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TOPIC

“The common philosophic and practical issues surrounding governance and accountability in NSW Universities, including a commentary on leadership, addressed from the perspective of the University of New England.”

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TOPIC

“The common philosophic and practical issues surrounding governance and accountability in NSW Universities, including a commentary on leadership, addressed from the perspective of the University of New England.”

In many respects the topic (and, I hope, this lecture) may help to inform the legal and moral background to many of the issues which are more commonly now called “risk management”.

In this lecture I will call University of New England “UNE”, and a reference to “Governing Council” includes a reference to “Senate”.

In referring to UNE I will refer to its enabling Act, The University of New England Act, 1993 as “**the Act**”.

A word of caution about the use of this lecture The scheme of New South Wales (“NSW”) University legislation is the basis of the first half of the lecture. The governance and accountability references derive from that legislation. Other States have different legislation, so care should be taken in analogising the first half of the lecture to Universities in other States. On the other hand, the second half of the lecture, concerning leadership and its connection to governance and accountability, is not limited in application either by legislation or by geography.

ADDRESS

1. The University Context – a Definitive Dilemma

A university is full of dilemmas.

In this lecture I will try to explain the philosophic impact of University dilemma in order to understand governance and accountability in the NSW University context.

I will then link this to a general consideration of “leadership”.

An Australian public University is a complex web of diverse and often conflicting activities. “Activities”, in a NSW University, reflects a statutory spectrum of operation from “free enquiry” or “academic freedom”, through businesses conducted through “controlled entities”, to uncontrolled commercial activities.

The history and current culture of Australian public Universities primarily continue to reflect the historical dominance of academic staff, and their pursuits, over management, administration, and accountable financial processes.

The current trend, however, is for governments, as the providers of public funds, to insist that Universities must now bring themselves into conformity with modern expectations of good general and financial management, and hence of governance and accountability.

This gives rise to a clear dilemma of what I call “*Free Enquiry versus Good Management*” (I will call these competing ideas, “the Two Sides”).

Hallmarking the results of this persistent dilemma is an observable, culturally - supported lack of cohesion in University activities.

Although self – interest groups may form effective teams, a general lack of cohesion, especially as between (but not confined to) academics and management, ensures a general lack of coordinated effort and hence a failure to achieve an overall ‘team spirit’. This, in turn, may foster idiosyncratic and autocratic management which closes the circle by reinforcing the divisive tendencies of the culture.

Curious methodologies can be seen to derive from this dilemma.
An example of such a methodology, germane to this context, is as follows:

Universities pride themselves on their adherence to the highest level of what I call ‘equity ethics’. However, their internal disciplinary systems tend to reflect what might be called ‘common fairness’ rather than the technical requirements of administrative law. This situation is amplified by any conflict of interest.

Hence, the application of ‘equity ethics’ paradoxically tends to actually deny natural justice and the rule of law.

One can perhaps explain the development of such a system if one accepts that University self – disciplinary processes are an outgrowth of the historical concept of the independence of academic staff. However, with modern issues of budget constraints, financial and management requirements, risk management, legal threats and insurance problems, such a system is increasingly contradictory of the requirements of statutory governance and accountability.

2. The Rule of Law and the History and Internal Culture of Universities

We can only glance at the history of Universities in this lecture.

It seems (1) that the history of Western Universities starts in France. The University of Paris, which traces its origins to the 12th century, was formalised in the 13th century with a licence from the Chancellor of Notre Dame Cathedral.

Encyclopaedia Britannica, which is my source for these facts, says that Oxford and Cambridge Universities were modelled on the University of Paris.

For our context, we can note that, of the first three colleges at Oxford (being University College, Balliol and Merton) the establishment of Merton in 1264:

*“is especially notable as associated with a new conception of University education, viz., that of **collegiate discipline for the secular clergy**, instead of for any one of the religious orders....”* (2)

It is evident that this cultural and organisational approach of the 13th century is still echoed in our University context in Australia today.

The historical financial independence of (university) colleges, often funded by the churches, supported a culture of self – governance. But, we must remind ourselves, this was before there was a literate population, and it most certainly preceded what we now call “**the rule of law**”.

Nevertheless, this culture of self – governance seems to have spilled over into modern Universities, which are created in Australia by statute in a climate where the State is now the primary financial benefactor and has a large role in the selection of members of the governing council.

In addition, the last quarter of the twentieth century saw a gradual domination by ‘black letter law’ over what we might previously have described as the ethical substrate of the rule of law.

It may be that we will see in the future that the excesses of the eighties culminated in the recent reaction against large corporate failures in the USA and in Australia. We may then also see that the

recent surge towards adoption of governance rules may be no more than the pendulum swinging back to re – assert, in a somewhat different guise, the old ethical substrate as part of the rule of law.

Now, here we must stop for a moment to check our bearings, because this is something of a philosophical crossroad.

The recent surge to governance has all the hallmarks of being a sub – set of black letter law, rather than what might be primarily characterised as **a moral substrate**.

In other words, we may be seeing the emergence of what might be called the (mandatory) civil (as opposed to cannon) law of morality rather than **ethics as voluntary morality**.

That is a contradiction in terms to a lawyer like myself who was brought up to rely on the old adage that the lawyer advises on the law and the client’s conscience alone is voluntarily responsible for matters of morality.

What I would suggest is that the negative implications of this recent trend (if, indeed it is a trend) may become clearer when I comment upon the nature of **leadership as I see it**.

To confirm the current trend towards attempting to mandate a new “**law of morality**”, we need only look at the paper on Corporate Governance now available on the ASX website (3). This paper, which is produced by the ASX Corporate Governance Council, sets out ‘Principles of Good Corporate Governance’ in some seventy five pages of detailed guidance.

One leading law firm (4) lists twenty one substantial documentary processes as being advised to conform with those ASX Principles: it is evident that conformity may result in submergence of management in a sea of paperwork, thereby offering some evidence that the old adage may be right after all, and morality should be kept separate from the law.

And that’s not all: think for a moment of the moral infusions which are now subsumed into and must be adhered to within the arena of mandatory black letter law: a few examples of what I call “**legislated morality**” will suffice to affirm this trend:

Privacy, Freedom of Information, Anti – Discrimination, ICAC, Protected Disclosures, Workplace Relations, Equal Opportunity is just a preliminary list.

Surely, we would say, there is an effective way to combine law and morality in a methodology of voluntary governance and accountability which does not result in us all disappearing in a mountain of compliance paperwork.

I would note, by the way, that such a paperwork mountain stultifies activity and results in a denial of the very governance and accountability which was being sought in the first place.

3. Current Form of Statutory Resolution of the University Dilemma in NSW

In Australia presently, the referee and ultimate arbiter of University rules, being the Federal Government as a funds provider, is making increasing calls for strong financial management in Australian Universities.

Thus the historical University culture is beginning to come under stress, and internal divisions are becoming sharper and more apparent between the Two Sides, that is *Free Enquiry v Good Management*. At the same time, the NSW State Government, as the “parent” of the public NSW Universities, feels the federal “financial heat” and has begun to act in respect of its Universities.

Thus, in 2001 the NSW Government enacted a very important piece of legislation which applies, part by part, to each of the NSW Universities.

This 2001 Act, which was not proclaimed until March 2002, is the *Universities Legislation Amendment (Financial and Other Powers) Act No 101 of 2001 (NSW)*. (I will call it “**Act 101**”).

It does not seem to be widely appreciated by NSW University Governing Councils or management that Act 101 introduced many subtle changes which amount, in my view, to a basic change in the philosophic and policy settings which henceforth are required to underpin the way in which NSW Universities are required to operate.

The changes are complex, but, in simple summary, they set down requirements for all NSW Universities for the application of governance (which operates top – down) and accountability (which operates bottom – up) at all levels (including Governing Councils) in NSW Universities.

In so doing, Act 101 attempts to resolve the University dilemma in NSW Universities by introducing statutory duties of governance and accountability which will necessitate the assimilation of defined statutory duty with academic freedom.

In order to fully comprehend those statutory duties at UNE, I found it necessary to write a paper detailing the new scheme and requirements for governance and accountability, with particular reference to that part of Act 101 which applies to UNE. In this lecture I will call it “**the Paper**”.

A copy of the Paper is available (free of charge) by email - see the contact information at the end of this lecture.

4. Time for Independent Action Under Act 101 is Limited

By way of confirmation that my conclusion (in the Paper) that the time allowed by Act 101 for the adoption of its requirements by NSW Universities is now ending without adoption of the scheme of the Act occurring, I would refer to the recent written directive of the (NSW) Minister for Education to NSW Universities setting down mandatory content of the *Commercial Guidelines* (required of each NSW University by Act 101), and giving the Universities ninety days to adopt same.

In my view, the Minister acted because no NSW University had managed to submit acceptable individual *Commercial Guidelines* since the proclamation of Act 101 in March 2002 (i.e. nearly a year and a half ago at time of writing).

In my opinion, this Ministerial action was predictable and is likely to be the precursor of other such actions, if Universities continue to fail to implement Act 101, and its many requirements for governance and accountability.

5. The Way Forward

It is therefore necessary for me to say that, unless the content of Act 101 is well considered and understood by each NSW University, it is clear that a “hit and miss” process of conformity which will apply.

In a context of the Two Sides (*Free Enquiry v Good Management*), and the reality of continuing academic cultural resistance to change of a high order, a “hit and miss” process is bound to fail.

The result will be that, as in the recent case of Commercial Guidelines, the opportunity for NSW Universities to choose to apply Act 101 individually will therefore be superseded by further mandatory Ministerial and related action.

I suggest that the result will be that each of the Two Sides will thereby needlessly suffer prejudice, and the activities of the University will be disrupted as Ministerial and other orders are imposed and / or intrude.

On the other hand it is interesting to note my experience that academic staff gradually tend to come to accept and cooperate with statutory change when Act 101 is explained and the statutory imperatives, duties and implications are understood.

I would stress that, the timing requirements of Act 101 mean that it is essential, for satisfactory implementation of Act 101, that each NSW University forthwith determines to action the new scheme of Act 101, and that this action has the support of both the Governing Council and management.

6. The Special University Problem of “Academic Freedom”

It is not only historically that academics may forcefully remind administrative persons like you and me that the administration of a University is there solely to assist the academics as and when they may seek assistance; the corollary, which is less often proposed, is that one may speak to the academic staff only as and when one is spoken to.

To show that it is “alive and well”, I will confide to you that I have been recently reminded (by one of the Deans at UNE) of this mantra (i.e. that administrative staff are there solely to assist the academics when asked).

In fairness, I acknowledge that, before Act 101, New South Wales Universities had an argument under the (then) philosophy of the Act that the mantra was correct. So, that argument (and the mantra) were only really laid to rest by the proclamation of Act number 101.

It is perhaps not surprising that many academics are not aware of these changes wrought by Act 101, and, if aware, choose to feign ignorance.

The phraseology of “academic freedom” in the Act, as amended by Act 101, continues to be by way of the words “Free Enquiry”.

It is an evident encouragement to academics that the words “free enquiry” appear in the Act both before and after Act Number 101; I am sure that many academics will mistakenly or intentionally try to use this continuity as confirmation of “business as usual” as stated in that old mantra.

That is not the case, but it takes a careful assessment of the Act after Act Number 101 of 2001 to understand that the NSW government has substantially changed the philosophy of the Act and of the way in which academics may now pursue “free enquiry”. The hallmark of those changes is the statutory redefinition of a scheme of governance and accountability for NSW Universities.

Before we can consider the changed context of “Free Enquiry” in the Act, we need to consider two preliminary aspects of the Act, as amended by Act 101. These aspects are placed in their full statutory context in the Paper.

The first aspect is the definition of ‘University’ under the Act; the second aspect is the changed status of the liability of the Governing Council under the Act.

These two aspects come together philosophically as a result of the insertion into Section 6 of the Act of an **Object of the University** for the first time by Act 101.

7. The New Meaning of ‘University’ after Act 101

Under S4 of the Act, UNE consists of, and is defined as being constituted by, four elements or bodies; 1. a Council 2. Convocation 3. the professors and fulltime members of the academic staff, and 4. the graduates and students.

Under S8 of the Act, the Council is established and, by S8 (2), the Council “*is the governing authority of the University and has the functions conferred or imposed on it by or under this Act*”.

Now, in the Act, **prior to Act 101**, S16 set out the “powers” of the Council , **but nowhere were the ‘functions’ of the Council actually defined.**

This uncertainty of linkage between powers and unstated functions of the Council is philosophically and practically remedied by the insertion of a new S16 (1A) by Act 101. The new S16(1A) precedes the old list of powers of the Council in S16(1) of the Basic Act, which continues unchanged by Act 101, except for the introductory lines of S 16(1).

The new S16 (1A) provides, under the heading ‘Functions of the Council’, three newly stated functions of the Council which the Council must perform.

The first and primary function is that “*The Council (a) acts for and on behalf of the University in the exercise of The University’s functions*”.

The second function of Council is to have “*the control and management of the affairs and concerns of the University*”.

The third function of the Council is that it “*may act in all matters concerning the University in such manner as appears to the Council to be best calculated to promote the object and interests of the University.*”

As stated above, there was no ‘object’ of the University expressed or included in the Act until the object was finally inserted by Act 101.

In trying to answer the question: ‘what is a University?’, we therefore find that the University is quite unlike an ordinary corporation, whose shareholders are separate entities from both the Board and the corporation itself, and where the object (in the sense of its constitutional business target - as opposed to the contents of the Memorandum of Association of the corporation) is the achievement of a single and constant outcome- i.e. financial gain for the shareholders.

The University, on the other hand, **is** the combined group of Council, Convocation, staff and graduates/ students within the legal entity of a specialised statutory corporation. This single entity is quite different from the multiple components of an ordinary corporation described above (and, as I will shortly explain, is not subject to the Corporations Act).

Furthermore, and unlike an ordinary corporation, the object of the University combines a package of diverse functions which are primarily grounded in social and educational functions which are completely different from the commercial and financial imperatives which define the role of a corporation.

The wording of the first (and primary) function of Council, as inserted by Act 101, is that it “*acts for and on behalf of the University.....*”

This form of language imports significant governance and accountability implications into the way in which Council (and hence the individual members of Council) discharge their duties and implement the new University object.

In particular, the phrase “*for and on behalf of*” is referential to the language of trusts law which sets out a body of rules governing the conduct of persons who are in control of the property of others. Trusts law insists on the highest levels of probity, fiduciary obligation and accountability on the part of trustees. Although Council and its members are not actually characterised as trustees by Act 101, the level of governance, accountability, and probity (including fiduciary duty) imposed on Council by this wholly new provision of Act 101 is evidently similar to the stringent legal standards imposed on trustees.

8. Changed Liability of Governing Councils after Act 101

Pursuant to the legislative changes in Act 101, the trail of accountability in the University thus can be said to have to begin anew, starting at the highest level, the Governing Council itself, which now acts, **for the first time as a result of Act 101, “for and on behalf of the University”** in its exercise (only) of the Council’s (new) functions under S 16(1A); in turn those functions of the Council now exist (solely) for the promotion of the “*object of the University*”: and, in turn, **the object of the University is defined, for the first time, as the promotion of the (new) functions of the University.**

Accordingly, every activity and every action of the University at any level (no matter whether it is at the academic extreme or the commercial extreme or any point in between) must have its justification within this trail of accountability.

Any activity or action which fails this test will be outside the statutory limits of the powers of the University, and will therefore be ultra vires and illegal.

It should be carefully noted that the limitation on liability of Council members (S5 of Schedule 1 to the Act) extends to include persons acting under direction, but the limitation is only operative “*if the matter or thing was done in good faith for the purpose of executing this or any other Act.*”

Although (at the time of this writing) Act 101 has only been in effect for a little more than one year, and although the very nature of a University, as it is defined by Act 101, now implies that the process of adaptation to change in a University would not proceed at a fully commercial pace, there clearly is an imminent and finite limit to the transition period during which it could be said that failure to conform to the new statutory requirements did not breach the test of acting in good faith which is required to gain protection of the limitation of liability set out in S5 of Schedule 1 to the Act.

That is to say, ultra vires actions cannot be said to be done “for the purpose of executing this Act” unless protected by transition timing contemplated by Act 101.

The time has probably already arrived when “ignorance” of Act 101 could no longer be argued to still allow “good faith” to be asserted.

The result is that, in many cases, members of Governing Councils are now already exposed to continuous unprotected personal liability for their failure, as Councillors, to appreciate and adhere to the requirements of Act 101.

9. How the University Dilemma continues in NSW after Act 101

Remembering that the Two Sides are “*Free Enquiry v Good Management*”, the primary dilemma of Universities continues to be statutorily enshrined in NSW.

That is achieved in the new object of UNE, in S 6(1) of the Act, which “*is the promotionof scholarship, research, free enquiry, the interaction of research and teaching, and academic excellence.*”

This UNE statutory object definitively perpetuates a prima facie tension between the academic staff and management & administration; academics traditionally assert the mantra that “others” are only there to help them. The object prima facie corroborates that assertion, because, since Act 101, the Act requires that UNE focus at all levels (ultimately) on that object.

What then of the rest of the Act?

Is it also to be interpreted as only a mechanism to support academic freedom (called “free enquiry” in the Act)?

How is this statutory object to be implemented in an arena of pressure on Universities to prioritise financial performance and self – sufficiency?

This is the current primary dilemma of NSW and other Australian Universities.

I have said that Act 101 changes the old balance between the Two Sides. We must now consider why this is so.

We can note for the record a few of the more evident complicating factors : the University CEO, called a Vice – Chancellor, is an academic, often with precious little experience of management and/or the commercial “world at large”; the University, as a public educational institution, is a charity and not subject to income tax and therefore not subject to the accounting and audit scrutiny demanded by the income tax authorities; even within the academic staff, there are uneasy divisions of power such as those between Vice – Chancellor and Deans and elected Heads of School.

Furthermore, UNE is styled a corporation (S.5 of the Act). As a statutory corporation of New South Wales, UNE is therefore not subject to the Corporations Act, 2001. (One may refer to the complex scheme of definitions and exemptions in Part 1 of the Corporations Act).

The general trends in governance issues which relate to corporations under the Corporations Act can also be said to be present in the world of University governance. However, the primary source of rules governing UNE is actually and philosophically the Act, as amended by Act 101, and not the trends and rules related to the Corporations Act, 2001.

As the activities of Universities inevitably extend their commercial range and context, it is fair to say that the requirements of the federal corporate regulators may influence, even if they do not become a

formal part of what may be an association of some tension as the two different cultures seek a common ground on which to co-exist. Those tensions may be exacerbated where academic activities spill over into more and more commercial activity, highlighting tensions which are built into the very scheme of the Act.

10. New Functions of NSW Universities under ACT 101

There is a number of reasons why Act101 replaced the University functions in S6 with a new list of functions.

The paramount reason is the insertion, for the first time, of an object of the University in S6 (1) which I have mentioned above and which I now quote in full:

“6(1)The object of the University is the promotion, within the limits of the University’s resources, of scholarship, research, free enquiry, the interaction of research and teaching, and academic excellence.”

In the first place, one may note that the new reference to *“the limits of the University’s resources”* **itself** imposes, **for the first time**, a financial governance requirement into the (new) **object of the University** itself.

It may further be noted that this new object lists items of a substantially academic nature. In particular, as we have seen, *“free enquiry”* is one item included in the new object.

This new object should be very carefully considered in relation to the new functions which follow. On the one hand, *“free enquiry”* reflects the whole historical and philosophic *raison d’être* of universities.

On the other hand the primary definition of the (new) ‘principal functions’ of the University in S 6(2) is set out as follows:

“The University has the following principal functions for the promotion of its object”

That is to say, each and every function of the University must be read, interpreted and implemented in *“the promotion of its object”*.

This precisely reflects the re - balancing which the new object and functions of the University brings to the Two Sides.

This re – balancing of *“free enquiry”* with governance and accountability is reinforced by the (new) requirement that Council shall act *“for and on behalf of the University”*.

And, most importantly, one of the (new) principal functions of the University in (the new) S 6(2) provides for *“the development of governance....”*

(I will call this legislative provision **“the University Governance Factor”** or **“UGF”**).

The result is that governance is one of the (new) principal functions which promotes the (new) object. That is the way that the re – balancing now operates under the Act, and it is the way that governance is mandated into NSW Universities.

In respect of UGF, the introductory words are *“the development of”* and not, for example, *“the observance of”*. This clearly allows for a reasonable timescale within which such *“development”* may occur, but, as I have said, the transition period has either passed or its passage is imminent. How much

longer can “development” of governance realistically take to accomplish? Perhaps until the second anniversary of proclamation of Act 101 in March 2004.

11. Achievement of Governance Without Drowning in Compliance Paperwork

Having seen how governance and accountability are made into statutory duties under the Act by Act 101, I return to the question I posed earlier in this lecture:

“Surely, we would say, there is an effective way to combine law and morality in a methodology of governance and accountability which does not result in us all disappearing in a mountain of paperwork?”

The answer, like the recent Ministerial mandate on Commercial Guidelines, may depend on whether or not Universities in NSW rapidly embrace “the development of governance” on their own behalf. The example of Commercial Guidelines indicates that the signs are not encouraging.

Here is a further problem: the Act does not define “governance”, and, as we have seen, examples of governance methodologies, such as the referenced ASX Guidelines, vary widely and tend to bring with them a mountain of paperwork

Accordingly, I will try to begin to formulate a philosophic approach to governance and accountability which suggests that there may be a way to combine law and morality without disappearing in the compliance paperwork.

In so doing, I cannot yet say whether this approach to the definition of “governance “under Act 101 will be adopted.

It may also be noted that this formulation is a work in progress. It needs to be refined and then adapted to requirements and circumstances of each organisation.

12. How Leadership is Linked to Accountability and Governance

How often do you see a CEO or Senior Executive recruitment advertisement with selection criteria dominated by the following requirements?

“The successful applicant must:

- *Shape strategic thinking*
- *Achieve results*
- *Exemplify personal drive and integrity*
- *Cultivate productive working relationships*
- *Communicate with influence”*

I want to suggest to you that those (and many similar) selection criteria are all inter – linked, and are directed at one attribute which is not specified in the list. That attribute is “leadership”, in the way in which I am about to define “leadership” for you.

My definition of ‘leadership’ cuts across both public and private sectors and incorporates and explains, in a practical context, the associated requirements of governance and accountability. Hence, my explanation is titled:

13. Towards a Definition of ‘Leadership’

(a) ‘Us and Them’

If we look carefully at the three words ‘governance’, ‘accountability’ and ‘leadership’, we tend to think of the obligations of the directors and managers of a University, company or other organisation.

That is to say, we think of these three words as having meanings which relate to the controllers of any organisation; because we attribute these three words to acts of the controllers, we tend to relegate GAL to the context of the dilemma often referred to as ‘Us and Them’.

Thus, because we attribute GAL to the controllers of our entity or organisation, we often conclude that GAL should only apply to ‘Them’.

That is another way of saying that GAL are **not** for ‘Us’, or that GAL are **not our concern**.

As a corollary, we therefore also conclude that it is for ‘Us’ (i.e. it is our job) to accept the status quo created by ‘Them’.

A principal consequence of the above is that it leaves ‘Us’ powerless in our own actions in our working lives. We are thereby accepting that power is for ‘Them’ alone.

Why do we accept this, when we continue to assert outside work that we have, and will always defend, our basic rights and freedoms as fundamental to our way of life?

Thus, we assert in our general lifestyle that we are ‘empowered’; and yet, when it comes to the organisation where we work, we say that we have no power to act.

There are many fictions in our way of life. This workplace dilemma of ‘Us and Them’ is one of them.

But, in this case, there is a problem involved in exposing the fiction. That problem derives from that most basic instinct which we call ‘fear’.

It is not unusual for us to have to confront fear. In the military, where fear is a component of the nature of the work, it is accepted that the nature of the work means that it is ‘Us’ who take orders and ‘Them’ who lead and give orders. Military people at all levels are therefore trained to implement with unquestioning loyalty the orders given by ‘Them’ – that is, by their leaders.

Somehow, we have come to accept a somewhat similar regime in our ordinary work organisations.

We have many examples to convince us that this is the way in which the system works. We have come to believe that it is ‘Us’ who must follow the dictates of the system if we are to survive in an economic sense.

We are encouraged in this belief because those who make it to the top are those who are considered to be successful, and it is ‘Them’ who constantly remind ‘Us’ of this by their exercise of their power.

Even government and quasi – governmental rules affirm the correctness of this interpretation of how leadership really works as between ‘Us’ and ‘Them’.

(b) Reactions and Justifications by ‘Us’

Our primary reaction to the dictates we receive in our work from “Them” is, like a soldier, to follow orders without question.

This is actually a macro and a micro problem.

The macro problem is that our primary reaction is something which is an accepted part of the whole workplace universe and is seen in action every day on an organisation – wide basis.

The micro problem is more subtle. Every person has one or more “superiors” to report or account to; even the directors of the company or the governors of a public institution must report to others, be they ASIC, ASX, shareholders, a Minister of the Crown, the Auditor – General or others.

The result is very important. That result is that when “They” give orders to “Us”, “They” are not really **leading** “Us”. In fact, “They” have the very same problems as “Us”.

What does this mean?

It means that, although **orders** are given, there is often no **leadership**.

(c) Fear and the Need for Scapegoats

A very important result of **no leadership** is a refusal by “Them” or by “Us” to accept blame or responsibility when any initiative (or decision not to act) fails to “succeed”.

“They” blame “Us” and “We” blame “Them”.

And, in a curious way, all of us are right (correct) and all of us are wrong (incorrect).

We are all right (correct) because **none of us** (be it “Us” or “Them”) is a leader or giving leadership. Therefore, **none of us**, in our individual minds, is mindful to accept blame or responsibility for any failure to succeed. This syndrome goes from the top to the bottom of many organisations.

We are all wrong (incorrect) because **none of us** has gone beyond our fear – based reaction to our organisational system; **none of us** has realised that, unless we go beyond fear reactions, each of us (and all of us collectively) are acting without any **responsibility** for our actions.

That is because a fear based system requires people to follow orders blindly; however, when things go awry, and the fear reaction arises, we then seek to lay blame elsewhere. That is, we seek a **scapegoat** to take the blame.

We do that because we are convinced that “We” have no responsibility for the failure; we take this view, in turn, because we feel that we have no power to make a decision on a responsible basis in the first place

Even at the top of an organisation, the person will say “It is not my fault” and, when asked to explain, will probably say something like:

“If you want something done properly, do it yourself”.

In some organisations, even the top person feels that he or she is without that power (perhaps he or she blames the Board); that means that the organisation is rudderless, where responsibility is concerned, from the top (or near the top) down.

(d) Fear and Bravery are Different But are Part of the Same Continuum

Because fear and bravery are on the same continuum, they are nevertheless mutually exclusive in their operation in our daily work.

That is because that continuum works a little like this:

Terror: Fear: Equilibrium: Bravery: Leadership: Heroism

If we think about this continuum, we will realise that the process of overcoming fear involves multiple steps. Adopting the convenient words I have used to describe the continuum, we must go from fear through equilibrium to achieve a status of bravery. Equilibrium is the conduit because, as I have said, bravery cannot co – exist with fear; therefore equilibrium, which means “an absence of fear”, must intervene to permit the emergence of bravery.

Now, I have said that “leadership” is a step beyond bravery. That step needs to be well understood. A soldier in the military may be recognised by one and all as a very brave person. That soldier may be decorated by his or her country for bravery. However, a brave soldier is one who still accepts and carries out the orders of his or her superiors without question.

On the other hand, a leader is a person who is not willing to accept and carry out orders simply because they are given. Therefore, **a person who is a leader is not the same as a person who is brave.**

(e) Who Can Be A Leader?

Here is the most important point of all:

Any person can, and every person should, be a leader at all times.

It is not sufficient to be a leader only when one is appointed to fill some top post in an organisation. That is because **it is the duty of every person at every level of the organisation to be a leader at all times.**

It follows that persons appointed to top positions in an organisation may very well not be leaders. In fact, if the organisation is characterised by:

- Reactions of fear
- Scapegoating
- Rudderless reactions and / or unpredictable decisions
- Unwillingness to acknowledge and /or combat problems

you will be correct to assume that the top persons are not leaders and that the “management” of the organisation is without good governance.

(f) Why should every Person Aim to be a Leader?

Leaving aside the military, there are four main reasons why every person in every organisation should aim to be a leader:

- It is the paramount way to achieve responsible actions.

- Fear and its consequence, scapegoating, cannot co – exist with leadership. Leadership denies the presence of fear.
- Leadership is inspirational to those around. By inspiring others to also become leaders, a single person, over a period of time, from a lowly position, can actually cause visible change in the culture of a fear – led organisation.
- Because leadership derives from personal responsibility, it is the best route to **accountability** and **good governance**.

(g) Leadership and Governance

Before we analyse and define ‘leadership’ itself, we must connect leadership to good governance and accountability.

Leadership and **good governance** are mutually inclusive, the one of the other.

As we have seen, there is a significant difference between “**governance**” and “**good governance**”, whereas “**accountability**” and “**responsibility**” are statements of a level of final achievement.

Why do we often refer to “governance” when we should refer to “good governance”?

The answer to this question is that the references to “governance” mostly serve to highlight the lack of understanding of these issues in our community.

As I have said, “governance” is “top – down”. The Act recognises this, as does practice in most organisations. Therefore, those at the top are responsible for their own acts **and** the acts of others in lesser positions below. If a person at the top acts without proper regard to the requirements of governance, that is called poor governance. On the other hand, where a person is acting properly at the top, that is called good governance.

On the other hand, “accountability is, as I have said, “bottom – up”. That is because “accountability” is representative only of personal responsibility, or the governance by each person of himself or herself, but not of others.

And yet, and this is an important paradox, we all recognize and are influenced by a person who we see as acting accountably.

We will now connect “accountability” directly and definitively to ‘leadership’.

(h) The Essence of Leadership

We have seen that **leadership** is in the eye of the beholder (that is, it is seen by others). And I have said that **any person at any level of any organisation may, by his or her own actions, become a leader**.

And I must tell you that “accountability” reflects and is the mirror image of, the **essence of ‘leadership’** which is itself the content of **governance** of each person by himself or herself. **It follows that if most people in an organisation act accountably, the organisation will be cohesive and will have good governance**

Therefore we must explain the essence of leadership.

The essence of leadership is that a person will become a leader if the Rules of Action are followed with good faith in an organisational context.

In implementing the Rules of Action, a person needs to constantly bear humility in mind; that is because leaders have power, and power abused is the anathema of good governance and accountability. **The Rules of Action presuppose such regard for humility.**

(i) The Rules of Action

The Rules of Action which follow are in the first person because they are like a personal work template.

1. In every action, the **person acting** is the leader. I always think about “leadership” before I act.
2. I **care** about how I act, and always act to the best of my ability.
3. I am **not afraid** to act accountably because I know that I will be supported by all leaders.
4. **Urgent matters** demand urgent action by every leader.
5. **“Me”** is one face in my team. My team will grow to be a cohesive group of leaders.
6. **Every act** of every person is multiplied in its effect in the eyes of all beholders. This informs the organisation’s culture.
7. The door of every leader is an **“open door”** for “all comers” at all possible times.

(j) The Three Pillars of Good Governance and Accountability

The Three Pillars of Good Governance and Accountability are also in the first person:

1. I apply the **Rules of Action** in order to be accountable and to foster good governance.
2. I am **accountable** when each of my actions is done with care in the sole interests of my organisation. This obliges me to always
 - act bona fide in good conscience;
 - respect legal, fiduciary and policy duties; and
 - declare and properly action any conflict of interest.
3. **Accountability** is personal from the “bottom - up”. **Good governance** is the correlating “top – down” cohesive application of accountability by all persons in the organisation.

That is to say, we can define “governance”, in its top – down aspect, as macro application of the Rules of Action by each person, especially those at the top of any organisational team.

“Accountability”, in its bottom – up aspect, is then the micro application of the Rules of Action by each person at an individual level.

Thus we begin to answer the question we posed earlier in this lecture:

“Surely, we would say, there is an effective way to combine law and morality in a methodology of voluntary governance and accountability which does not result in us all disappearing in a mountain of compliance paperwork.”

The emerging answer, which needs a great deal more consideration, is that governance and accountability coalesce in a simple moral strategy, which I call the Rules of Action, and which require little or no compliance paperwork or supervening legislation.

14. A Tentative Conclusion: How Leadership leads to Value

In the topic for this lecture I referred to philosophic issues. Perhaps it will be useful for us all if we ponder some philosophic issues so that we can try to end this lecture with a philosophic approach that we can usefully apply into the future.

In so doing, I will try to suggest that leadership has value beyond the daily aspects of a workplace; if you agree with my suggestion, it may be that we can also thereby add an increment of personal value in our wider lives.

At first sight, small incremental steps over a long period seems a very mundane, even boring, prescription with which to inform the methodology of a working life.

However, if we think over carefully what I have said, we may find that most people recognise (perhaps grudgingly) that the following two aspects of human activity (among others) have value, and will, with diligent application, in some way lead to an enhancement of value in what we call our “working lives”.

Those two aspects of activity are:

- Persistence; and
- Morality.

It is my submission that, in the language of the vernacular, these two aspects can be said and seen to be part of the moral substrate which I have defined as “leadership”

Now, although the material demands of corporate life tend to lead in other directions, it is actually quite a simple extrapolation from “persistence and morality in a working life” to “quality of life”.

That extrapolation is actually a reflection of the methodology of leadership from the workplace into one’s daily life in general.

The current trends to “legislate morality” to which I have referred are neither necessary nor effective by comparison, although they may constitute a “wake – up” call which many of us need.

Philosophically, we can then pursue the idea of leadership in our daily lives and into questions of our general view of personal accountability.

I will here refrain from such pursuit because it will inevitably obscure and probably divert our professional purpose. That, in turn, is because people will tend to thereby divert their attention into the cusps of the arena, which here leads directly to moral and religious codes. Such codes are not germane to this lecture.

I will, however, finish with a short remark on this aspect, which must be put aside for another forum on another day.

If we consciously and constantly pursue leadership, as I have defined it, in our working lives, we will find that it gradually percolates into our daily lives in general. In this way, we will find that we have gradually infused our lives with value which cannot be attained in any other way; in particular, it cannot be bought for any amount of money.

That is to say, we can now philosophically describe a continuum which includes along its path the concepts of governance and accountability in the workplace on the one hand, and the moral basis of our general lives on the other hand.

It can be said that that continuum is to moral philosophy what DNA is to genetics.

And like DNA, because that continuum is thereby only partly understood, I commend each one of us to pursue our understanding of that continuum at a personal level and by persistent incremental steps.

NOTES

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