC) revealed a persistently significant gap between executives’ rhetoric and their actions. The 2007 National Business Ethics Survey (NBES) survey shows that only one in four companies has a well implemented ethics compliance program. Although The 2009 NBES survey found that an ethical culture in the workplace is highly regarded and that there is awareness among executives that financial fraud or other misconduct can be discovered before the damage shows up in financial reporting if there is an ethical culture in the workplace, unethical conduct persists in corporations. In the executive summary of the 2000 NBES survey, the Ethics Resource Center reports that “one in eight employees feel pressure to compromise their organizations’ ethics standard.” According to the 2005 NBES survey, ethical misconduct returned to the pre-Enron levels during 2005, and, as was in 2000 survey, one in eight employees experience some form retaliation for reporting misconduct. More recently, the 2009 NBES survey reported an increase in retaliation against those who reported misconduct in the workplace. Studies conducted by Bolt-Lee, Farber & Moehrle (2011), of among other things, whistleblowing in corporations found similar pattern of retribution against auditors and employees. They found that the auditors who reported findings of fraud were not rewarded. However

there was an “approximately 50% probability that the whistleblowing auditor would lose the account of the company involved in the irregularity”, and “82% of named whistleblowers alleged they were either fired, forced to quit or demoted after blowing the whistle” (Bolt-Lee, Farber & Moehrle 2011, p. 38). The 2009 NBES Supplemental Research Briefs found that “Actions – and Perceptions – of top managers drive the ethical culture of the company and have a significant impact on outcomes” (NBES 2009, p. 8). Such impact includes the prevention of the kinds of workplace behavior that can put a business at risk. The 2009 NBES survey also found that “in a weaker ethical culture, employees observe more misconduct” (NBES 2009, p. 16). These findings raise questions about the commitment of corporate executives to implementing ethics in the workplace. Any positive response from corporate executives may be driven primarily by mitigating factors against punishment rather than concerns about social responsibility. Clearly, corporate culture or what Sonenshein characterized as thick or organization moralities (Sonenshein 2005), is the primary determinant of the degree of ethical behavior in the workplace.

Corporations are living organisms. They have culture, leadership and emotion. They experience desperation, depression, denial, hope, and fear (Foster & Kaplan 2001). Most of all they have mental models. These are “the core concepts of the corporation, the beliefs and assumptions, the cause-and-effect relationships, the guidelines for interpreting language and signals, the stories repeated within the corporate walls” (Foster & Kaplan 2001, p. 18). Corporate systems are built on mental models, some of which have produced less than virtuous results. Mental models are invisible, implicit, yet real, enduring and omnipresent. It develops and nurtures interrelationships and interdependence. The workplace is an ecosystem and as with other ecosystems adaptation is imperative for the survival of its members and the system itself. System thinking is pervasive, that is, the view that an organization is effected by what happens to the parts. It encourages cohesiveness, positively or negatively, among employees. Senge defines system thinking as “the discipline that integrates the disciplines (*personal mastery, mental models, building shared vision, team learning*), fusing them into a coherent body of theory and practice” (Senge 1990, p. 12). A corporation is also a learning organization “a place where people are continually discovering how they create reality and how to change it” (Senge 1990, p. 13). People in the workplace slide between two realities, namely, personal culture and the culture of the workplace. The decisions they make may be based on moral or amoral principles. It depends on the corporate culture and by extension, corporate boards.

Corporate boards of directors have a crucial role in the quest to eradicate unethical business practices. The boards of directors are the official management of corporations. It is at this level that the ideology and message regarding ethical standards should emanate as do all other policies and strategies of the corporation. According to Gras (1939), “Business ethics is the reservoir of clear water which may be drawn upon to build the codes of industry. It is a lake upon which the individual firm can sail its ship into the harbor of Good Policy” (Gras 1939, p.310). Although investors sometimes chided directors for the under-performance of their corporation, they usually escape punishment for the unethical behavior of their executives. This breeds complacency and contempt for ethical issues. The SEC’s suit against the directors of DHB Industries might represent a change in this practice. The SEC accused three ex-board members of DHB Industries of “willful blindness”, alleging that they turned a blind eye while the company sold defective armor to the military and law enforcement agencies (Norris 2011). This action was welcome by investors and members of the legal and enforcement communities, but a more proactive approach might have avoided the victim’s suffering in this alleged fraud. The SEC’s charges signals that board members must become proactive on matters of ethics because they may be held accountable for the malfeasances of their executives. Business schools have the ability and capacity to assist corporate executives with their ethical challenges.

Business Schools and Ethics

The role of business schools in the moral development of their graduates is not settled. It is reasonable to assume that most, if not all students, have some notion of what is good and bad, right and wrong, just and unjust in the abstract. The purpose of business schools is to provide their graduates with among other skills, critical thinking. Teaching is a process which results in the voluntary modification

of the behavior or thought of others. In so doing it should produce critical thinkers. “Good teachers produce skeptics who ask their own questions and find their own answers” (Ackoff & Addison 2007, p. xi). Ethics is a diffused discipline and by extension business ethics is an undefined body of knowledge. Therefore, the application of ethics is invariably the product of critical thinking, which is influenced by the environment in which the decision is being made. Subjectivity often trumps objectivity in crucial circumstances, therefore a set of rules must be available for reference at all times. The workplace is highly competitive and corporate culture, directly or indirectly, provides the weapons used in this combative environment. It is where the feedback loop of performance and reward is established, evaluated and controlled. Against this backdrop, business schools should not be expected to teach their graduates to unilaterally disarm. This could lead to career suicide. As Machiavelli observed, “it is not reasonable to suppose . . . that any unarmed man will remain safe among armed servants” (Buskirk 1974, p. 40). Business schools can and should create awareness. However, such knowledge is impotent or at best a blunt instrument in an unethical culture.

Business schools provide ethics education through various means. In addition to course materials they have encouraged ethical behavior among their graduates through honor societies and other means. Professor Nitin Nohria (who became Dean of Harvard Business School in May 2010), has been actively promoting business ethics for more than two decades. He has been leading the crusade to adopt an MBA Oath. The Oath is a voluntary pledge for graduating and current MBAs to “create value responsibly and ethically.” MBA students, graduates and advisors representing over 250 business schools worldwide, the Aspen Institute and the Economic Forum are participating in this Oath (The MBA Oath). There is nothing new about professional and organizational Oaths. The Hippocratic Oath, Thunderbird’s Oath of Honor and the Columbia Business School’s Honor Code are notable examples. These activities are necessary but are obviously insufficient to prevent unethical behavior by their graduates. Therefore, business schools must become more innovative if they are to remain credible in the quest for solutions to this scourge.

Conclusion

The need for a more ethical workplace is no longer debated. It is also a demonstrable fact that there is a colossal failure of the current strategies employed to control unethical conduct in the workplace. Laws have been enacted, codes have been written, oaths have been taken and pledges have been made but they all fell short of their objectives. The federal government has tacitly admitted the failure of the legislative approach by its resorting to a cooperative posture through the sentencing guidelines developed by the United States Sentencing Commission. One is not sure of the extent to which business schools can influence the ethical behavior of their graduates but they can help corporations. One of the main reasons the strategies fail is that there is a lack of meaningful collaboration amongst business schools, corporate boards, and government. The justification for their collaboration is self-evident. Firstly, there is a natural link between the three institutions, the responsibility to protect the public interest. Secondly, there is a need to bridge the divide between normative ethics as taught by business schools and the ethical challenges that confront corporations. This presents a unique opportunity for business schools to take a leading role in ameliorating this intractable problem. Business schools can begin to demonstrate their commitment to developing ethical corporate workplaces by establishing direct contact with corporate boards and by hiring faculty who are business ethicists and avail their services to corporations. These are faculty who appreciate the concerns of business executives, understand how corporations work, and are dedicated to protecting the interest of the public.

Corporate boards of directors can reciprocate by appointing a member whose sole responsibility is to develop, monitor and enforce ethical standards in the workplace. This member would be required as a matter of corporate policy to establish consultative relationships with ethics faculty at business schools. Parenthetically, the new posture of the SEC might encourage this direction. The relationship will facilitate the flow of ideas and best practices amongst business schools, corporations, and government. It will also intersect the application of normative and practical ethics. It is essential because ethical questions usually arise at the margin. For example, a discussion may occur on issues

of disclosure; what should be disclosed, to whom it should be disclosed, and when it should be disclosed. Taken separately or in any combination, the response to these questions can have significant financial and public relations consequences. The notion of corporations obtaining external opinions is not new. They routinely seek the advice of external professionals such as lawyers. While corporate executives may be impaired by parochial ideologies, independent business ethicists would not be restrained by such handicaps, thus allowing for better decisions.

Clearly, the engagement and cooperation of business schools, corporate boards, and government at a level that matters can transform attitudes, policies and practices within the public and private systems. The nature of the problem requires coordinated solutions. A systematic approach is the only strategy that can provide these solutions.

References

- Ackoff, R.L., & Addison, H. L., (2007), *Management f-Laws: How Organizations Really Work*. Triachy Press, United Kingdom,.
- Aristotle, trans. J.A.K. Thomson (1953), *Ethics*, Penguin, , London.
- Baumhart, R. C. (1961), 'How Ethical Are Businessmen?' *Harvard Business Review*, vol. 39, July-August, 1961, pp. 66 - 71.
- Bentham, J. (1789/1948), *An Introduction to the Principles of Morals and Legislation*. Hafner, New York.
- Blumenthal, W.M. (1975), 'New Business Watchdog Needed', *The New York Times*, 25 May, 1975, sec. F., p. 1.
- Bok, D. (1983), 'Students Need to Grapple with Significant Ethical Problems', *U.S. News & World Report*, 21 February, 1983, p. 83.
- Bolt-Lee, C. E., Farber, D. B. & Moehrle, S. R.. (2011), 'Highlights of Corporate Governance Research' *Journal of Accountancy*, September 2011, pp. 34-39.
- Buskirk, R. H. (1974), *Modern Management & Machiavelli*. New American Library, New York.
- Caterpillar Tractor Company (1974), 'A Code of Worldwide Business Ethics', viewed 10 February 2011, http://www.caterpillar.com/company_strategy/code-of-conduct.
- Cavanagh, G. F. (1984), *American Business Value*, 2 ed., Prentice-Hall, New Jersey.
- Chene, M. (2010), 'International Good Practice in Anti-corruption Legislation: General Principles', *Anti-corruption Resource Center*, No. 233, viewed 20 January, 2012, www.U4.no.
- Crawford, D. & Searcey, D. (2010), 'U.S. Joins H-P Bribery Investigation', *The Wall Street Journal*, viewed 17 April, 2011. <http://online.wsj.com/article/SB1000142405270304628704575186151115576646.html?mod=WSJ>.
- Clinard, M. B. & Yeager, P.C. (1980), *Corporate Crime*, Free Press, New York.
- De George, R. T. (1987), 'The Status of Business Ethics: Past and Future', *Journal of Business Ethics*, Vol. 6, pp. 201-211.
- Desio, P. (2004), 'An Overview of the Organizational Guidelines, Washington, DC: United States Sentencing Commission', viewed 2 March, 2011,

- <http://www.globalcompliance.com/LinkClick.aspx?fileticket...tabid=170>. Also see <http://www.ussc.gov/TRAINING/corcover.PDF>.
- Detweiler, G. (2009), 'Understanding The Credit Card Accountability Responsibility and Disclosure Act of 2009: Public Law 111-24', viewed 20 January, 2012, <http://www.credit.com>
- Dodd-Frank Act (2010), 'Brief Summary of Dodd-Frank Wall Street Reform', viewed 12 June, 2011, http://banking.senate.gov/.../070110_Dodd_Frank_Wall_Street_Reform...
- Drucker, P. F. (1983), *The Ecological Vision: Reflections on the American Condition*, Transaction Publishers, New Jersey.
- Eder, S. & Margolis, D. (2010), 'Goldman CEO faces blistering attack over ethics', *The New York Times*, 28 April, 2010, p. B1.
- Foster, R., and Kaplan, S. (2001), *Creative Destruction: Why Companies That Are Built to Last Underperform the Market and How to Successfully Transform Them*, Doubleday, New York.
- Gaetti, M.M, Organdy, C. R. G., and Morgan, O. F. (1997), "Foreign Corrupt Practices Act", Gaetti & Associates, viewed 20 January, 2012, <http://library.findlaw.com/1997/Jan/1/126234.html>.
- Gras, N. S. B. (1939), *Business and Capitalism: An Introduction to Business History*, F. S. Crofts & Co., New York.
- Hauser, C. (2010), "In Washington, Battles in Two Rings", *The New York Times*, 28 April, 2010, p. B1.
- 'How the SEC Protects Investors, Maintains Market Integrity', viewed 11 April, 2011, <http://www.sec.gov/about/laws.shtml>.
- Hudson, R.L (1983), 'SEC Charges Fudging of Corporate Figures Is a Growing Practice', *The Wall Street Journal*, 2 June, 1983.
- Joseph, J. (2003), 'National Business Ethics Survey: How Employees View Ethics in their Organizations', Washington DC, Ethics Resource Center.
- Kaviya, S. (2009), "Ethics in Management", viewed 20 January, 2012, <http://www.articlesbase.com/ethics-articles/ethics-in-management-1535462.html>
- Kerin, R. A., Hartley, S. W., & Rudelius, W. (2007), *Marketing: The Core*, 2nd edn., McGraw-Hill Irwin, New York.
- Lattman, P. (2011), 'In Galleon Trial, Arguing Greed vs. a Picture of Diligent Research', *The New York Times*, 10 March, 2011, p. B1.
- Lewin, T. (2011), 'Hearing Sees Financial Success and Education Failures of For-Profit College', *The New York Times*, 11 March, 2011, p. A17.
- Locke, J. (1690/1952), *The Second Treatise of Government*, Liberal Arts Press, New York.
- Merchant, K. (1987), 'Fraudulent and Questionable Financial Reporting: A Corporate Perspective', Financial Executive Foundation, Morristown New Jersey.
- Mill, J. S. (1863/1957), *Utilitarianism*, Bobbs-Merrill, Indiana.
- Morris, B. (1982), 'Accounting Scams are on the Rise, Putting More Pressure on Auditors', *The Wall Street Journal*, 9 July, 1982, p. 19.

- Morganton, G. (2011), 'Case on Mortgage Official Is Said to Be Dropped', *The New York Times*, 20 February 2011, p. 20.
- National Business Ethics Survey (2000), "Executive Summary: Major Findings", Ethics Resource Center. viewed 20 January, 2012, <http://www.ethics.org/resource/2000-national-business-ethics-survey-nbes>
- National Business Ethics Survey (2005), Ethics Resource Center. viewed 20 January, 2012, <http://www.ethics.org/resource/2005-national-business-ethics-survey>.
- National Business Ethics Survey (2007). Ethics Resource Center. viewed 20 January, 2012, <http://www.ethics.org/resource/2005-national-business-ethics-survey-nbes>
- Neuman, W. (2011), 'Tyson Settles U.S. Charges of Bribery', *The New York Times*, 11 February, 2011, p. B1
- Norris, F. (2011), 'For Boards, S.E.C. Keeps The Bar Low', *The New York Times*, 4 March, 2011, p. B1.
- Protests, B. (2011), 'From Ex-Chief, a Staunch Defense of Countrywide's Legacy', *The New York Times*, 18 February, 2011, p. B5.
- Reimer, J., Paolitto, D.P., & Hersh, R.H. (1983), *Promoting Moral Growth from Piaget to Kohlberg*, Longmans, New York.
- Ross, I. (1980), 'How Lawless Are Big Companies?' *Fortune*, 1 December, 2011, pp. 56-64.
- Sarbanes-Oxley Act (2002), 'Sarbanes Oxley Act of 2002 Summary and Introduction', viewed 20 January, 2012, www.Soxlaw.com/introduction.htm
- Scripture Backdrops, 'Relevant Historical Insights Into Scripture', viewed 20 January, 2012, <http://www.bible-history.com/backd2/moneychangers.html>
- Senge, P. F. (1990), *The Fifth Discipline: The Art & Practice of The Learning Organization*, New York, Doubleday.
- Smith, Adam. *An Inquiry into the Nature and Causes of the Wealth of Nations*. Edwin Cannan, ed. 1904. Library of Economics and Liberty, viewed 20 January, 2012, <http://www.econlib.org/library/Smith/smWN.html>
- Sonenshein, S. (2005), *Business Ethics and Internal social criticism*, *Business Ethics Quarterly*, Vol. 15, No.3: pp. 475-498.
- Steiner, G.A., Steiner, J.F. (1985), *Business, Government, and Society*, 4th edn., Random House, New York.
- Supplemental Research Briefs, NBES (2009), *The importance of Ethical Culture: Increasing Trust and Driving Down Risks*, Ethics Research Center, Virginia.
- Tausch, C. F. (1931), *Policy and Ethics in Business*, McGraw-Hill Book Company, Inc., New York.
- The Bedford Committee (1986, Spring), 'Future Accounting Education: Preparing for the Expanding Profession', *Committee on the Future Structure, Content, and Scope of Accounting Education*, American Accounting Association, pp. 168-195.

The MBA Oath: Responsible Value Creation, viewed 20 January, 2012, <http://mbaoth.org>.

The Treadway Commission (1987), 'Report on the National Commission on Fraudulent Financial Reporting', October.

Roosevelt, T. (n.d.), viewed 20 January, 2012,
<http://www.brainyquote.com/quotes/quotes/t/theodorero147876.html>

Wotton, H. (n.d.), viewed 20 January, 2012,
http://www.searchquotes.com.quotes/author/Henry_Wotton_Sr

Wright, J. P. (1979), *On a Clear Day You Can See General Motors*, New York, Avon Books.
Reprinted in G.A. Steiner and J.F. Steiner (1985). *Business, Government, and Society*, 4th edn.,
Random House, New York.

What Do Indigenous Communities Think of the CSR Practices of Mining Companies?

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Abstract

This paper examines how one indigenous community in the Western Province of Papua New Guinea (PNG) views the social responsibility initiatives of OK Tedi Mining Ltd (OTML). This mining operation has been controversial since its inception, and various operators of the mine have sought to engage the community and to undertake a number of CSR-related projects. Insights gained from four focus groups amongst the Ok Tedi River indigenous communities show that while some members of the community are satisfied with the company's efforts at the macro level, many have reservations about the effectiveness of the programs at the micro level on the village and family unit. The implementation of CSR activities are slow and in many instances do not effectively address stakeholder concerns.

Keywords

Corporate Social Responsibility, Stakeholders, Indigenous Community.

Introduction

For most of the past fifty years, academics have debated the social responsibilities that business should assume (Bowen, 1953; Carroll, 1999), and managers have struggled to implement policies that satisfy these multiple expectations. One framework that has enjoyed some traction is stakeholder theory – or the idea that business organisations have responsibilities to groups and organisations that

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are affected by its operations (Freeman, 1984). Business ethics academics are drawn to its normative foundations (Hasnas, 1998), and managers intuitively recognise the potential stakeholders can have on reputation and organisational legitimacy (Beaver, 1999). Stakeholder theory incorporates descriptive, instrumental and normative perspectives (Donaldson & Preston, 1995), offering an alternative to the traditional profit maximising theory of the firm.

Stakeholder theory is not without its critics – in many ways it has been easier to consider in theory, than to implement in practice. One challenge is practical – how do managers reconcile conflicting stakeholder demands (Kerr, 1996)? Another is whether stakeholders are always right – is there more to being socially responsible than taking in to account the demands of those powerful or organised enough to be heard (Clarkson, 1995)? While some scholars have asserted that there are different levels of stakeholders – including primary and secondary stakeholders (Preston, 1990), defining ‘who and what really counts’ remains a challenge (Mitchell, Agle, & Wood, 1997).

One significant theoretical weakness with stakeholder theory is the lack of the views of stakeholders themselves. Mostly, stakeholder perspectives are considered in the *negative*, and largely *assumed*. That is, they are conceptualised as a source of potential trouble for business, and it is assumed they are sufficiently powerful and organised to act in the face of poor business behaviour. Certainly, the literature is replete with cases of high-profile stakeholder action – examples of stakeholder challenges to Nike, Shell, Walmart, and Nestle are numerous (see, for illustration, Bendell, 2000 and the chapters contained therein). What is less considered are the views of specific stakeholders in light of socially responsible practices initiated by companies. Do the socially responsible practices put in place measure up? Are they sufficient, valued and seen as effective?

In this paper we present the findings of four focus groups held with an indigenous community alongside the OK Tedi River in Papua New Guinea, downstream from the controversial mine that bears its name. We engaged representatives of the Yonggom community – a community that falls outside OK Tedi’s Mine Lease Agreement zone, but which has been found to be significantly affected by the mine’s operations (Kirsch, 1992). We introduce a stakeholder perspective to considerations about the value and effectiveness of socially responsible business behaviour.

In the next section we provide a brief overview of how social responsibility has been theorised, raising in particular ambiguities about what CSR is meant to achieve. We then describe our research site – the issues associated with mining companies and the situation of the OK Tedi Mining Company in Papua New Guinea. We then present the results of our focus groups – emphasising three key themes that emerged. A discussion and conclusion section summarises our points.

Literature Review and Case-Study Background

Corporate Social Responsibility (CSR) is an elusive concept – full of ambiguity for those who seek to define it, and also for those who try to practice it (Dahlsrud, 2008). At issue are different perspectives about its normative foundations and its fundamental contributions (Windsor, 2001, 2006).

Many CSR scholars have emphasised its normative foundations, and have attempted to institutionalise a new moral language for business. The basic position is that ethical theory should guide the behaviour of managers, and should be used to evaluate the appropriateness of business outcomes (Den

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Uyl, 1984). Early contributions stressed a ‘social contract’ that sought to tie social and environmental outcomes to the freedom extended to private business organisations by ‘society’ (Bowie, 1991; Donaldson, 1982). Normative perspectives assert that, irrespective of economic outcomes, business organisations are social actors that have obligations to respect the rights of others. Much of this work assumes fundamental changes in the business and society relationship are necessary (Windsor, 2006).

Others see CSR as entirely consistent with the current business system, and seek to blend economic and social/ethical issues. Firms can still maximise profits – indeed CSR is often seen as the means by which they can do so. Much of the CSR scholarship over the past thirty years has investigated the CSR-Financial performance relationship (Margolis & Walsh, 2003) – such that many now take for granted that a ‘business case’ for CSR exists (Wry, 2009). Conceptually, several ‘integrated’ CSR frameworks have attempted to blend the various demands on business. Probably the framework that has received most attention is Carroll’s pyramid of corporate responsibility. According to this model, business organisations have economic, legal, ethical and discretionary responsibilities (Carroll, 1979). The assumption has been a mutually beneficial relationship between economic and social/normative outcomes.

Aside from, and running in parallel to, theoretical perspectives about CSR has been the development of a number of socially responsible practices. While some scholars have attempted to conceptualise these initiatives – most notably by way of corporate social performance (Wartick & Cochrane, 1985; Wood, 1991a, 1991b), but also Frederick’s corporate social responsiveness (CSR2) (Frederick, 1994) – socially responsible practices have been distinctively practice-led. Firms now engage in a wide range of social and environmental activities – ostensibly geared toward fulfilling their responsibilities. Analyses by Kinder, Lydenberg and Domini & Co (see Michelin, Boesso, & Kumar, 2013) provide an overview of common socially responsible business practices. Many initiatives have arisen from voluntary global codes (eg the UN Global Compact), and are specified as part of sustainability reporting frameworks (eg the Global Reporting Initiative), and have emerged through various socially responsible business awards (McIntosh, Thomas, Leipziger, & Coleman, 2003). Studies of the ‘most’ socially responsible companies show that firms in almost all industries engage in socially responsible business practices. Some activities – such as sustainability reporting, stakeholder engagement, business-community partnerships, philanthropy and various employment related initiatives (such as the employment of disadvantaged people) are common across many different industries (Michelin et al., 2013).

In the mining (and other extractive) industries, social responsibility has become fairly well institutionalised – driven in part by well documented controversies. Of concern have been the impacts of large multinational mining companies (MNMCS) on the environment (Garvin, McGee, Smoyer-Tomic, & Ato Aubynn, 2009) – particularly waste management; indigenous community relations; and aspects of socio-economic development (Banks, 2002). Mining companies tend to operate in some of the most isolated – but also some of the most pristine environments – and stakeholders have lamented the irreversible impacts that mining causes to these landscapes (Annadale & Taplin, 2003). In terms of indigenous issues, the extraction of mineral resources displaces indigenous people from their traditional lands and affects their cultural and social lives. It is an activity of business in which the whole ways of life for the indigenous people are altered permanently. Concerns over socio-economic development centre on mining operations in developing countries – where economic development is a high priority, but social and infrastructure services are basic and often weak public policy and legislation governing the extraction of mineral resources prevails (Yakovleva, 2005). It is now taken-for-granted and expected that a range of social and environmental initiatives are undertaken to address some of the adverse impacts of mining operations.

The Research Site and Approach

We explore the issues associated with the socially responsible initiatives put in place by the OK Tedi Mining Company in Papua New Guinea. The economy of Papua New Guinea (PNG) is dominated by the mining and oil sectors, making up approximately 70% of exports and about 25% of gross domestic product (Banks, 2002; Imbun 2007). The mining industry in PNG and the behaviour of the Government in relation to mining has been controversial (Harper and Israel, 1999). The Multinational Mining Companies (MNMCS) have been accused of exerting considerable pressure over the Government – often lobbying extensively over environmental and mining laws (Harper and Israel,

1999), and the Government is seen as capitulating – driven by the need to attract and retain economic outcomes. The enactment of statutory laws by the PNG Government that deny customary resource owners the right to sue for compensation in the courts is a case in point (Kalinoe and Kuwimb, 1997).

The Ok Tedi Mining Company (OTML) operation is PNG's highest profile mining-related controversy. The gold and copper mine is located in the Star Mountains in Western Province of Papua New Guinea (See appendices A & B). The project was the country's first major post-independence mining operation, developed as part of a national strategy to generate revenue for the State and create employment opportunities for its people. It is managed by Ok Tedi Mining Limited (OTML) under a consortium agreement between shareholders. BHP Billiton originally owned 52% of the mine, but in 2002 it transferred these shares to the Papua New Guinea Sustainable Development Program (PNGSDP) and pulled out of operations. OTML's shareholders comprise PNGSDP (52 per cent), Inmet Mining Ltd (18 per cent) and the PNG Government (30 per cent).

The Ok Tedi mine has had a significant economic effect at both the local and national levels. The company has provided much need revenue in the form of taxes and dividends (Imbun, 2007), and it employs approximately 2,000 people with a further 1,500 by contractors servicing the company. Over 90% of the employees are PNG citizens with about 800 coming from within a 40 kilometre radius of the mine (Higgins, 2001). According to Morrison (2007) OTML has contributed K300 million in community infrastructure - benefitting local business as well as agricultural programs. Morrison further estimates that more than 50,000 people depend on the economic activity that the mine generates. The benefits provided by mining companies in the form of infrastructure development, education and health services as well as financial benefits are acknowledged by local communities.

The OK Tedi Mine has been controversial since its inception. Prior to operations commencing, the PNG government gave approval for the dumping of mine tailings into the Ok Tedi River, following the collapse of a tailing dam during the early construction phase (Harper and Israel, 1999; Morrison, 2007) and extensive lobbying by the company. The company threatened to quit operations if the approval was not granted (Harper and Israel, 1999), and the Government appears to have made several other compromises to secure desperately needed revenue. Since then, the Ok Tedi and Fly River pollution has become an international environmental issue (Evans 2001; Imhof, 1996; Jennings, 1995). OTML discharges on average 80,000 tonnes of mine waste per day into the Ok Tedi River which eventually joins the Fly some 150 km from the mine (Kirsch, 1992; Imhof, 1996). The effects of the discharge are experienced up to some 800km downstream from the mine site.

From a social perspective, adequate nutrition and protein intake has become an area of concern (Kirsch, 1992) as people consider the fish and other river sourced protein to be contaminated by toxic chemicals. In addition, though the mine operation has brought about increased medical benefits to the villages, it has also brought with a range of outsiders and an influx of introduced diseases – including tuberculosis and sexually transmitted infections (Kirsch, 1992). Unemployment among the Lower Ok Tedi people also appears to be an issue as they transition from a subsistence economy. Even through the mine operation has generated considerable employment, it has not been evenly distributed. The number of Yonggom employed at the mine site is low (Kirsch, 1992). Economically, the distribution of the gains from the mine have failed to reach the people living in the Lower Ok Tedi and Fly rivers (Kirsch, 1992).

The Indigenous community of Western Province

The Ok Tedi indigenous community comprises numerous villages stretching approximately 150 kilometres along the Ok Tedi River system. Prior to the commencement of mining, the indigenous community were predominately subsistence farmers (Kirsch, 1992). Their livelihood was sustained through the use of land resources and a working knowledge of the environment. Anthropologist Stuart Kirsch (1992) maintained the company's operations greatly impacted those living in this region, particularly the Yonggom community that fell outside the Mine Lease Agreement (MLA)

zone. This community did not originally derive any benefit from OTML, unlike the Wopkaimin people who live by the mine site and are deemed by both the company and the government to be the immediate beneficiaries of compensation (Morrison, 2007). It was only as a result of a lawsuit filed in 1994 by the landowners from the Lower Ok Tedi and Fly rivers against the then BHP Ltd that the plight of the Lower Ok Tedi people was first highlighted to the world.

Research Approach and Design

The main data for this study is derived from four focus groups held in the OK Tedi River region in late November 2007. Participants were recruited by one of the authors using community networks with help from the Community Relations Office at OTML in towns between Tabubil and the river port town of Kiunga (see Appendix A). A combination of purposeful approaches (Morgan, 1997) to community leaders was combined with snowball sampling to recruit a sufficient cross section of community members. The aim of our participant selection was not necessarily representation – but to gather together sufficient numbers of local indigenous people to enable the full spectrum of issues to surface.

According to Morgan (1997), focus groups are basically group interviews to produce data and insights that would be less accessible without the interaction found in groups. In particular, they are valuable for gaining an insight in to the opinions, beliefs and values of a particular segment of the population (Davidson and Tolich, 2003). Focus group research uses group discussions to recognise and explore the thoughts and perceptions about a particular area of interest. They have particular value for uncovering direct evidence about similarities and differences in the participants' opinions and experiences about a particular event or phenomena (Morgan, 1993).

Of the four focus groups, one was held in Kiunga and the other three in different villages along the river. Each village has approximately 150 to 200 people, whereas Kiunga has a population of about 10,000 people. The four focus groups consisted of between eight and ten people, with a total of 37 participants. The focus groups were conducted in Pidgin which is the common language spoken by almost all Papua New Guineans and were taped and transcribed (with permission). One of the authors is a native speaker, and undertook the focus groups and the translation.

The eight questions discussed in the four focus groups were structured to obtain an understanding of the indigenous community's perception on CSR strategies applied by OTML (see appendix C). These questions were used as prompts to facilitate discussion and to keep the insights generated focused on key themes.

The principles and processes of thematic analysis were used to code and interpret the data. According to Boyatzis (1998) thematic analysis is the process of identifying themes or concepts that are in the data. The researcher systematically builds an account of what has been discussed, observed and recorded – initially by recognising the codable moments or sensing themes (Boyatzis, 1998). In this study we followed the six phases of thematic analysis (see table 1) as presented by Braun and Clarke (2006).

Table 1. Phases of thematic analysis

Phase	Description of the process
1. Familiarizing yourself with your data	Transcribing data (if necessary), if necessary reading and re-reading the data, noting down initial ideas
2. Generating initial codes	Coding interesting features of the data in a systematic fashion across the entire data set, collating data relevant to each code.
3. Searching for themes	Collating codes into potential themes, gathering all data relevant to each potential theme.
4. Reviewing themes	Checking if the themes work in relation to the coded extracts (Level 1) and the entire data set (Level 2), generating a thematic 'map' of the analysis.
5. Defining and naming themes	Ongoing analysis to refine the specifics of each theme, and the overall story the analysis tells, generating clear definitions and names for each theme.
6. Producing the report	The final opportunity for analysis. Selection of vivid, compelling extract examples, final analysis of selected extracts, relating back of the analysis to the research question and literature, producing a scholarly report of the analysis.

Source: Braun and Clarke (2006)

Indigenous community perceptions on OTML's CSR strategies

Three major themes emerged from the focus group discussions.

Theme One: Anger, disappointment and frustration

Participants identified and acknowledged a number of important community projects initiated by the company, but overwhelmingly their feelings towards the activities of OTML are of disappointment, anger and frustration. This reaction relates to aspects of the company's core operations, rather than the specific details of their CSR initiatives. The issue of how mine tailings are discharged, and their impacts on the river which have destroyed their primary source of livelihood is a major concern. Shared within this theme was concern that the company was not adequately assisting local communities to live within the mine impacted environment. One participant stated:

...we cannot do gardening because bananas, sagos, taro and yams can no longer grow beside the rivers. Also there is no fish in the river anymore. These problems have come about because of the mine polluting our river but the company is not doing anything to help us (Group 1, p. 2).

Thus, feelings centred on the immediate difficulties faced by communities along the Lower Ok Tedi River. In outlining the difficulties they faced, the tone of language used, the expressions on the

participants' faces, and their body language provided a glimpse of frustration and resentment at the company.

OTML maintains that the river is safe to drink and that there is adequate fish stock in the river (Higgins, 2001) and Breen (2007) continued to advocate this position when he stated on 29 October 2007:

“There are fish in the system and they are edible. The water is still drinkable so long as the areas of evident oxidation are avoided. The produce from gardens is still safe to eat”.

When asked whether the company's position regarding the status of the river was correct, all members of the focus groups were angered by the company's claim. One participant responded to this statement in the following terms:

...the company is not telling the truth. You can see for yourself what has happened to the river. Before mining operation the river was very clear. We could see fish and turtles swimming in it. Now we cannot see anything. What is running down is a black, grey muddy river (Group 4, p.2).

With regard to the river, the participants also wanted to know whether the river would return to normal status anytime in the future. They were concerned that the company was not adequately addressing the environmental issues including flooding of the river banks responding in the following manner:

...the river is flooding more often these days. The mud from the river is washed into our gardens killing our taros, yams and sago palms. We have told the company our problems but they never listen to us. They must listen to us and help us settle in other places where it is safe (Group 1, p.6).

...we are telling them what we want done in our villages, but the company people do not listen. They always come and tell us about their plans and projects (Group4, p.6).

Importantly, however, there is not a clear consensus on what this community expects and desires from the company. There is a lack of coordination – with views split between high impact socio-economic projects, and a shopping list of very local, individual requests. There are also tensions between participants from different regions. Those closer to the mining site felt they were the most affected and preferred their concerns to be addressed over others. Participants lower down from the mine site argued they were the most affected and forwarded their grievances to OTML seeking redressing of their claims over other villages. The participants also expressed concern that despite village leaders chosen to represent communities, there were numerous other self-appointed leaders who were making claims directly to the company. It is this, coupled with internal competition and conflicts amongst different village communities, which also impedes the delivery of development projects.

Despite the continued push for increased financial compensation, the indigenous communities continue to face the dilemma, recognizing that monetary compensation cannot be a substitute for means for survival. They realize that any form of monetary compensation will never undo the enduring damage to their environment. As one participant claimed “sago is life” referring to the sago palm tree from which their staple diet is obtained:

...If our sago is destroyed, then our lives are also destroyed. This is why the company must help us now. We know that we cannot get our river and land back, but with some form of company help we can try and support ourselves (Group 3, p. 7).

The observations from our participants under this theme demonstrate the “hate” side of Imbun's (2007) “love-hate” relationship which we raise in our discussion section.

Theme Two: Benefits of mining

Despite the contributions that are made by the company, participants differed on what the company should be responsible for, and why.

Many acknowledged the substantial infrastructure contributions, and the macro level benefits these delivered these include – the 150 kilometre Kiunga to Tabubil road, and the road linking the Tabubil hospital and the Kiunga wharf. The participants also acknowledged hospital services, schools and training opportunities. Many also felt the company's contributions at the village level were achieving some positive results. The major concern raised was for the programs to be more extensive - covering a wider area and including a larger population.

...we are happy that the company has built the highway. It makes it easy to travel to Kiunga and Tabubil. Because of the road, people in our village can sell their vegetables in Kiunga. Even though it is still a long way, the road makes it possible to go to Tabubil hospital when our people are sick. For this, we are happy with the company (Group 2, p. 4).

But at the same time the road was seen a problem as well:

...we are happy with the road. Some of our people who own buses and trucks can make some money this way. However, we are not happy about how the company is maintaining the road. They are getting gravel from the polluted river. It gets very dusty and those who travel up the road breathe this dust. We are afraid the people might get sick because the dust might contain pollution and chemicals from the mine waste. It will be good if the company can permanently seal the road (Group 1, p. 4).

On an individual and household basis, however, the respondents stated they did not benefit much from the company. One participant suggested that:

...we are not given any kind of compensation for the damage to the river and our land. The mine area landowners are paid royalties every year. They have a lot of money to spend. The landowners in Tabubil also benefit because the company pays them for using their land. Here, in my place, we are not given anything. The company said they will pay us, and we are still waiting for them (Group 4, p. 2).

For some, the mining companies needed to step up to address negative impacts. The indigenous communities felt tangible benefits and contributions were necessary as compensation for environmental impacts (Imbun, 2007). Mining companies and developers are viewed as responsible for bringing environmental and cultural changes to once pristine and tranquil areas; therefore they should make amends through meeting the expectations of the indigenous communities (Imbun, 2007).

The expectation on education of youth from the mine affected areas was expressed by one participant in the following way:

...not enough of our young people are attending universities. Sometimes the problem is because of no school fees. The company must find a way to help these young people. The company only pays the school fees for a few students. The company must increase this in the mine affected areas so that many of our children can attend universities (Group 3, p. 7).

Others looked to mining companies because of the perceived ineffectiveness of the Government. Most held very negative and highly sceptical attitudes toward the Government. The participants believed the Government was totally ignorant of their development needs. They see the government has having failed in its responsibilities to provide basic services and economic development initiatives

(Imbun, 2007, Kirsch, 2007). Thus, the local communities view the mining company as the medium that has potential to bring development and would favour the mining company providing more CSR services. Many expressed frustration that the Western Fly River Provincial Government and the national government were given their share of the mines revenues, yet had reinvested very little in the province.

...we know the company is starting to do some important projects now. However, we are worried of what will happen to them after mine closure. To continue these projects, the PNG Government and the PNGSDC must also get involved to help us. This way, the projects can continue to run when the company leaves after mine closure (Group 1, p. 4).

Through this theme we can see the development of the “love” side of Imbun’s (2007) “love-hate” relationship.

Theme Three: Mine closure and legacy

The third theme was an expectation that OTML must provide sustainable socio-economic and financial benefits before the mine closed. The focus is on the future, rather than current initiatives. Many felt that most of the benefits of the mining activity had gone to a minority group – and that the lives of the majority along the Ok Tedi River had hardly changed. A greater say in the distribution of benefits before the mine closed was needed. One tangible example was a form of medical insurance because of the likely continued pollution of the river. One participant suggested:

...we are fearful that people will get many kinds of sicknesses in the future. Already some of our people have the sickness called bladder stone disease. This is a result of the pollution and chemicals in the river. We want the company to establish a long term medical insurance cover for mine affected regions (Group 4, p. 7).

Overwhelmingly, participants put financial compensation as their top priority. It was evident that the local communities wanted adequate financial compensation before mine closure, and there was evidence that local communities were not satisfied with the company’s current approach to compensation. One participant suggested:

...money given on a piece meal basis does not allow us to do anything with it. We are only able to consume this money. They must give it to us in lump sum so that we can do something with it such as investments (Group 3, p. 7).

Another participant used the sago tree, a staple diet in the region, to illustrate his concern regarding the current compensation schemes administered by the company.

...sago is the livelihood of the people. If OTML is doing something, they must do so that it lasts a life time just like the sago tree. Otherwise, it is a lost cause. We have the ideas to obtain this, however OTML must listen to us (Group 4, p. 8).

Related to the above grievances were issues associated with promises the company had made to the indigenous communities after the 1996 lawsuit. One that wasn’t honoured was a \$US40 million one off payment to indigenous communities. One participant suggested:

...the promises made after the 1996 lawsuit have not been kept. We don’t know how much of this money is being paid to us and whether we will ever receive the full amount. This money must be paid to us in full now so that we can do something with the money. (Group 4, p. 8).

Others suggested the need to upgrade local hospital services – to at least the same standard as the hospital in Tabubil, and that further roading infrastructure was necessary to be completed before the benefits of the mine dried up. A majority of the focus group participants agreed settling in permanent villages was a good concept. However, because there was no road linking the Western Province and the rest of PNG, the participants felt there was no market to sell surplus crops and fruits that were farmed. The participants felt a solution to this problem would be to have a ship that would run along the Ok Tedi and Fly Rivers as a floating market which would stop at designated places to buy agriculture produce from the local communities. The participants expressed a sense of urgency in wanting the company to deliver sustainable projects and benefits before mine closure. Many also felt that what was currently underway, should have been done a long time ago. Thus, they feared that all the recent plans to encourage social and economic development projects may not be achieved before mine closure. These concerns drove demands for greater compensation to enable local communities to take ownership and have direction in making plans for the future. The participants acknowledged they had educated people from the local areas who can provide leadership in making investment decisions and they had ideas on how to achieve sustainable development projects for the community. Therefore, they wanted the company to come forward and make the promised compensation payments in lump sum and let the indigenous communities face the risks and challenges of investment and business. As one participant expressed:

...we know the problems we are going through, and we have the ideas to help ourselves. The company must let us help ourselves by giving the compensation money as a one of lump sum payment and not little by little (Group 4, p. 8).

Discussion and concluding comments

OK Tedi Mining Company has developed a series of comprehensive corporate policy guidelines to achieve socio-economic developments at both the village and provincial levels. The company maintains that it has engaged the affected communities as key stakeholders in developing solutions to the complex issues, including the containment of increasing pollution levels and identifying key development projects. These development projects are intended to create alternative cash generating opportunities as part of the mine closure plans.

Many of our study participants, however, had reservations about the effectiveness of these projects, and whether the benefits would endure beyond the then planned mine closure in 2013. There is a lack of trust – and a lack of faith in how the company executes its projects. After nearly twenty years of mine operation, they had little to show in terms of socio-economic progress and development.

According to Imbun (2007), communities and governments develop a “love-hate” relationship with the MNMCs – and this type of relationship is apparent in relations between the Lower Ok Tedi indigenous community and OTML. In many ways, the mining company, its operations and outcomes are cherished. When BHP Ltd, OTML’s then major shareholder, wanted to close operations in 1996 after the lawsuit, the wider community in the mine affected regions rejected the idea. Despite the anger and frustration exhibited at the company for the years of environmental destruction, the indigenous community still wanted the company to remain.

The focus group participants mirrored the “love- hate” phenomenon – they resented the company and their body language portrayed hatred towards the company. The participants in the four focus groups generally agreed that their environment including riverine and land resources along the river were no longer viable. For the loss of subsistence livelihood, the participants expressed sentiments wanting the company to adequately compensate them. The participants expressed frustration for being neglected for compensation payments while their river was being destroyed. They resented the

company for polluting their river and causing destruction to the surrounding environment. They were dissatisfied with the slow implementation of community based CSR projects.

Many did, however, “love” the company. The indigenous communities realize that it is OTML that has introduced modernity and the western world. They realise that the mine has led to vital health and education services. They appreciate the infrastructure developments and other economic and social projects which were once non-existent (Imbun, 2007 and Jorgensen, 2006). In many ways, the communities are appreciative of the company’s CSR initiatives.

At a macro level, the company’s activities are appreciated, but there is a disconnect at the micro level. Initiatives targeting individual villages and households are seen as ineffective and fail to touch the day-to-day realities experienced by affected communities. Many argued that OTML was slow and careless in identifying the needs and expectation of locals, and responding in a timely manner. An example of this was the constant flooding that occurred in the villages due to sediment build up. Many felt that communities are left to address environmental hardships on with limited company assistance. The community based projects were few and far apart, and many doubted that the strategies in place would bring any effective solution to the problems they faced.

Given the gravity of expectations placed on the company regarding CSR projects, one would wonder whether the company would have the financial, human and technical competencies to meet expectations in a limited timeframe before mine closure. The meeting of individual expectations of 30,000 people stretching an area of 180 Kilometres would appear non feasible to the company. Even if the company attempted to resolve issues and meet CSR expectations village by village, it is highly unlikely all villages would be covered before the then projected mine closure in 2013.

On the company’s part, there also appears to be one major impediment in achieving its CSR strategies. Despite the obvious fact that the company has well documented CSR policies (i.e. CMCA agreements) and other CSR corporate guidelines to direct its strategies, the practical implementation of such projects appears to be very slow. The snail’s pace in CSR project implementation appears to be an inherent characteristic of OTML. As one senior OTML management official stated “despite the huge wealth and benefits generated by the mine over the many years and the increasing environmental impacts, there is little to show for in terms of social and economic development” (Higgins, 2001, p. 1).

References

- Annadale, D, & Taplin, Ross. (2003). The determinants of mining company response to environmental approvals regulation: A report of Australian research. *Journal of Environmental Planning and management*, 46(6), 203-218.
- Banks, G. (2002). Mining and the environment in Melanesia: Contemporary debates reviewed. *The contemporary pacific*, 14(1), 39-67.
- Beaver, W. (1999). Is the stakeholder model dead? *Business Horizons*, March/April, 8-12.
- Bendell, J. (2000). *Terms for endearment: Business, NGOs and sustainable development*. Sheffield, UK: Greenleaf.
- Bowen, H. R. (1953). *Social responsibilities of the businessman*. New York: New York University Press.
- Bowie, Norman. (1991). New directions in corporate social responsibility. *Business Horizons*, 34(4), 56-65

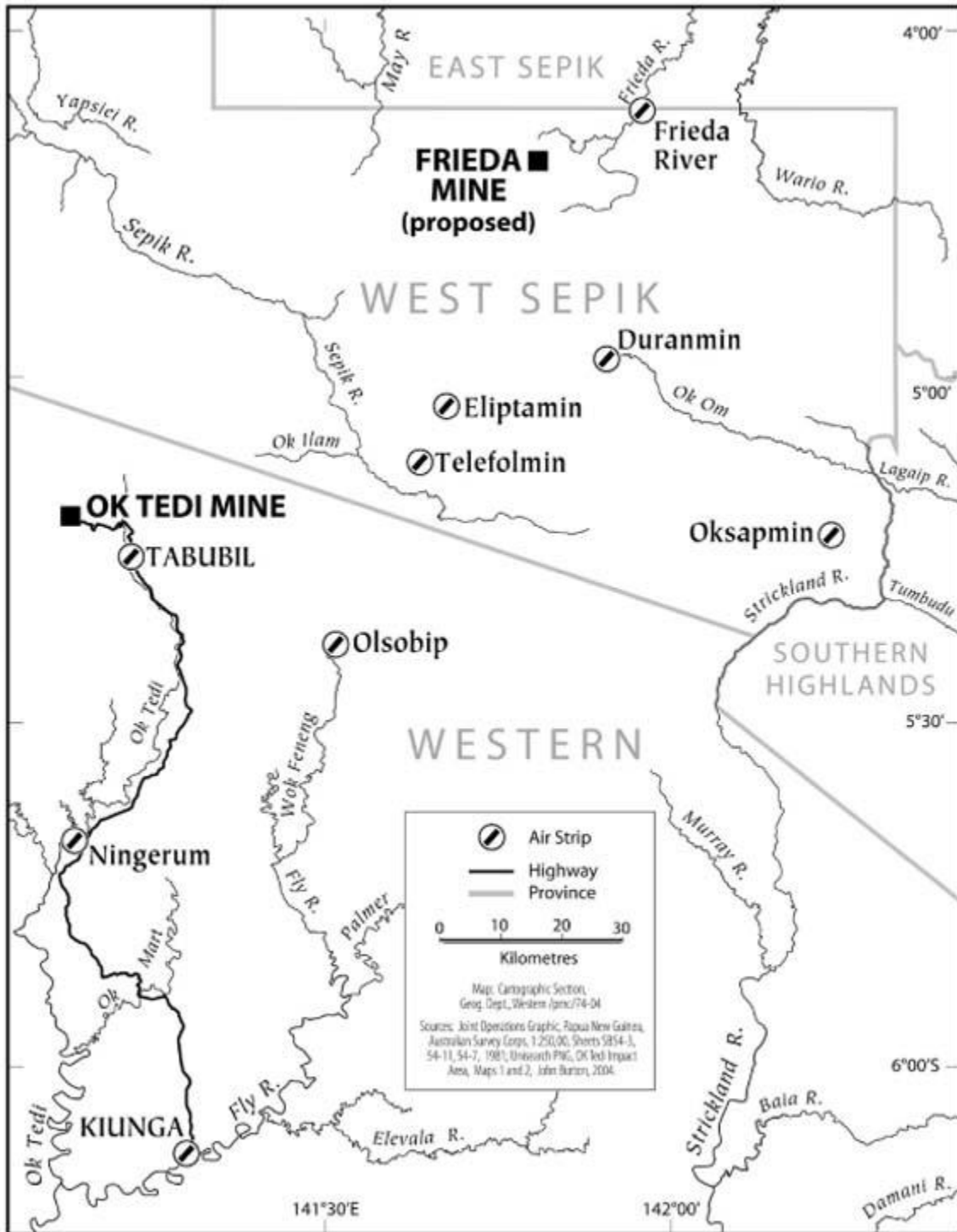
- Boyatzis, R. (1998). *Transforming qualitative information: Thematic analysis and code development*. Thousand Oaks, CA: Sage.
- Braun, V., & Clarke, V. (2006). Using thematic analysis in Psychology. *Qualitative research in Psychology*, 3(2), 77-101.
- Breen, A. (2007). PNG mining seminar, Port Moresby [Electronic Version]. Retrieved 25 March 2008 from <http://www.oktedi.com/home/oktedi/okTedi/www/reports/news/75/Presentation.pdf>
- Carroll, A. (1979). A three-dimensional model of corporate performance. *Academy of Management Review*, 4(4), 497-505.
- Carroll, A. (1999). Corporate social responsibility: Evolution of a definitional construct. *Business and Society*, 38(3), 268-295.
- Clarkson, Max. B.E. (1995). A stakeholder framework for analysing and evaluating corporate social performance. *Academy of Management Review*, 20(1), 92-117.
- Dahlsrud, Alexander. (2008). How corporate social responsibility is defined: An analysis of 37 definitions. *Corporate social responsibility and environmental management*, 15(1), 1-13.
- Davidson, C., & Tolich, M. (2003). *Social science research in New Zealand: Many paths to understanding* (2nd. Ed.). Auckland: Pearson.
- Den Uyl, Douglas, J. (1984). *The new crusaders: The corporate social responsibility debate*. Bowling Green, Ohio: The Social Philosophy and Policy Centre: Bowling Green State University.
- Donaldson, Thomas. (1982). *Corporations and Morality*. Englewood Cliffs: Prentice Hall.
- Donaldson, Thomas, & Preston, Lee. (1995). The stakeholder theory of the corporation: Concepts, evidence, and implications. *Academy of Management Review*, 20(1), 65-91.
- Evans, G. (2001). *Human rights, environmental justice, mining futures* [Electronic Version], 1-8. Retrieved 19 May 2007 from: www.austlii.edu.au/au/other/HRLRes/2001/14/
- Frederick, William C. (1994). From CSR1 to CSR 2. *Business & Society*, 33(2), 150-164.
- Freeman, R. Edward. (1984). *Strategic management: A stakeholder approach*. London: Pitman.
- Garvin, T, McGee, T, Smoyer-Tomic, K, & Ato Aubynn, E. (2009). Community-country relations in gold mining in Ghana. *Journal of Environmental Management*, 90(3), 571-586.
- Harper, A., & Israel, M. (1999). *The killing of the fly: State-corporate victimization in Papua New Guinea*. Canberra: Resource Management in Asia Pacific Program
- Hasnas, John. (1998). The normative theories of business ethics: A guide for the perplexed. *Business Ethics Quarterly*, 8(1), 19-42.
- Higgins, R. J. (2001). *Ok Tedi: Creating community partnership for sustainable development* [Electronic Version]. Retrieved 3 September 2007 from http://www.oktedi.com/reports/reports/54/CIM_paper_Higgins.pdf

- Imbun, B. Y. (2007). Cannot manage without the significant other: Mining, corporate social responsibility and local communities in Papua New Guinea. *Journal of Business Ethics*, 73, 177-192.
- Imhof, A. (1996). The Big, Ugly Australian goes to OK Tedi. *Multinational Monitor*. 17(3) 1-7.
- Jennings, A. (1995). *Environmental devastation: BHP lies about Ok Tedi*. Tabubil. Papua New Guinea
- Jorgensen, D. (2006). Hinterland History: the Ok Tedi Mine and its cultural consequences in Telefolmin. *The contemporary pacific*, 18(2), 233-263.
- Kalinoe, L., & Kuwimb, M. (1997). *Customary land owners' right to sue for compensation in Papua New Guinea and the Ok Tedi dispute* [Electronic Version]. Retrieved on 28 August 2007 from: www.paclii.org/journals/MLJ/1997/4.html.
- Kerr, Roger. (1996). The meaning of corporate social responsibility. *Paper presented at the AIESEC Corporate Social Responsibility Seminar, Auckland*(3 December 1996).
- Kirsch, S. (1992). *Social impact of the Ok Tedi mine on the Yonggom villages of the North fly*. South Hadley, Massachusetts: Mount Holyoke College
- Kirsch, S. (2007). Indigenous movements and the risks of counter globalization. *American ethnologist*, 34(2), 303-321.
- Margolis, J, & Walsh, J. (2003). Misery loves companies: Re-thinking social initiatives by business. *Administrative Science Quarterly*, 48, 268-305.
- McIntosh, M, Thomas, R, Leipziger, D, & Coleman, G. (2003). *Living corporate citizenship: Strategic routes to socially responsible business*. London: FT and Prentice Hall.
- Michelon, G, Boesso, G, & Kumar, K. (2013). Examining the Link between Strategic Corporate Social Responsibility and Company Performance: An Analysis of the Best Corporate Citizens. *Corporate Social Responsibility & Environmental Management*, 20(1), 81-94.
- Mitchell, R, Agle, B, & Wood, D. (1997). Toward a theory of stakeholder identification and salience: Defining the principle of who and what really counts. *Academy of Management Review*, 22(4), 853-886.
- Morgan, D. L. (1993). *Successful focus groups. Advancing the state of the art*. Newbury Park: Sage Publications.
- Morgan, D. L. (1997). *Focus groups as qualitative research* (second ed.). Thousand Oaks: Sage Publications, Inc.
- Morrison, J. (2007). *Mining and sustainable development* [Electronic Version], 1-35. Retrieved 18 May 2007 from: www.sustainability.murdoch.edu.au/casestudies/case
- OK Tedi Mining Limited. (2007). *Ok Tedi: Our Project, Our Challenge*. Tabubil, Western Province, Author.
- Preston, L. (1990). Stakeholder management and corporate performance. *Journal of Behavioural Economics*, 19(4), 361-375.

- Wartick, Steven, L, & Cochrane, Philip, L. (1985). The evolution of the corporate social performance model. *Academy of Management Review*, 10(4), 758-769.
- Windsor, D. (2001). Corporate citizenship: evolution and interpretation. In J. Andriof & M. McIntosh (Eds.), *Perspectives on corporate citizenship* (pp. 26-51). Sheffield: Greenleaf.
- Windsor, D. (2006). Corporate social responsibility: Three key approaches. *Journal of Management Studies*, 43(1), 93-114.
- Wood, D. (1991a). Corporate social performance revisited. *Academy of Management Review*, 16(4), 691-718.
- Wood, D. (1991b). Toward improving corporate social performance. *Business Horizons*, July-August, 66-73.
- Wry, Tyler. (2009). Does business and society scholarship matter to society? Pursuing a normative agenda with critical realism and neoinstitutional theory. *Journal of Business Ethics*.
- Yakovleva, N. (2005). *Corporate Social Responsibility in the Mining Industries*. Hampshire: Ashgate Publishing Limited.

Appendix A

Map of the Ok Tedi Mine, Ok Tedi River, Tabubil Town and Kiunga Town.



Appendix B

Ok Tedi, Kiunga and Western Province in perspective to PNG.



Appendix C

Focus Group Questionnaire

(1) What is the best (positive) thing(s) the company has done for the people in your village and how has this affected your life?

.....

(2) What are your views on the way the company has operated and what do you think the company should do?

.....

(3) What is the worst thing(s) the company has done and how has this affected your life?

.....

(4) What are the things you believe the mining company can do differently in terms of its strategies that are directed at you?

.....

(5) How has your life changed over the last 20 years since the company commenced mining operations?

.....

(6) What is the condition of the river and how has this affected your lives?

.....

(7) Do you think the village has changed during the mining operation and if so, how has it changed and in what ways has the change affected the villagers?

.....

(8) What are your views on the company's compensation payment for the environmental damage?

.....

Directors Duties and Responsibilities Towards Other Stakeholders: A Discussion of Case Studies on Corporate Disasters

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ABSTRACT

Implications of corporate disasters as a result of irresponsible corporate actions/decisions have been significant. Impacts on the society and environment and their affects are seen after many years. Previous research on directors' duties and responsibilities towards stakeholders other than shareholders is scarce, due to the reason that the legislative requirement of directors is to act in the best interests of shareholders. This paper explores the duties and responsibilities of directors and officers on environmental disaster and their impact on society and environment using a sample of 6 case studies around the world. The finding of this study shows that a shareholder primacy approach has negative impacts on the other stakeholders who are affected by the activities of the firm. Even though corporate governance codes refer to stakeholder interests, the focus of corporations' laws is on shareholder value. Given that the impact of corporate disaster on society and environment is still happening even in 2013, this study recommends that the corporations law in relation to duties responsibilities directors' and officers' should be extended to other stakeholders other than the shareholders.

Keywords

Board of Directors, Corporate Social Responsibility, Stakeholders, Ethics

INTRODUCTION

Environmental disasters in the past have brought much attention to the ethical responsibilities of a corporation. Directors of high profile companies have been charged for failure of their duties of care, negligence and misconduct. The most recent case in the news was the asbestos threat as a result of mishandling by Telstra and NBN Co. in 2013. Complying with legislation and regulation has a strong influence in the way business operates. This paper argues that those corporations that are socially

responsible tend to operate in a manner that fulfils the wishes of society through legal and ethical behaviour.

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Corporate disasters in the recent past have brought much attention to the duties and responsibilities of directors and officers. These disasters in both developed and emerging markets countries have been partly attributed to the failure of directors' duties of oversight. In the current legal

framework in Australia, under both the Corporations Act 2001 and common law, directors owe a fiduciary duty to the company as well as the shareholders. However, in the case of insolvency director's duties expand to creditors and other stakeholders such as employees and pensioners (Newman, Stavis & Renick 2005).

In the case of corporate disasters such as Exxon Valdez, James Hardie, Bhopal Gas tragedy, BP oil spill, BHP and Ok Tedi and the National Broadband Installation, what were the duties of directors? If the duties of directors are to govern a corporation to ensure that the shareholders' interests are met, failure to consider their duty to other stakeholders in above situations would have an adverse impact on shareholder value as well as corporate reputation. Additional legal obligations are imposed on companies and directors in relation to employees and environment. Disasters do happen but acting for the betterment of one group at the expense of the others is an irresponsibility and not acceptable in the civil society.

According to CAMAC (2006, p. iii) "*A simplistic approach that focuses on one particular social perspective to the exclusion of others is unlikely to do justice to the complexity of corporate decision-making or the overall contribution of corporation to the society. A balanced approach under which companies are judged according to their overall economic and other contribution and impacts, including how they manage social and environmental issues relevant to their business, is more productive and meaningful.*"

This paper will analyse case studies on environmental disasters of six corporations located around the world in order to understand a company's responsibilities in relation to the duties and responsibilities of directors to other stakeholders who will be affected by the activities of the firm.

LITERATURE REVIEW

Directors' Duties and Responsibilities

In the current legal environment, directors' duties are regulated by the Corporations Law (2001) and courts will punish failure to meet director responsibilities. The Corporations Act specifies four main duties for directors, which are duty to act with care and diligence (s180), duty to act in good faith (s181), proper use of position (s182) and proper use of information (s183). According to Section 181(1) of the Corporations Act 2001 (Cth) directors and other corporate officers are required to exercise their power and act in good faith and in the best interests of the corporation. However, it does not explain what is meant by "interests of the corporation" (Marshall & Ramsay 2012). In the context of UK, amendments to address this was made to the UK Companies Act in 2006. Section 172(1) of the Companies Act 2006 imposes a duty upon a director to act in the way he or she considers in good faith, that would most likely promote the success of the company for the benefit of its members as a whole, and in doing so have regard (amongst other matters) to (a) the likely consequences of any decision in the long term, (b) the interests of the company's employees, (c) the need to foster the company's business relationships with suppliers, customers and others, (d) the impact of the company's operations on the community and the environment, (e) the desirability of the company maintaining a reputation for high standards of business conduct, and (f) the need to act fairly between members of the company' (Marshall & Ramsay 2012, p. 314).

Marshall and Ramsay (2012), further argued that section 172 of UK Corporations Act, emphasised that directors' primary responsibility is to make decisions for the benefit of its shareholders and not to the benefit of the wider group of stakeholders but permissive enough to allow directors' discretion to take into account the interests of stakeholders other than the shareholders.

According to Blair and Stout (1999), who constructed the team production model of corporate governance, corporate law in the United States is more consistent with their model and that the legal conception of the company may already be largely consistent with the stakeholder conception. According to their argument a company has interests which are independent of any single set of people affected by it, including shareholders. Thus, the role of directors is to mediate a constantly shifting set of interests.

Theoretical Perspective

The theoretical perspective of this paper is based on a shareholder vs stakeholder approach. According to a “shareholder primacy” view, a corporation is run for the sole benefit of the shareholders. As a result, directors of a company have an obligation to maximize shareholder value through monitoring the agents who are the managers of the company. Friedman (1970) argued that a firm’s responsibility is primarily towards maximizing the wealth of the shareholders, whereas other schools argue that a firm has an obligation not only to its shareholders, but to all stakeholders whose contribution is necessary for the success of the firm (Donaldson 1983; Freeman 1984), which also supports Friedman (1970) that Corporate Social Responsibility is married with a corporate profits motives to maximize shareholder value (Brueckner 2010).

Freeman (1984) presented stakeholder theory and developed the stakeholder governance model. Freeman’s ‘stakeholder model’, defines stakeholders as: ‘Any group or individual who can affect or is affected by the achievement of the organization’s objectives’ (Freeman 1984). This view not only recognised the importance of ‘inputs’ and ‘outputs’, but also the relationships between a company and its stakeholders in achieving objectives of the organizations. Hence ‘stakeholders should have input into a company’s decision-making processes for either instrumental reasons, for example in order to achieve buy-in, or for normative reasons, because the company has a moral obligation to those stakeholders and to involve them in how the company is run (Jensen 2001). The emerging literature explained the theory in detail. Donaldson and Preston (1995), outlined three distinct aspects of the theory as descriptive, describing the specific characteristics of corporate behaviour, instrumental theory which addressed the connections or lack of connections between the stakeholder management and the corporate objectives and the normative stakeholder theory which explores the ethical philosophical and moral guidelines used to interpret the activities of the company. The normative or intrinsic value of the company is the core of stakeholder theory. (Marshall & Ramsay 2012). It considers stakeholders as the “end” while the other two aspects are regarded as “means” (Marshall & Ramsay 2012), i.e. how stakeholders’ value could be used to improve company performance (Allen 2001).

Jensen states that a focus on maximising economic goals is the single goal for managing an organisation, whereas a firm’s focus on stakeholders can result in multiple goals (Jensen 2001). The current issues facing companies due to globalisation have brought much attention to serving stakeholders who may be affected by their operations. According to Hoogervorst (2009) a company which pay attention to social, ethical and environmental aspects, performs better in relation to their value of shares. Companies that neglect their social responsibility can have a severe impact on shareholder value. Kanter (2004) conducted a study in 23 countries with 23000 respondents reported 90% believed in broader responsibility than just profitability.

In response to the arguments by advocates of a stakeholder model of governance, the Australian Corporations and Market Advisory Committee (CAMAC, 2006) conducted a review in 2005 to determine whether the Australian Corporations Act should be revised to incorporate instructions to directors to take into account specific stakeholders or community interests in corporate decision making without breaching their duty towards shareholders of the company (CAMAC 2006). The Code of Corporate Governance in South Africa advocates the stakeholder approach (Institute of Directors South Africa 2009). Principle 1.1, recommendation 1.1.9 states *promote the stakeholder-inclusive approach*. Principle 1.2 states “*the board should ensure that the company is and is seen to be a responsible corporate citizen*”. Recommendation for principle is supported by recommendation

1.2.1 “a board should consider not only on financial performance but also the impact of the company’s operations on society and the environment”; and 1.2.2.states “protect, enhance and invest in the wellbeing of the economy, society and the environment”

In order to understand the importance of moving towards a stakeholder approach, the next section of this paper will discuss incidence of corporate irresponsibility leading to corporate disasters which had significant impacts on people and the environment.

CASE STUDIES

Bhopal Gas Tragedy

The Bhopal gas tragedy in India was a serious environmental disaster. One of the most deadly chemicals, MIC was stored and produced in a densely populated area by Union Carbide. Due to cost cutting, the operation was sub-standard and the work force cut down by half between 1980 and 1984. This had serious consequences for safety and maintenance. Many skilled workers and well-trained and experienced engineers and operators had left the Bhopal factory in search of more secure and satisfactory employment. In addition to the above, management withheld medical information on the chemicals which deprived victims of proper medical care (Dinham & Sarangi 2002; Dutta 2002). According to unofficial sources, over 16000 have been killed (Dutta, 2002). A study carried out by an NGO in March 1985 showed, 50% - 70% of the non-hospitalised population who were exposed, had one or more symptoms of MIC poisoning. A study conducted in 1993 for a dissertation in Delhi University showed 65.7% people were suffering from respiratory symptoms, 68.4% with neurological problems and 49% with ophthalmic symptom. 43.2% of women in the reproductive age suffered from reproductive disorders (Dutta 2002).

Tragedies of this nature could be avoided if boards took more responsibility towards other stakeholders who would be impacted by the operation of the company. In the above case, the corporation and its officers were criminally liable under the Indian law. The plant manager of Union Carbide was arrested by the Indian Government, and Chairman of Union Carbide board, Warren Anderson, was charged with negligence and criminal corporate liability and criminal conspiracy when he arrived in India from United States (George 2012).

Exxon Valdez

Exxon Valdez disaster was an environmental disaster, which had an impact on the environment affecting mainly animals. In 1989, 11 million gallons of oil spilled into Alaska’s Prince William Sound was the largest ever oil spill, killing thousands of sea birds, otters and other wild life and affecting Alaska’s fisheries National Park, beaches and forests and tourism. This environmental disaster occurred as a result of the irresponsibility of the crew master of the tanker carrying the fuel who was under the influence of alcohol and left the command of the ship to the third mate who was inexperienced and not licensed to pilot. Apart from the above, Exxon delayed responding to the spill or sending aid to Alaska. When the company did respond, it sent a team who were not trained in crisis management. Here, again due to cost cutting, experts were not available. The company communicated to the people in Valdez but failed to report to the public at large. It was only after two weeks that Chairman, Lawrence G. Rawl flew to the disaster site. The company board never took responsibility for the disaster, indicating a lack of care about the environment or the damage done to the tourism or the fisheries industry in Alaska (Ferrell, Fraedrich & Gwyneth 2011). According to the legal decision Exxon was liable for punitive damages of US \$5billion and \$507.5 million compensatory damages.

James Hardie Case

The third case examined in this paper is the James Hardie case. James Hardie was a company in Australia which produced and distributed Asbestos products for most of the 20th century. Dangers

from exposure to asbestos were not known till the 1930s. Exposure to asbestos fibres was linked to lung cancer and various respiratory diseases, which resulted in thousands of cases against James Hardie for negligence and product liability. By 1986, James Hardie stopped using asbestos in any of their products and in the late 1990s, James Hardies' board of directors decided to relocate to Netherlands to avoid liability against asbestos claims and also to receive favourable tax advantages. In 2001, the remaining companies in Australia were given funding to setup a Medical Research and Compensation Foundation to deal with asbestos liabilities. However, the funds were insufficient to meet the claims of those workers who were suffering exposure to asbestos with James Hardie products. In February 2001, an announcement made by the directors of James Hardie to the Australian Securities Exchange (ASX), stated that the foundation had sufficient funding to meet the future compensation claims. The announcement was misleading, because it was underfunded by \$1.5 billion. It was found that the directors were in breach of the duty of care and diligence under s 180(1) of *the Corporations Act 2001* (Cth) (de Saini ; Hargovan 2009; Harris, Hargovan & Adams 2008; King 2012). The James Hardie case directors adopted a policy designed to minimise the liabilities of the company to thousands of victims and a restructure policy that aimed to maximize the exclusive interests of the shareholders. This case demonstrates a clear tension between maximization of shareholder interests and other stakeholder interests (Harris, Hargovan & Adams 2008).

BHP and Ok Tedi

BHP is one of the world's largest mining companies, operating in Ok Tedi Papua New Guinea. During the construction of the tailing dam for the Ok Tedi mine, a slippage caused the foundation to collapse and an investment of \$70 million was washed into the river. Papua New Guinea government gave permission to commence mining without a tailing dam. However, BHP promised to look for feasible options for tailing containment. Disposal of waste into the Ok Tedi River impacted on the environment. A barge transporting 2-7 tonnes of cyanide sank into the Fly River killing fish and crocodiles, which were found down-stream. In 1989 toxic chemicals spilt into the river as a result of a burst pipeline. The life style of the people who were living along the river was also affected. In a statement, the solicitors, Slater and Gordon representing the local landowners, said "*The Villagers' subsistence lifestyle of thousands of years had been wiped out in the past decade by an environmental catastrophe*" (Australian Graduate School of Management).

Despite the above, Ok Tedi mine contributed about 20% of the export income, provided employment for thousands of people, investment of \$ 300 million in infrastructure such as roads, power, water, communications, schools and medical facilities, education and training for over 1500 people, reduced the infant mortality rate from 33% to 3%, improved health and increased life span from 30 to 50 years. It also expanded the educational opportunities for children, established school building and provided small business assistance. Therefore, closing the mine was not a solution as it was important to the economic and social welfare of Papua New Guinea. BHP was proud of its' achievement at OK Tedi, but recognised the difficulties that the mine created due to its impact on the environment and the effect of the lifestyle on the people living along the river. However, closing the mine was not an option, as it was too important to economic and social welfare of the people in Papua New Guinea and negative impact was only advocated by a very small number of people in the region. Therefore, BHP declared that it is committed to carrying out all aspects of its operations in a responsible manner as well as adopting equal standards in all the countries and communities they operate. In 1996, out of court settlement of \$400 million was agreed for the land holders, which included compensation of \$110 million, \$40 million to relocate 10 villages and legal expenses of \$7.6 million. Apart from the above, BHP agreed to sell ten percent of OTML to the government of PNG for the benefit of the local community. (Australian Graduate School of Management).

BP Oil Disaster in the Gulf of Mexico

This is the most recent, largest accidental oil spill in history extending to 339 miles, requiring coastline clean up, claiming 11 lives and oil flowing for 87 days. There was extensive damage to

marine and wild life habitats, fishing and tourism industry and health problem, which has continued through to 2013. The US government report in September 2011 on the spill stated that , defective cement in a well which was mainly due to BP and its partners Transocean and Halliburton cutting costs and installing insufficient safety systems. The report also stated that poor risk management was the cause of loss of life and pollution of the Gulf of Mexico, last minute changes to plans, failure to observe and respond to critical indicators, inadequate well control response, and inadequate training on emergency bridge response by the companies and individual's responsible. Plaintiffs' lawyers' identified mishandling of a rig safety test, inadequate training of the staff, poor maintenance equipment and substandard cement. This case was filed by Department of Justice as "gross negligence and wilful misconduct" (Fisk & Calkins 2013; Wikipedia)

Telstra National Broadband Installation

The most recent case reported in May 2013, was a result of mishandling of asbestos during the rollout of the National Broadband Network. "The asbestos threat was known, yet safety measures were inadequate" (Crowe 2013). Workers and members of public were exposed to asbestos when Telstra was installing the cables. Telstra had a duty of care to prevent workers and public who may be in contact with asbestos. The exposure to asbestos is preventable if people who were qualified to do the work removed it. Telstra's chief executive Thodey accepted the responsibility as one for Telstra rather than the government (Jacques 2013). As a result, a national register was established to enable public to contact if they were exposed to asbestos. They also appointed a Telstra Network construction executive director to oversee all asbestos management, including compliance. They have also taken steps to confirm that employees conform to best practice in asbestos management and contractors and subcontractors meet the standards under the Federal Code of Best Practice and implemented extra checks, controls and training as well as extra people to ensure that work is carried out in the most safest manner (Lion 2013).

DISCUSSION

The above cases pose the question of where was the accountability of the boards and the officers that operated these companies. In the Bhopal case withholding medical information by the directors and officers of the organisation was unethical and irresponsible. Cost cutting, in Exxon Valdez resulting in substandard work, BP oil and Telstra approved insufficient safety systems and in Bhopal, reduction in staff resulted in unavailability of experts. Directors were in breach of their duty of care as a result of the announcement of misleading information in James Hardie. In Ok Tedi work in the mine by BHP resulted in polluting the Ok Tedi river and damaging the life style of people living there. Where was their duty of care for the people, environment and the communities?

The consequences for the companies varied. In the Bhopal case seven executives including the chairman were sentenced to only two years jail. The Bhopal tragedy, which left thousands dead and injured, was settled for US \$470 million, which worked out for around Rs 10,000 per victim. Following the disaster in Alaska EXXON spent \$40,000 for rehabilitation of every sea otter affected and each sea Otter was given a ration of lobsters costing US \$500 per day. This shows that the value of life of an Indian Citizen in Bhopal was much cheaper than a sea otter in America (Dutta 2002). Even though a business is conducted for the benefit of the shareholders, failure to take into account the other stakeholders can have a significant impact on the business and society as demonstrated in the case studies examined above. Therefore, directors who are the gatekeepers must be vigilant the way a business operates.

The legal framework does not talk about the interests of other stakeholders, other than the owners or shareholders of a company. As referred to above corporate governance codes recommend stakeholder interests and should be considered in their decisions but the corporations' law appears reluctant to punish the directors and the officers for wrong done to other stakeholders as a result of their activities.

They hide behind the Corporations Act and common law which require directors to have a duty to act in the best interests of the corporation, which is in the interest of shareholders.

CONCLUSION

Activities conducted by businesses can have both positive and negative impacts on an economy, society and environment. Cost cutting, insufficient safety measures, announcement of misleading information and lack of duty of care for people, environment and the community have brought much attention to the value of a stakeholder approach. Under the Corporations Act directors have a duty to act in the best interest of the shareholders. However, the issues encountered, as a result of the activities of the firms studied had disastrous impacts on the environment and the society. This paper argues that the evidence from the case studies suggests that the Corporations Act should include explicit obligations towards stakeholders affected by the activities of a firm.

REFERENCE

- Allen, WT 2001, 'The Mysterious Art of Corporate Governance: How individual directors set the tone of the board', *Corporate Board*, vol. 22, pp. 1-5.
- Australian Graduate School of Management *The Environment: BHP and OkTedi*, <http://www.agsm.edu.au/bobm/teaching/BE/Cases_pdf/Ok_Tedi.pdf>.
- Blair, MM & Stout, LA 1999, 'A team production theory of corporate law', *Virginia Law Review*, pp. 247-328.
- Brueckner, M 2010, 'Sustainability: A Corporate Responsibility', in *The Business with the Environment: A (Different) Reader*, 2nd edn, p. 27.
- CAMAC 2006, *The Social Responsibility of Corporations*, Corporations and Market Advisory Committee, Sydney, NSW.
- Crowe, D 2013, 'Union urges halt to NBN rollout over asbestos safety ', *The Australian*, 05 June.
- de Saini, NX 'Lessons for Directors, Company Secretaries and Corporate Advisors: The James Hardie Cases', *Astuto Lawyers*, viewed 12 June 2013, <<http://www.astutolawyers.com.au/james-hardie-case-summary/>>.
- Dinham, B & Sarangi, S 2002, 'The Bhopal Gas Tragedy 1984 to? The Evasion of Corporate Responsibility', *Environment and Urbanization*, vol. 14, no. 1.
- Donaldson, T 1983, "Constructing a Social Contract for Business" in Donaldson, T and Werhane, P. (Eds), *Ethical Issues in Business*, Prentice-Hall, Englewood Cliffs, NJ.
- Donaldson, T & Preston, LE 1995, 'The Stakeholder Theory of the Corporation: Concepts, Evidence and Implications', *Academy of Management Review*, vol. 20, no. 1, pp. 65-91.
- Dutta, S 2002, *The Bhopal Gas Tragedy*, ICFAI Centre for Management Research, Hyderabad, India.
- Ferrell, OC, Fraedrich, j & Gwyneth, MV 2011, 'The Wreck of the Exxon Valdez', <<http://danielsethics.mgt.unm.edu/pdf/Exxon%20Valdez%20Case.pdf>>.
- Fisk, MC & Calkins, LB 2013, *BP Gulf of Mexico Spill, From Disaster to Trial: Timeline* Bloomberg.
- Freeman, RE 1984, *Strategic Management: A Stakeholder Approach*, Pitman Publishing, Boston, MA.
- Friedman, M 1970, 'Social Responsibility of Business is to Increase Profits', *New York Times Magazine*, 13 September, p. 33+.
- George, D 2012, 'Corporate Moral Responsibility: The Bhopal Incident ', paper presented to Angelo State University Symposium.
- Hargovan, A 2009, 'Corporate Governance Lessons from James Hardie', *Melbourne University Law Review*, vol. 33, pp. 984-1021.
- Harris, J, Hargovan, A & Adams, M 2008, 'Directors' and Officers' Duties', in *Australian Corporate law*, LexisNexis Butterworths, Australia.
- Hoogervorst, JAP 2009, 'Corporate Governance', in *Enterprise Governance and Enterprise Engineering*, Spring, Netherlands.
- Institute of Directors South Africa 2009, *King Code of Governance for South Africa 2009*, Institute of Directors South Africa,, South Africa.

- Jacques, O 2013, 'Disturbing Discovery of Asbestos at Busy Intersection', *Sunshine Coast Daily*.
- Jensen, M, C. 2001, 'Value Maximization, Stakeholder Theory and the Corporate Objective Function', *Journal of Applied Corporate Finance*, vol. 14, no. 3, pp. 8-21.
- Kanter, RM 2004, *Confidence*, Crown Press, New York.
- King, M 2012, 'Asbestos caser: James Hardie Directors banned, fined', *Nine News*, 12 November 2012.
- Lion, P 2013, 'NBN assesses rollout delays after asbestos scare ', *News Corp Australia Network*, 02 June.
- Marshall, S & Ramsay, I 2012, 'Stakeholders and directors' duties: Law, theory and evidence', *University of New South Wales Law Journal*, vol. 35, no. 1, p. 291.
- Newman, S, H, Stavis, G, N & Renick, J 2005, 'Fiduciary Responsibilities of Corporate Directors and Officers in the "Zone of Insolvency"', *Business Law Journal*, vol. 9, no. 1, pp. 24-30.
- Wikipedia *Deepwater Horizon oil spill*, <http://en.wikipedia.org/wiki/Deepwater_Horizon_oil_spill>.

Social and Governance Changes: Rate, Principles and Morals

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Abstract

This paper draws attention to two aspects of change; first, the rate of social change is a source of concern, to this is added that both the configuration of changes and the values dimension, add to those concerns. Change makes it hard to keep up, and is the generator of much stress. We need to apprehend that such a point applies strongly to all enterprises, in particular to governance issues. This article holds that the rate of change is compounded by a constantly changing configuration. To ameliorate those concerns it is held that there needs to be both an expression of agreed basic principles, and recognition that values are one of the most vital parts of that selection. In this the debate and explication of guiding principles, particularly in governance, that is crucial. The main point here is to again emphasise the complexity that results not only from the rate of change but also the configuration and moral values that it constantly tests. It is only by direct consideration that concern over such issues be reduced. It is also held that an explication of basic principles is a significant aid to coping with the source of such stress.

Keywords

Governance, Social change, Economics, Foundation of law, Complexity, Conceptualisation

Regulations are good
when they produce such a
by-product state, as to
make them virtually
redundant.

Carlo Donolo

Introduction

This work addresses the issue of social changes in the third millennium. It stemmed from a consideration of the notion of social change, and has particular application to business. In essence the

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rate, rather than the fact, of change is distressing: second there is a pressing need to explicate the principles and values that are complex in that they involve moral values. In governance, as in society in general, changes such as recent and pressing issues result in new legislation, new requirements, new moral obligations, all of a rapidly changing nature. This article stemmed from the preparation of a MS by the first author: the mix of old and new problems

engaging our concern, and showing the structural tensions inherent in such changes. The issue of the rate of change is addressed, and the point made that both the rate of change and the complications of principles and values complicate that analysis yet further. One of the most effective means of countering this problem is the working out, and the explication of such principles.

Just as the industrial revolution brought changes, so too does the pressure of present problems; such forces strain social stability, and require our urgent attention if we are to adapt. It is argued here that there are substantial changes, largely due to both changing circumstances and to the questioning of older beliefs. It is many years since 'future shock' was argued by Toffler in 1971. That thesis was that it was not that change takes place but, rather, that the rate of change is the source of concern. This argument applies with some force to corporate governance. The development of moral concern for the environment, the change from political dominion to corporate multinationals, and the use of limited liability are all examples of relatively recent developments.

To resolve such issues it is important that we develop guiding principles, based on up-to-date knowledge. This article attempts to extend that argument to include the configuration of problems, and to the extension of concerns that include strongly held values. Bouma (1998) examined the distinctions between institutions and organisations for the purposes of social change. His analysis bears upon this present one, but does not negate this present one: it simply adds to the complexity.

More recently the notion of future shock was given a cartographic and geopolitical connotation (Ferguson & Mansbach, 2004). They argued that our mental maps of two-dimensional scale are inadequate to explain more recent events, and they document the view that identity is crucial to an understanding of contemporary events.

Complexity

Here we might compare the metaphors of the Ark and The Tower of Babel, recognising what is superfluous (and bound to lead to wreckage), and what to preserve. Such criteria help us to understand how we can simplify complexity, not to avoid mistakes but, rather, to avoid perishing. The Ark has a relatively simple structure that can defy the hostile elements: its essence is simplicity, with the richness of the world characterised by the representation of all living things as a potential. This minimalist approach represents a potential for re-creation. The complementary view is that of the Tower of Babel: one of a multiplicity of entities, of differences, and of seeming confusion. One prefers the simplicity, but must concede to complexity.

This complexity may be coped with by two means: firstly by simplifying, the most immediate reaction. In selecting from complexity you exclude those aspects deemed less relevant until you come to a lesser level of complexity that you can master. Then the question arises, what are you going to exclude? This principle finds expression in, for example, calls for the limiting of court trials. Because of the human limit on recall, and on understanding, one could envision a time when trials might be restricted to (say) a week for a murder trial or a complex commercial instance. The second method of coping is to provide 'order'; for example, put in a classification system, as did Linnaeus in biology. Ordering complexity is the root of the concept of system – one of the most powerful mental schemes in the history of human knowledge. For us to face successfully the challenge one may propose a path marked by several main steps:

1. The problems that affect human society in the present times are particularly vital. It is essential to solve them for society and, indeed, corporate governance, to survive. This requires paramount crucial choices – even though risky ones. How are we to choose?

2. Increasing complexity of the world we build up doesn't help. Complexity has become too big and thus we are in the need of simplifying. Such simplification should lead to decide priorities, and then reflected in essential principles.

3. In making the choice we must take into account some constraints that derive from the very nature of the human beings and their social relationships.

4. As a result we may recognise the essential principles to be followed in order to choose.

Contemporary problems

Among the contemporary problems here are those of tyranny, climate change, ease of travel, the availability of social statistics, the imbalance of wealth, the press to emigration, and the questioning of established ideas. Here one should not underestimate the ease of communication and its consequences. The ready availability of information and ideas must be significant drivers of dissent, of migration, and of action to improve. The Arab Spring, the overthrow of such tyrants as those of Tunisia, Libya, and Egypt, together with the protests by the Kurds, the Tamils, and the Basques all point to an unwillingness to tolerate suppression of their aspirations. The dominance of the need for energy is an instance, recently addressed by Cottrell (2009). The general topic includes treating with oil-supplying nations, and the internationalisation of commerce, both being commercial instances.

The suppression of revolutionaries in Syria is a recent striking example. If one were to look to the improving side one would note a distinct unwillingness to tolerate such harshness and oppression. Second, one would be immensely cheered by the substantial reduction in violence – a point well documented by Pinker (2011). It may seem a strange conclusion to draw but the diminution of violence and the use of negotiation are becoming more prevalent. This applies strongly to governance issues wherein non-violent solutions are sought.

The need to address such issues as climate change, habitable countries, and corrupt political institutions is most pressing, and may be most readily addressed from a political perspective addressing the issues from a business point of view. Such a dire need requires precepts in place to guide a resolution. Two striking examples of guiding principles are the Doctrine of the ‘separation of powers’, and ‘The rule of law’. Such bulwark’s exploitation again needs to be kept firmly in mind, and constantly exercised.

Conceptualisation

Taking an example, that of climate change, one might consider the issues involved. First is the hard core evidence for climate change: second is the rate at which the debates change; third is the effect that it might have on our values, including the effect it will have on our children and grandchildren. One notes the change from ‘global warming’ to ‘climate change’: in this the views of sceptics must be considered, and their views accommodated. One cannot, and must not, dismiss critics as being destructive and wilfully ignorant. Further, business will to be cognisant of the issues, and do something about them as they are a serious cause of concern. In all of this we see that each individual will have a different constellation of concerns.

On that topic Lever-Tracy (2008) has argued that those not within environmental sociology have largely ignored the subject. She argued that there needs to be a fusion of interests, and substantial dialog, between sociology and the physical sciences in order for us not to ignore such a substantial point that will have a profound effect on our world outlook. In this the role of business is vital.

One of the obvious requirements here is to conceptualise the issues for discussion. Once such concepts and values are socially accepted they shape a dominant model, and the community develops a ‘social pressure’ to hold to it. The more the model is rooted in the social system, the stronger the pressure: it becomes easier to yield than to resist.

In order to ‘explain’ one must decide among different factors. It may be an economic one, a psychological one, a sociological one, or a moral one. One might ask, for example, why did Moses

take 40 years to lead the Israelites out of bondage and into the Promised Land, a total distance of only a few hundred kilometres? On that information one would have to have him fail Navigation 101. Another way of looking at the Exodus is that Moses ensured that it was a different generation that left Egypt from the one that arrived in Palestine. The facts are the same, but the interpretation is different. How one decides between rival explanations is always problematical, and difficult to specify an overarching explanation .

One may look for theories that not only explain phenomena but also capture a point not commonly appreciated. For example, consequences are not always proportional to causes. The limits of rational analysis are evident in complexity. Our intellectual abilities are not sufficient to build up a complete mental model of every possible relationship between all entities. Quite recently the notion of the disproportion of causes and effects has been captured in Chaos Theory. The beating of the proverbial butterfly's wings in Brazil may cause a storm in Europe: Gavril Princip's assassination of the Archduke Ferdinand in Sarajevo meant that a bullet caused a world war and the loss of millions of lives. Chaos theory is a blend of mathematics, engineering, biology, and economics. As such it is an attempt to construct an overarching explanation. Thus the problem of making complexity comprehensible by conceptualising it: even though there is determinism that does not make issues predictable. For any system to operate it must be consistent of application. A possible solution rests on identifying essential principles suitable to uphold a fitting solution. Principles are stated below, which ensure the mechanisms to be simple and effective at once, the Consistency Principle representing the linkage between the sphere of moral values and practicality.

Issues that emerge here are shaped both by need, and by the will. Pressure from the system should be used in order to guide the community to implement and shelter its chosen values ('Systemic Design Principle'). A second instance is the Control Principle which entails the assignation of power to safeguard the observance of substantial ends, and which is reason for them to exist. In all of this it will be seen that the imperatives of power, of force, and of solidarity are essential for social functioning. It is essential that the social projects are based upon principles, whose observance appears both righteous to morality, and convenient to expediency. Making society, and its derivative business, work seems to be based upon principles, not all of which are articulated. Sometimes they seem to have elements of caprice, but still work. Indeed, one might argue that a deep discussion of political principles is an essential precursor to their adoption. One recalls Napoleon's precept 'I need lucky generals', just a businesses need 'lucky' guidance. Yet our effort must aim at selecting such principles, being grounded in human nature.

The human sciences

Human sciences, as distinct from the physical sciences, deal with phenomena that are meant to be relatively unfettered; ones in which there is a margin of choice. Thus human sciences include in their field not only the 'how', but also the 'why'. With the Theory of Gravity, nobody claims an explanation of its 'rationale' in order to believe it: its experimental authentication and its stability over time is sufficient. Dealing with human behaviour, however, is more complex: the perception of an underpinning 'freedom of acting' obliges to record 'tendencies' more than constant facts. An insight into motives is, here, critical to understanding. To that end these points are relevant:

1. A recognition, and a consequential diminution, of the distressing effect of the rate of change (the 'change principle').
2. The foundation of morality rests in abstaining from manipulating people and circumstances. The rule of law provides for autonomy, and manipulation is contrary to that (the 'autonomy principle').

3. Turning a benefit from the purpose for which it is granted is fraud: it eradicates the legitimacy of claim or action ('legitimacy and transparency principle').
4. Nobody may demand from the others a behaviour, which he himself refuses to take upon face to them (the 'reciprocity principle'). This ideal principle would see politicians who declare war to be among those first sent to the front: thus we recognise its limited application.
5. A social system, which wants to conform to given values, must shape interests, structures, and regulations according to these values (the 'consistency principle').

Although these principles may appear debatable, the solution given to the debate will definitely affect the sort of society we will have in place.

The structure of social relationships involves the basic tension between idealism and manipulation: it also involves a tension between idealism and pragmatism. Politics is often characterised by defining it as 'the art of the possible', and 'the art of compromise'. That tension sits uneasily with idealism. Indeed it is a basic dilemma for political parties who aspire to certain standards and goals, that their ability to achieve anything is compromised unless they yield.

Personality, rewards and punishments – The human factor

One of the clear findings from psychology is that reward is a more effective technique than is punishment. Having said that we have to recognise that sometimes punishment is necessary, as the criminal law clearly shows. Nevertheless, trying to proscribe phenomena, which are widespread and whose repression is probably bound to ultimately achieve no success, is often counter-productive. Its only effect will probably be fostering the growth of illegal markets and routes, as every example of prohibitionism made clear. Policing by law a behaviour that is rooted in personal choice, preference or values (as drinking or drugs or unusual sexual inclinations) has scant efficacy and makes doubtful sense. What we have to proscribe is rather the anti-social acts that may come from such behaviour (like violence, harassment, or the unwelcome and unjustified interference with the lives of others).

Enforcement is far less effective than is social control of the gentler kind. The pivotal mechanism of social control resides in the discipline of inter-private relationships: that is it resides in civil law. Multiplying coercive regulations only increases the complexity of the system. Attempts at evasion will inevitably arise. If elusive alternatives exist (and they usually do), the concerned party will eventually be able to find them. It is instructive to note that 'rewards' are critical to business. The 'reward' of customer needs, the 'rewards' of business returns, and the failure of unsuccessful businesses to 'reward' dissatisfied customers are obvious.

Success in achieving a goal rests essentially on the choice of suitable players. It is easier to train somebody in professional skills or techniques, than infuse in him or her moral traits like commitment, motivation, and values. However, under the same circumstances, learning techniques is easier than learning values. An example is school, which can, in due time, teach to virtually whomever, the ability of writing and reading – but it cannot necessarily transmit the values it preaches to the same extent. A business project is no exception. All of this is a plea for the selection process for all business and public offices to be mindful of social values – quite as important as technical competence.

Here it is appropriate to mention the selection of 'winners'. When an aspirant has been selected on the basis of previous experience that is no necessary guide to how they will perform in a new role. For example, a good manager might be promoted to a board. The fact that they were good at managing is no essential guide to seeing how competent they will be in an strategic role. Those who go after their goals regardless of the means will easily be short-term winners (and possibly abusers).

One might ask is this an example of The Peter Principle (1969) wherein people are promoted beyond their level of competence?

One of the goals of social leadership is not simply to manage problems: the essential goal is to design a better structure able to benefit society. To imagine, and to design this structure, is one of the great challenges of our future. Perhaps the magnitude of the emergent problems confronting us is disheartening. Since there are no certain signals of impending collapse, one may be tempted to ignore the risk and to put off the remedies to the future. But this is a deceptive solution: when the signals become indisputably visible, it might be too late.

Economics considerations

While people are motivated by economic considerations, that is not the only consideration. The American presidential principle 'It's the economy, stupid' is relevant but not conclusive: economics is an important principle, but not the only one, and includes every additional labour, sacrifice, or indirect disadvantage (almost a plea for a Pigouvian tax) – taxing the cost of negative externalities, of the wider social costs, as one might tax the fast food outlets for the clean-up costs of discarded food containers. Society, it needs to be recalled, is a collective. It implies that whatever factors there are, each has wider implications. This also introduces the issue of co-operation. Co-operative people are a better choice than competitive people, rebuffing a myth of the present time. Competition is one means either of selection or of action, and is definitely functional to power: one must say, then, that co-operation, not competition, is to be preferred.

The Western world currently enjoys riches previously unimaginable: the problem here is the uneven distribution of wealth, readily measured by the Gini Index. People being what they are, immediate benefit so often takes a superior position to longer-term interests. The dominating peoples appear to care only about preserving the roots of their power. As if such privileges can widen endlessly without any corresponding imbalance, as if there were nobody else who is to pay the price. It seems, in other words, to be a zero-sum game rather than a win-win.

Forms of disparity other than economic ones are also apparent. For example, the pressure use of lobbyists by business to influence legislators; the lack of time to pursue goals other than immediate economic ones; and the failure of legislatures to represent certain interests of the constituency but, rather, following a party line. Such pressure groups may have an economic motivation: they may also have another wish. The example of the gun lobby in the USA is a prime example: their obsession with firearms is a source of both serious concern and of serious social consequences.

Morals and logic

Morals is the set of values commonly acknowledged by a social group, sometimes organised into a system. As such it is a complication in the system in that it developing values constantly interact with change. One of the difficulties here is that one might, in morals as in all else, use logic to draw conclusions – but from debateable premises. For a syllogistic example: The sphere is the perfect form, angels are perfect, therefore angels are spherical. Clearly one can only draw conclusions that are apt if both logic permits (validity), and that the premises are acceptable. One might, for example, hold that violence is wrong, but think it appropriate in bringing someone to justice. In business it is persuasion rather than force that is critical. Here the balance may be the injunction 'If force is necessary then use the minimum' – as one might in self-defence. Thus the principle is that the use of force is lawful only in defence, or in legal restoration: one respects the legally established limits. Problems will still be there: for example: should one intervene in the civil war of a neighbouring state in order to prevent (say) manslaughter or refugees streaming across the border? – and what is the position of profiting from sales to governments that deal with refugees?

A similar problem arises with the question of 'How should a government treat a minority group of shareholders who wish to change the board structure?' Even more complex is the issue of (say)

tolerance. To be unduly tolerant might be to tolerate the intolerable, and thus destroy the very value that one wishes to preserve.

Here it becomes plain that morals, amongst other things, ascribe meaning to events. Instances are tested against values, and relevance ascribed to them. This aspect of meaning finds expression in various ways, including attachment to our children, our moral values, and our loyalty, trust, and honesty. Indeed the ascription of meaning is a mainstay of such psychological tests as the Rorschach Inkblot Test and the Thematic Apperception Test. Facts are one thing, interpretation quite another: men in different seasons of their life may get up once in the night: in their youth it is to go home, later in life the same behaviour has a different reason.

Foundations of the law

Whether or not morality should be the basis of laws found expression in the Hart-Devlin debate began in the 1960s (Hart, Devlin)*. There the question was to what extent should morals intrude into the law? Plainly values do invest the law and its business corollaries, but because values vary in a multicultural society that is a problematical proposition. Here too, one may look for principles in order to resolve the puzzle. With respect to relationships there are two pillars. Once a pact is made the engagements must be maintained: keeping faith is paramount. A second and debatable point is that nobody may reasonably demand from others a behaviour, which s/he declines to undertake (again the 'Reciprocity Principle'). Here the issue is, should one refuse to fulfil the engagements held towards someone who fails to fulfil his own, or is the honour principle inviolable?

One of the bulwarks of freedom is that of the rule of law: really that should read 'just laws'. The concept of equality before the law, its universal application, and its regenerative nature, are essential features. The judicial system must work broadly since it is the only instrument available to the citizens in order to require conformance to the rules. Indeed, good governance resides in something more important and complex than mere stability of a government: it not only resides in the substance of the decisions but also in the ability to design and implement really adequate structures. Moreover, 'good governance' and effectiveness rest not only on results, but also on their cost and the way it is shared. Sorting out doubtful issues means making a choice – albeit risky. We have to decide what risks we accept.

Legal framing bodies aim to produce precise rules of unambiguity, apt to regulate a never-ending record of cases. In doing so it may well create complexity, and a capacity for 'loopholing' – finding creative business ways of subverting the law's intention. When it comes to drafting laws the maximum acceptable degree of simplification may be preferred. Regulation must show the mark of simplicity and evenness, so that all the citizens may easily know what behaviour they are required to embrace, and abide by. Simple rules are also easier to assess as for their substance and implementation. In other words the more technical the law the greater the opportunity for subversion.

People may abide by obligations only if and when those are realistic. When they are not, they provide a robust moral alibi to those, who are willing to circumvent them. Letting somebody contingently evade abiding by a rule means granting him an unfair advantage upon those, who abide by it. If this is allowed, it makes deviance appear as tolerated, and somehow legitimised. Such a gap opens room for some degree of profitable deviance. The deviant group will benefit of the other people's 'moral' (i.e. 'abiding') conduct, under the mere condition of paying attention to maintaining its opportunistic behaviour under the level of social harm that would justify stricter enforcement. Under particular circumstances a social 'elite' invested of decisional power may even find it convenient to back such behaviour, if it may secure specific advantage in terms of economic or political dominance of the group. From this emerges the principle that 'Rules, in both formal and substantial observance, enjoin equality'.

In this context the use of hypocrisy is worthy of comment. The basis of hypocrisy is to espouse one value and act on another (do as I say, not do as I do). A good international example is that the UN commitment to democracy. The Security Council has the right to veto any decision, hardly a

democratic principle: further; it is comprised of members who lecture countries on human rights issues where a number of member states represent tyrants and dictators.

Criteria for assessment

The principles we have captured so far, provided that they are respected, are complementary and synergistic. Simplicity in rules, transparency in behaviour, functionality in interest structure design, equality in compliance, legitimacy in exerting power, warranty of equilibrium and social control reinforce themselves and grow with each other. The criteria for assessment cannot be simply the fact that a devised goal has been achieved: the method is not necessarily good just because the result was achieved. ‘The end justifies the means’ is the basis of most manipulations. The measure of success is inadequate because it tends to measure costs and benefits only from the viewpoint of those who stand to benefit, and does not necessarily consider the costs that others pay.

Here one must ask how can one be assured that a particular goal has been achieved? The answer must lie in majority approval. The dilemma here is that the majority may be mistaken in terms of human autonomy and of higher order principles: this is the reason of the search for principles sketched above. One additional useful guide may be the 30 precepts of the UN Declaration of Human Rights: a document of unprecedented persuasion. It is a pity that it has no corresponding statement of Human Obligations. With respect to business the UN Declaration has little to say: its contributions are indirect. For example it rightly espouses the dominance of law, of freedom of international movement. In particular Article 23 holds that everyone has the right to work (but, curiously, no obligations to do so).

Also critical criterion measures are those of time: short-term and the long-term effects may be at substantial variance. In various criminological studies it has been shown that what appears to be a benefit becomes, in the longer term, a detrimental intervention. That point is exemplified in the longer-term strategic planning of major multinational corporations.

We have already observed that the range of time taken into consideration by decision-makers is relatively short, given their pressing need to take further steps, mostly in order to maintain their power. That point applies, a fortiori, strongly to politicians (not to statesmen but even more strongly so for political party hacks). The criterion of social rather than personal success requires looking for longer time solutions. Indeed, the problems we face in the present time demand long-term answers. These may not particularly benefit those who will have to give them. But if they fail, this could make the planet unfit to live in for generations. It is, therefore, crucial that those who are appointed to lead the change are able to look in distance and to wait a long time for their reward, or accept that lesser prize that those who sow may not be around to see the harvest.

As those who fight for a socially desirable end know well, targeting difficult and durable goals requires being able to give up shortcuts or apparent and showy success: they must maintain their commitment with tenacity, and independently from the immediate reward.

Conclusion

A community exists because its members are acknowledged to hold common ends. Millennia of history have made these ends so obvious that they are often unconscious, rarely assessed, and sometimes ignored. Revitalising their awareness and common sharing is the base of the renewal of a true community. Starting from this initial step, the task inheres in putting these ends in order of priority, and developing mechanisms that may generate the best possible level of achievement — watching lest rhetoric doesn’t spoil, distort or manipulate. This applies from the larger political perspective, to business, and to personal development.

The contribution of this paper is twofold: to assert the point that the distressing rate of change may be ameliorated by confronting the issues; the second point is that the explication of principles is a substantial aid to guiding towards the kind of organisation that we want. In these processes it is

counterproductive to leave human values out of consideration, since those values are exactly what makes engaging in action so worthy. It is better to acknowledge them explicitly, assessing their consistency and their actual sharing, understanding, and accepting their consequences. A vital society, a business, a governance issue, or a personality, cannot be but a fair one.

References

- Bouma G (1998). Distinguishing institutions and organisations in social change. *Journal of sociology*. 34 (3)
- Cottrell F (2009). *Energy and society*. Bloomington, Indiana: Author Press
- Devlin P 1965. *The enforcement of morals*. London: Oxford UP
- Donolo C (2001). *Disordine*. Roma: Donzelli
- Ferguson Y H & Mansbach R W (2004). *Remapping global politics: history's revenge and future shock*. Cambridge: Cambridge UP
- Gini Index (after the Italian statistician Corrado Gini). en.wikipedia.org/gini_coefficient
- Hart H L A (1987). *Issues in contemporary legal philosophy*. Oxford: Clarendon Press
- Hart, H L A (1963). *Law, liberty, and morality*. London: Oxford UP
- Peter L J & Hull R (1969). *The Peter Principle: why things always go wrong*. NY: William Morrow & Co.
- Lever-Tracy C (2008). Global warming and sociology. *Current sociology*. 66 (3) 445-466
- Pigou A C (1943). The classical stationary state. *Economic journal*. 53 210/211 202-211
- Pinker S (2011). *The better angels of our nature: the decline of violence in history and its causes*. Harmondsworth: Penguin
- Toffler A (1971). *Future shock*. London: Pan Books

