



Colluding on Culture - Condoning Corporate Anarchy

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A client of mine was talking to me about their previous job as internal legal counsel for a professional services firm. His first week in his old job was particularly memorable, he reminisced. A distressed employee had come to him with a formal complaint alleging sexual harassment against one of the senior partners. As he dug a bit deeper he found that this was but one in a string of allegations by different women in the firm including a couple who'd left and talked about his sexual intimidation and offensive behaviour in their exit interviews with Human Resources. Counsel admitted to me that his first thought was "If this is true, it's outrageous and must be stopped". He then admitted his second thought hot on the heels of the first was "Groan, why me... and why this week?" Notwithstanding, he took a deep breath, approached the partnership and readily gave unequivocal advice on what he thought was in the best interests of the firm if the allegations were substantiated. However in stark contrast and to his consternation, he found their equivocation on what to do with Mr. Million Dollar (annual billings) Man quite pronounced. Following investigation, the partner was exited from the business but not without some sweaty palms, some real chagrin and not a little anger, some of which was (mis)directed at Counsel aka bad-news-messenger-on-probation.

In past months from sport to finance to retail we have seen careers destroyed, commission determinations handed down and arguments rage on blogs all over Australia as people consider the issues, the evidence and opinions before them, and make decisions on who to back and why? Did Kristy Fraser-Kirk over reach and eclipse the big issue? Should she have settled or did that let the team down? Who is to blame for the credit-default swaps that nearly brought down Greece? Should we be punitive or compassionate on drug addiction in sport (à la Ben Cousins)? The common denominator in so many of these cases which have provided such fertile ground for supposition, critical analysis, newspaper editorials and good old fashioned water cooler gossip is a much more serious and fundamental issue and that is one of organisational culture and the lawlessness that can take hold of an organisation that either refuses, or in the context in which it operates, is powerless, to act.

I feel very frustrated and a little betrayed. I have consulted to companies like those represented in my examples. I have met outstanding, well intentioned, principled individuals wanting to improve their organisations, serve their communities, provide value for their shareholders and drive performance cultures. They commit no crime asking their people to do an honest day's work for an honest day's pay and even that endeavour is sabotaged by those who see that accountability culture as a threat to working life as they know it.

This is not necessarily the fault of unions or lazy or opportunistic employees but also an IR system (on any side of politics) that attempts to demand natural justice but in its application defends the indefensible. But poor performance doesn't usually bring down organisations. Scandal does. Scandal borne of corruption, dirty politics, ruthless game-playing, or cowardice.



Culture is ubiquitously defined as “the way things are done around here”. Note the distinction between how things are *done* and official mantra, company rhetoric, policy and even, relevant instruments of law. It’s what we do and allow others to do that says more about who we are and what matters than any elegant vision and values statement sitting behind perspex in board rooms with marble and fresh flowers everywhere.

I would characterise organisational culture more pointedly. I would rather define culture as what we are and aren’t prepared to put up with. It is when we are tested that one understands the true character of both a person and an enterprise. Jan Carlsson, former CEO of the Swedish International Airline referred famously to watershed moments in customer service as “moments of truth”. Organisations face “moments of truth” in the context of culture. Behaviour that is *committed* (when it didn’t have to be) is one moment of truth. Bad behaviour *called* once it’s committed says something about the integrity of people who won’t sit by and watch bad stuff perpetrated. But the third and very telling moment of truth is when behaviour is *consequenced*.

At the risk of appearing to be name dropping shamelessly (and sorry, without names) I was doing coffee with an AFL Football Club president some time back when he politely excused himself to take a call following “Mad Monday”. He was particularly interested in whether or not anything was likely to blow up in the media that could cause anguish for the Club. When assured by the senior player who’d rung him that nothing untoward happened, I heard my coffee companion ask why. The simple answer coming back was “because we knew there was no way (Coach) would wear it”. If clear and reasonable boundaries of behaviour are set in a healthy culture where people are committed to the team, its vision and are protective of brand, most if not all can be relied on to do the right thing.

Having said that, many if not all of us have had a sudden rush of blood to the head and said or done something we wished we could take back. But when we do step over the line, *is that behaviour called?* Religious dogma would suggest that if we witness and don’t act; it is as if we committed the act ourselves. It is not just when we’re young and at school that others drop their gaze, shift uncomfortably in their seats, laugh nervously for fear of being next; sheepishly and tacitly condoning aggressive or ridiculing behaviour. It is undoubtedly happening in a boardroom somewhere near us all right now.

Have you ever wondered about corrupt business practices? Do those who *do* never get witnessed by those who *don’t*. Unlikely. How does a crooked cop, (and I believe they are in the overwhelming minority), a drug-addled athlete or a defiant trading floor sharebroker keep doing what they’re doing and remain part of an insidious in-crowd? At the risk of sounding naive, how shameful to think that supposed cleanskins working in corrupt environments sit by apathetically, or gutlessly and turn a blind eye to shonky practices, intimidation of others or smear campaigns. And if fear of retaliation is the reason, how reprehensible to think that anyone might work in such a climate of fear that speaking up could result in harm to themselves or their families? Something or someone has undoubtedly failed them. But potential dramatic and life threatening consequences for speaking out are not the common condition. In many situations there will be those bystanders who unreservedly disapprove but hold anti-dobbing policy as sacrosanct as ethical business practice or clean policing. It may be that Fraser-Kirk asking for \$37M was an awful lot of money from one defendant and one company. Divide that by the number of people who may have known what was going on and



did nothing about it, and maybe we can understand it. The DJ's case was as much about alleged observers and bystanders as it was about a perpetrator.

How many of us come forward when push comes to shove? You may recall the Ocean Grove Football team assault case of 2006. According to the magistrate who heard the case, certainly not the bus driver (who "could have done more") or other members of the drunken group of Ocean Grove footballers watching a mate torment an orthodox Jew walking down the street with his two small children; not former corporate executives listening to others talking about Nazis and gas chambers and how Hitler should have done a better job; not staff of the West Coast Football Club who counselled and cajoled errant players but evoked no consequences until it was too late. And why? Because Cousins when he played there was a demigod and only mere mortals have substance use problems.

And what of behaviour *consequenced*? The Amcor Board took decisive action and sacked several of its executives in the wake of the price fixing allegations that emerged in 2004. Christine Nixon as chief commissioner of Victoria Police attempted to do so two years ago when she sought powers to suspend and/or dismiss police over serious matters and still some police members cried foul and still the Police Association defended them to the death. What does someone have to do in this country before an organisation can cut the tangled parachute for the sake of others? What about the casualties of war along the way including organisational brand and public confidence? Why should thousands of other dedicated and decent sworn and unsworn staff of Victoria Police have to pay a price?

In an era where companies are obsessing (yes, right word) about how to hold on to good people, why give them the cringe factor about their employer as collateral damage? What do scandal, corruption and poor culture mean for the collective esteem of those who work in an organisation where bullies, sociopaths, misogynists, bigots and narcissists rule the roost either formally or informally? What respect exists for senior managers who may not perpetrate such bad behaviour but effectively condone it because the perpetrators are popular and charismatic, opinion leaders or money makers or well-connected to the right people and therefore become Teflon-coated?

It is imperative in a civilised democracy country like ours that there are laws and regulations that obstruct impassioned managers wishing to jump the gun on process and punish or exit staff without the punishment fitting the crime or worse still, where no 'crime' was committed. Thus the means to uphold the principles of natural justice must be fundamental to any workplace relations regime. The system must make it difficult to do the wrong thing but if we are going to jealously guard good culture, it must not be almost impossible to do the right thing.

Undoubtedly many organisations make brave decisions every day about what they will or won't put up with. The context in which they operate must support that and where an employee can always cite custom and practice as a reason why things shouldn't change, ethical management will draw a new line in the sand, ensure everyone can see it and demand that everyone respect it or expect to face the consequences. A Spanish proverb notes that every cask smells of the wine it contains. We will inevitably be judged by the company we keep and what we condone and reward in the people that work in our companies.



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