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Editorial

With this issue (Volume 5, Number 4) the *Journal of Business Systems, Governance and Ethics* completes its fifth year as a peer reviewed online journal. We have every intention of continuing to produce the journal for many more years to come.

The first article in this issue: *The Failure of Professional Self-Regulation: The example of the UK Veterinary Profession* is by Eddie Blass from the University of Hertfordshire in the UK. In this paper the author argues the case for professional bodies to lose their right to self-regulate wholly within their membership. He uses the example of an analysis of six cases reported to the Royal College of Veterinary Surgeons (RCVS) as cases of false certification in the last 3 years to demonstrate that self-regulation allows moral integrity to be sacrificed at the expense of economic imperatives and that individual judgements are preferenced over fair process and procedure. The need for professional regulation beyond those provided by the professions themselves is presented if only by the inclusion of lay-people in professional disciplinary hearings.

Michael Segon, from RMIT University in Australia, next presents an article on *Managing Organisational Ethics: Professionalism, Duty and HR Practitioners*. In the paper he poses the question: after almost 20 years of researching, teaching and consulting in business and organisational ethics, this emerging field seems to be facing an organisational dilemma. Who should manage the ethics and integrity systems that are slowly being adopted by Australian firms? Segon notes that during consulting engagements with numerous Australian businesses it has become clear that the task of managing ethics and integrity systems (- creation of codes of ethics, ethics committees, information programs, conducting of audits, etc) more often than not seems to be delegated to Human Resources Managers and their Departments. This trend appears to be unique to the Australian setting and contrary to the US where Ethics Officers and Compliance Officers assume this role. This paper then considers the question of who is appropriate to manage the ethics function in the Australian context.

Next is an article: *Using New Technology for Remote Witnessing of Legal Documents in Victoria* by Adam Darbyshire, from the University of Melbourne, and Paul Darbyshire from Victoria University, Australia. The article notes that current legal requirements concerning the witnessing of affidavits and statutory declarations require the physical presence of both the authorised witness and the deponent, but that this can be time consuming process and seriously disadvantages people in remote rural areas and even those in urban areas with transport problems. Although current laws will not at this time permit this process in this paper the authors outline a strategy for remote witnessing of documents that could be considered both secure and transparent for the legal process. The paper additionally presents the results of a survey undertaken to obtain comments from legal practitioners on this proposed method of remote witnessing.

The final article: *Lessons from the Twin Mega-Crises: The Financial Meltdown and the BP Oil Spill* is by Hershey H. Friedman and Linda Weiser Friedman from the City University of New York, USA. It explores the synchronicity of two mega-crises now faced in the US: The BP oil spill and the repercussions of the 2008 financial meltdown and examines some key common threads in both of these crises. The overarching message of the article is that firms must maintain a culture of social responsibility, must behave in an ethical manner, and must do everything possible to avoid societal harm.

Arthur Tatnall
Editor

The Failure of Professional Self-Regulation: The Example of the British Veterinary Profession

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Abstract

This paper argues the case for professional bodies to lose their right to self-regulate wholly within their membership. Using the example of an analysis of six cases that were reported to the Royal College of Veterinary Surgeons (RCVS) as cases of false certification in the last 3 years, this paper demonstrates that self-regulation allows moral integrity to be sacrificed at the expense of economic imperatives, and individual judgements to be preferenced over fair process and procedure. Five of the six cases presented in this paper were upheld by the professional body and the sixth was dismissed and went through the British legal system instead. Narrative analysis of the case reports reveals a lack of consistency in the professional body's analysis of motive, causal connections, responsibility regarding implications and their role as either purveyor of standards or mentor to the profession, which has resulted in anomalies that leave the profession in disarray. By failing to act 'professionally' itself, this paper argues that the RCVS itself has undermined five of its own ten guiding principles, and hence can no longer regulate its own membership. The need for professional regulation beyond those provided by the professions themselves is presented if only by the inclusion of lay-people in professional disciplinary hearings.

Keywords

Professional bodies, self-regulation, moral integrity, economic imperatives, British legal system

Introduction

Since the 1990s the privileged position of the professional has started to be questioned. The accounting profession were one of the first to come under what I would call 'professional scrutiny'; that is, being questioned with regard to the application of quality standards and self-governance, with the attention of media, government and society eroding the reverent position of elite esteem. Cooper et al (1994) note that a number of scandals cast doubt upon the established independence and trustworthiness of the accounting profession and they highlight the continual engagement of those involved in maintaining status and regulation with significant others such as politicians, civil servants, journalists and academics, who have their own agendas. The concept of a professional stems from a power discourse based on claims to self-regulation, independence and expertise, reliant on the shifting material conditions upon which the stability of this ideology depends. Frankel (1989) argues that the profession as an institution in itself serves as a normative reference group for its individual members and through its various codes of ethics and practice clarifies the norms that ought to govern professional behaviour. He identifies three types of codes: aspirational; educational and regulatory. This paper questions whether codes which are represented to the public as regulatory are actually being treated as aspirational by professional bodies in their practice of self-regulation. Professional bodies create a

balance against state dictat, however this position is open to abuse when they themselves are both self regulating and concerned with promoting their own self-interest. This is particularly the case in professions where the practices are very lucrative. In a business world where social and ethical issues are becoming increasingly important to consumers and society, the continuation of self regulation of lucrative professions needs to be considered.

The debate surrounding the definition of 'professional' can be categorised into four areas: the definitional controversy; the debate about the process and implications of market closure and social closure; the ethnographies of professional work; and the histories of particular professions (Neal & Morgan, 2000), none of which may be mutually exclusive. For example, Abbott (1988) exemplifies the sociological perspective which focuses on the role of the professional in society. He also questions the way in which groups control access to knowledge and occupations, viewing professions as a form of occupational control within society, such that not everyone is licensed to practice as a professional in their field, moving into the second area of debate – that of market and social closure. Lawrence (2004) also focuses his attention on group membership seeing the concept of membership as being the base of legitimate participation in a social arena. Membership in professional fields is demarcated by specialised knowledge safeguarded formally by universities and professional associations and informally by culturally entrenched understanding of the meaning of professional work. Indeed the Royal College of Veterinary Surgeons (RCVS) guide to professional conduct states 'foster and endeavour to maintain good relationships with your professional colleagues' as one of its 10 guiding principles (RCVS, 2008a). The danger is that this becomes somewhat incestuous. Koehn (1994) argues from a historical perspective that 'professional practices qualify as morally legitimate because, and to the extent that, they are structured to merit the trust of clients….Professions are not mere ideologies but inherently ethical practices.'

Eraut (2000) focuses his definition of professional around the ideological aspect of what professionalism should be about, taking a more normative perspective. He argues that there are three central features of the ideology of professionalism: a specialist knowledge base; autonomy, and service. He is clear about separating the professional themselves from the professional body, a rhetoric that is difficult to enact in reality as professional bodies are themselves constituted by and representative of the group of individual professionals. By separating the professional from the regulating body, the establishment of the professional as a professional becomes somewhat unsound.

The concept of 'the Professional' was traditionally beyond reproach. The fact that the professions were given the right to self-govern by Royal Charter, and were legislatively established meant that their history was one of elite esteem and reverence by society generally. It was believed that only the professionals themselves have the expertise to regulate their peers. Quinn et al (1996) see professionalism as stemming from a knowledge base. They suggest that the true professional commands a body of knowledge - a discipline that must be updated constantly. This is represented within most professions through the idea of 'continuous professional development' (CPD), with some professional bodies going so far as to state a minimum requirement of CPD per year. Another example of the RCVS's 10 guiding principles is to 'maintain and continually develop your professional knowledge and skills' (RCVS, 2008a).

Arguably, the idea of the professional as being the backbone of society is under threat. Dent & Whitehead (2002) see a shift in how professionalism is measured from the perspective of morality and ethics shifting towards a regulatory perspective. They view the professional as someone who was traditionally trusted and respected; an individual who was given class, status, autonomy, and social elevation, in return for safeguarding our well-being, and they apply their professional judgement on the basis of a benign moral or cultural code. Now, however, they observe an audit-based measure of professionalism as agencies and organisations are being held to account by measuring process and performance and enforcing a regulatory framework. This has arguably arisen from the moral dilemmas the professional's face when balancing their interest in making money with their ethical responsibility as a professional.

Power and economic discourses interact clearly here. A survey of Industrial Hygienists in America found the greatest reason for ethical misconduct was economic pressures, followed by on-the-job

pressures (Burgess & Mullen, 2002). Competitive pressures and the need to meet client demands were recognised by Nelson (1984) as leading solicitors to adopt what he called 'ethical tunnel vision' as far back as the 1980s. Davies (2005) notes that the current regulatory system for solicitors is built around an older version of professionalism, when the profession served individual, non-influential clients rather than large, powerful corporate entities. The legal profession in the UK, having been criticised for its handling of professional complaints on a number of occasions[1], has devolved its regulatory body from the Law Society to the Solicitors Regulatory Authority in a move to retain its independent professional status and avoid independent regulation.

Friedson (1986) specifically focuses on the power relationships that professionals carve out within society, viewing professionals as the agents of formal knowledge. In questioning the difference between professionals and amateurs, Friedson reflects on how people in a society determine who is a professional and who is not; how they make or accomplish professions by their activities and what the consequences are for the way in which they see themselves and perform their work. This external esteem is a source of power and reflected in many professional codes of conduct, for example 'upholding the good reputation of the veterinary profession' is another of the RCVS's ten guiding principles of professional conduct (RCVS, 2008a).

The question arises as to whether or not such power leads to a sense of authenticity amongst professionals. Kosmala & Herrbach (2006) examined the way in which professionals behave in their workplace according to the expectations of their peers and other societal groups, and concluded that professionals are playing their role rather than being, such that differences can arise between the image professionals portray and who they really are. This is arguably what led to the scandals within the accounting profession and the devolvement of regulation within the legal profession to an alternative regulatory body to the body which represents the professionals themselves.

Friedson in his later work (1994) questions the extent to which there is a domination of professional power in Gramsci's idea of intellectual hegemony, or whether there is a steady decline of professional power that he describes as deprofessionalisation, proletarianization, rationalization, bureaucratization or corporatization. He views the professions as having no intrinsic resources other than their command over a body of knowledge and skill that has not been appropriated by others. Hence he questions whether they are losing their position of prestige and trust in society and within large organisations, are they losing their autonomy and control? At the crux is the question of whose interest is the knowledge being used for.

This paper argues that professionals are indeed losing their 'professional power' but that this is not due to proletarianization, rationalization, bureaucratization or corporatization, but rather to the 'deprofessionalisation' of the 'professional body' – that which exists to maintain the professions prestige and trust in society, and autonomy and control. It is the balance of power between the individual and the professional body that is undermining the concept of the professional in current times, as the collective appears to exploit the moral weaknesses of the individuals rather than their strengths. Macdonald (1995) argues that individuals construct their careers and professional identity as social participants in the professional body, noting that the balance between personal integrity and group monopoly in an economic system is an uneasy one. The balance between upholding the 'being' of a professional and the moral responsibilities that comes with that, and 'promoting the profession' and the income generation possibilities that attract people to the profession is a difficult balance to maintain within a professional body. This paper argues that the two should be separated out, to keep the business promotion from the business regulation, and place the professional bodies within the regulatory frameworks that apply within other regulated industries and sectors such as financial services.

The concept of professional bodies self-regulating their profession dates back to the 19th Century, with the clergy, lawyers and doctors carrying the status of the 'original' professions. Self-regulation manifests itself in a number of formal and informal mechanisms. The formal mechanisms are the

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1 The Fabian Society published a call for independent regulation in 1998, followed by the Lord Chancellors Office in 1999 and 2002, leading to the Department for Constitutional Affairs enquiry chaired by Sir David Clementi reporting in 2005.

codes of practices, rites of entry, and processes put in place to manage the professional membership. The informal mechanisms are shaped by professional etiquette and ethics that shape the formal mechanisms. Such etiquette suggests within the professions that it is wrong to criticize a fellow professional's behaviour (Rosenthal, 1997). As such professional bodies have increasingly come under public scrutiny for their failure to self regulate. In the 1990s a number of high profile misconduct cases within the medical professions resulted in the 1999 NHS Bill giving more widespread powers to the National Health Service (NHS) to make changes in the machinery of regulation of the health professions (Davies, 2000).

The Veterinary Profession in the UK, through its professional body The Royal College of Veterinary Surgeons, provides us with a perfect example of a professional body that is failing at its own self-regulation, losing the balance between integrity and economics. Through some very public and appropriate evidence stemming from a number of recent disciplinary cases, they have failed to take appropriate action in some cases and in others their action has been unjustifiable, as they continually confuse their responsibility to the public with regard to market and social closure, they abandon the histories of their professional colleagues, and leave the definition of their professional boundaries to the law courts who have been involved in a number of cases which should have been dealt with within the profession itself. This has left the RCVS as no more than an administrative entity offering a bureaucratic service to a beleaguered profession.

Methodology

As with all forms of discourse analysis, it is important to be reflexive with regard to the author's interpretation, to identify the lens that the paper has been conceived through. As a former member of faculty in a Business School, and now an academic in a School of Education specialising in 'Professional Learning' the author has already researched and published in the field of defining professionalism and professional learning as bounded entities (see, for example, Blass, 2007). Having owned horses for many years, the author has been interested in the operations of the veterinary profession and the extent to which business and professionalism contrast. Ask any horse owner and they will tell the first question every vet asks when attending to a horse is 'is the horse insured?' The financial stability of the client should be established when registering with the practice, not when the horse needs diagnosing and treating. However, the diagnosis process and treatments vary according to the answer to this question suggesting the business and professional boundaries are often blurred. Finally, the author was involved in an incident with a vet over the purchase of a horse which she believed to be false certification but the RCVS threw the case out without even considering it before a disciplinary committee. The case went to the courts as a professional negligence case and lost. The author started an enquiry through a rigorous exploration of other cases into why these were the outcomes and carried out a narrative discourse analysis of other cases of false certification reported to the disciplinary committee for a comparison.

This paper uses what Lee (2000) calls 'unobtrusive research methods'. That is, the data used for analysis was not directly recorded for the purposes of the investigation, but rather was freely available recordings of occurrences within the profession as reported on the RCVS website, the All England Law Reports, and other media reporting and correspondence that occurred at the times of the incidents in question. Marx (1984) argues that researchers should make better use of information generated by investigative, legislative and judicial bodies, although the data is not unproblematic as witnesses will have been selected for a reason and hence may not be truly representative. As such, they are treated as narratives, as stories of what the cases involved, outlining a sequences of events that occurred and were reported for a particular purpose. It is the story of the events that is of interest rather than the way in which they reported and, as such, it is the narrative that is the focus of the analysis rather than words themselves. The data therefore selected for this analysis were the reports and findings of the RCVS disciplinary committee and their judgements as published on their website, and the correspondence to and from the RCVS including the case and defence presented in the author's case and findings from the court judgement. All documents relating to the latter case are in the public domain as they were presented to the courts. All this data was freely available in the public domain. In addition they were selected because of their capacity to illustrate the issue concerned, the sentiment

attached to it and the affective states that surround it, as outlined by Webb (1981) in his generative taxonomy of unobtrusive measures.

The data has been analysed using a meso-discourse analysis of narratives, looking at each reported incident to unpack the sequencing and patterning of events and the meaning-making that surrounded them. A template was created to record the stories with particular focus being placed on the following elements which were reported in all the incidents:

a) attributing motives of the defendants with regard to both their actions at the time and the way they approached their hearings;
b) causal connections with regard to outcomes for the animals concerned and the parties involved;
c) responsibility of the vets to the profession;
d) the respective roles of the RCVS and law courts.

The cases were selected as they are all the cases within the 3 year period 2006-2008 inclusive which address the issue of false certification according to a scrutiny of the cases listed on the RCVS website as having been considered by the committee. The issue of 'false certification' is stated as one of the guiding principles of the veterinary profession and one of three named offences which amount to gross professional misconduct. As such, it should be a core principle being upheld through the process of self-regulation.

Results

The details of the cases are presented in turn before a comparison table is presented.

Case No 1: In September 2006, Mr Lyndon Basha was found guilty of four charges of disgraceful professional conduct relating to mistreatment of animals and false certification by signing an insurance form for an uninsured animal as if it were another insured animal. Mr Basha qualified as a vet in Queensland and was exceedingly apologetic for his errors and fully admitted responsibility and remorse to the committee. A number of animals were clearly mistreated (and arguably suffered) as a result of Mr Basha's actions and an insurance company was involved in a false claim. The disciplinary committee postponed judgement for 2 months pending an outline development plan, and then a further 2 years for this plan to be implemented to ensure that Mr Basha was redressed his issues of incompetence during this time through CPD, supervision by mentors and other activities agreed with the committee. At the end of the two year period, the disciplinary committee held that in respect of the clinical charges 'Mr Basha is now a competent veterinary surgeon and has decided to take no further action against him. However, the committee takes the issue of false certification very seriously and therefore has decided to issue a reprimand to Mr Basha in respect of his conviction of the Insurance Certification charge.' (RCVS, 2008b)

Case No 2: In January 2007, Mr Alan Walker was found guilty of two charges of professional misconduct relating to the mis-dating of vaccinations in race horse passports. Mr Walker admitted to his offence and noted that it had been wrong, but offered a justification as to why this was not gross misconduct. No horse appears to have suffered as a result of his action, and neither did any owner. He had simply failed to comply with the Jockey Club's rules. Mr Brian Jennings, Chairman of the Disciplinary Committee, said: "We regard any false certification as being an extremely serious matter because it weakens the confidence of the public and damages the integrity of the profession. We acknowledge in Dr Walker's favour the frankness of his admission of the facts, but consider that he ought to have known the significance of his actions, which have fallen far short of those which are expected of a veterinary surgeon. The only appropriate course is to remove Dr Walker's name from the *Register*." The Committee also noted Mr Walker's seniority within the profession and his particular standing and expertise within the racehorse community, regarding this as all the more reason for such a severe punishment. This case then went to the law courts and the Privy Council heard an appeal against the decision of the committee on 30 October 2007. While upholding the charge, it reduced the sentence to a six month suspension as the grounds for the severity of punishment were unfounded. (RCVS, 2007a)

Case No 3: In June 2007, Mr Paul Hallum was suspended from the veterinary register for a period of two months for falsely certificating a horse as sound. The circumstances were peculiar in that the certificate had been requested for one purpose and used for another. In essence this was an issue of a vet dictating a letter over the phone and getting it sent out, signed on his behalf, without checking his records. Mr Hallum apologised profusely for his wrongdoing, fully admitting the error of his ways and outlined the steps he would take to ensure he did not repeat such an offence. It is unclear as to what the outcome for the horse was in this case, or indeed for the new owner as no evidence to this effect was presented in the findings. Mr Brian Jennings, Chairman of the Disciplinary Committee said: "We wish to make clear the importance and status of any document signed by a veterinary surgeon that another body might rely on."

Case No 4: In October 2007, Mr William Morris was removed from the veterinary register for false certification of a horse in a pre-purchase vetting examination. Chairman of the Disciplinary Committee, Mr Brian Jennings, said: "Members of the public are entitled to expect a member of the profession to act with integrity, probity and trustworthiness and any failure on the part of a veterinary surgeon to meet those high standards damages the public's perception of the profession." The disciplinary committee were sure that Mr Morris signed the certificate when he knew that there were signs of disease or abnormalities with this horse, despite the fact that the horse appears to have continued doing the job it was vetted for without any surgery or on-going treatment. Mr Morris defended his position, arguing that this was not a case of false certification, arguing (in writing rather than in person) that abnormal findings did not inhibit the horses use for the purpose it was vetted for, and that he had orally told the prospective buyers of the issue concerned. The disciplinary committee however held that "Members of the Public are entitled to rely on a certificate made by a veterinary surgeon without question. This is a cornerstone of the profession.... Such behaviour amounts to disgraceful professional conduct and will not be tolerated. It is therefore both appropriate and proportionate to remove Mr Morris's name from the Register."

Case No 5: In November 2007, Mr John Williams was removed from the veterinary register for false certification of horses being exported. Mr Williams claimed that the certification would be checked and countersigned by DEFRA by which time the certificate results would be available, and hence there had been no risk involved in his activities as the test results would be available by then, or the certificates would be revoked. Mr Williams admitted that his actions were wrong but justified them on the basis that they could/would be resolved within a matter of hours when the results came through. No animal suffered as a result of his actions, and no animal was exported that should not have been. Mr Williams therefore defended his actions as not being gross misconduct. Chairman of the Disciplinary Committee, Mrs Alison Bruce, said: "The Royal College of Veterinary Surgeons has always given a high priority to the maintenance of accuracy and truthfulness of veterinary certificates. Mr Williams gambled on the likelihood that the results would be negative. This can never be the basis for proper certification." Mrs Bruce concluded: "We have been invited to assess Mr Williams' character and, sadly, we assessed his attitude to certification as being either irresponsible, or cavalier, or both. In order to maintain public confidence in veterinary certification and to reinforce to the profession the importance of accurate certification … we have no alternative but to instruct the Registrar to remove Mr Williams' name from the Register."

Case No 6: In April 2008, a Professional Negligence case was held in the High Court which was previously rejected by the RCVS under an earlier submission to the disciplinary committee for false certification. The argument put to the court was that the vet in question, Ms Sarah Randall, had signed a pre-purchase vetting certificate stating a horse was suitable for purchase for dressage without mentioning the fact that the horse had a de-nerving procedure in two legs. The procedure, according to the witness statements, desensitised rather than cured a career-ending condition known as proximal suspensory desmitis, rendered the horse illegal to compete under FEI rules in dressage, arguably (veterinary testimony differed) meant that a test of soundness could not be completed, made the horse uninsurable on those two legs, and could have a number of serious longer term implications for the horse's well-being which did actually result in the horse being retired due to recurrent issues from the de-nerving operation. Despite all of this and contrary to the line of argument adopted in the case of Mr Morris, the RCVS disciplinary committee did not consider the issuing of the certificate in this case to

be false. The courts also felt that Miss Randall was not guilty of negligence as they believed her claims that she told the prospective buyer orally. In setting down his judgement on the completion of pre-purchase certificates in the High Court, Judge Seymour noted 'As long as the relevant information is communicated clearly and comprehensibly to the Client I see no reason why it needs to be communicated or confirmed in writing. The Client does not need to be told twice what he has already been told, and understood, once.' This renders any certification procedure as valueless as a vet need simply now claim that they told the owner/buyer verbally.

The table presents the RCVS principles breached, the circumstances that caused the complaint to be made, the outcomes for the injured parties including animals, owners and insurance companies, the role the RCVS has played in their carrying out of the hearing, the justification given by the veterinary surgeon concerned for their actions and the outcome of the disciplinary committee.

The ten guiding principles outlined for the veterinary profession as stated on the RCVS website and publications are that 'your clients are entitled to expect that you will:

a) make animal welfare your first consideration in seeking to provide the most appropriate attention for animals committed to your care
b) ensure that all animals under your care are treated humanely and with respect
c) maintain and continue to develop your professional knowledge and skills
d) foster and maintain a good relationship with your clients, earning their trust, respecting their views and protecting client confidentiality
e) uphold the good reputation of the veterinary profession
f) ensure the integrity of veterinary certification
g) foster and endeavour to maintain good relationships with your professional colleagues
h) understand and comply with your legal obligations in relation to the prescription, safe-keeping and supply of veterinary medicinal products
i) familiarise yourself with and observe the relevant legislation in relation to veterinary surgeons as individual members of the profession, employers, employees and business owners
j) respond promptly, fully and courteously to complaints and criticism' (RCVS, 2008a).

Case	Principles Breached	Causal Connections	Responsibility/ Implications	Role of RCVS	Justification Given	Outcome
1	A, C and F	Multiple complainants	5 animals suffered. 1 false insurance claim.	Mentor	Remorse for errors	2 years CPD
2	F	Complainant in dispute & used complaint as a bargaining tool	No animals suffered. 2 horses needed to restart their vaccinations.	Upholder of standards	Common practice of leeway	Struck off; Privy Council reinstated after 6 month ban
3	F	Purchaser of horse relied on certificate seller had requested for other purposes	Horse purchased that would otherwise not have been. Monetary loss.	Upholder of standards	Letter dictated over phone used as certificate. Apology given.	2 month ban
4	F	Purchasers of horse	No loss. Horse is still performing at level for which it was vetted without treatment or surgery.	Upholder of standards	Condition did not affect use hence not on certificate.	Struck off
5	F	DEFRA	No loss or harm to animals. Certificates were however relied upon by a third party for a period of time.	Upholder of standards	Certificates signed for expediency reasons. If not ok, would be called back at docks.	Struck off
6	F?	Purchaser of horse	Horse had to retire after injury resulting from lack of knowledge of prior condition. Financial loss. False insurance.	None	Purchaser was told orally of condition. Previous history should not go on certificate.	Case dismissed without hearing

Table 1: A comparison of False Certification cases in the UK Veterinary Profession 2006-2008.

Discussion

It is difficult to see at face value, regardless of how dishonest the RCVS may think that the purchasers may have been – although this proved irrelevant in case number 2 - how this last situation (case 6) differs to that for which the vet in case number 4 was struck off. Indeed, Miss Randall's certificate was also used to falsely insure the horse, which amounts to the reliance of another party for which case number 5 was struck off, and her testimony in court notes how she remembered the vetting in her memory and did not make any notes at the time, and other breaches of the British Equestrian Veterinary Association's (BEVA) guide to pre-purchase examinations, which would make her case more aligned to case number 2's lack of following due protocol resulting in his suspension.

However, in this final case, the RCVS chose to do nothing. The result of the law courts therefore stands that there 'is no reason why it [relevant information] needs to be communicated or confirmed in writing' provided it has been communicated clearly and comprehensibly to the Client orally. Messrs Morris, Williams and Hallum should take note. They ought to declare that they told their respective parties orally, and that is why their findings were not on the certificates they issued – the RCVS can do nothing but accept this now as a judgement. This is particularly so as the case of Miss Randall was re-presented to the RCVS post the trial for further scrutiny on the basis of Miss Randall's testimony only as this amounted to 'new evidence', and the RCVS again dismissed it.

So where exactly does this leave the veterinary profession? In the early days professional regulation was presented as a means of protecting the public; we are now seeing significant reversal (Davies, 2000). By examining these six cases we can see that the RCVS has not acted consistently with regard to maintaining the integrity of the profession by confusing the motives, causal connections and responsibilities of both the vets involved and their own role. In a number of these cases the motives of the complainants have been called into question – in particular in Walker and Hallum, and possibly in Randall. In the first two these mitigating factors were ignored. In Randall and Basha the RCVS clearly took the view that the motives of the vets had been so admirable that any conduct failing could be ignored or rectified. In Walker, Williams and Morris, the motivations of the vets involved were questioned and felt to be lacking by the RCVS and hence they were punished accordingly. Remorse appears to play a bigger part in the decision process than logical reason. Indeed, in a further case (M William Baird) which was not a false certification case and hence has not been analysed in this paper, a vet was reinstated a year after being struck off simply because he e-mailed a letter of remorse to the RCVS, promising not to do it again (he refused to make a home visit out of hours).

By focussing on the motivation of the vets - the economic imperative, rather than the actual misconduct that occurred - the moral imperative, and by being drawn into personalities – the ethnographies within the profession, the RCVS has failed to act responsibly in its role of purveyor of standards. Professional standards are set as such because they are the minimum below which people cannot stray and remain within the profession. That is their raison d'etre. Because the RCVS has been inconsistent in their application of standards, the British legal system has become involved. This, in itself, is evidence of its lack of ability to self-regulate. The result can only be interpreted as a disaster for the veterinary profession as a whole. It's professional body can no longer impose sanctions for false certification that it wishes; and indeed any vet can now avoid a false certification offence by saying 'but I told them verbally.'

By taking on the role of mentor to the profession rather than upholder of the professional standards, the RCVS has issued 2 year CPD orders in a number of cases to allow people to undergo the necessary development to get themselves back up to the standard required of a competent veterinary surgeon. This is not what you would expect of the body that is set up to maintain standards. I would hate to be operated on by a surgeon that I later found out was just starting two years of refresher training to make sure he really was competent enough to operate on me. Why should this be different for any other profession. One of the core elements that identifies a profession in the literature is the control of access to the knowledge and occupation. As soon as a profession opens the door to people being allowed to obtain that standard whilst in the profession, it has dumbed down its own standards, knowledge and occupation.

Davies (2000) views late twentieth century governments as trying to redress the imbalances occurring in professional self-regulation through reconstituted models and development of social policy that regulates persons, programmes and policy rather than the profession as a whole. This has remained with the professional bodies as successive governments have avoided this final step of putting in place intermediary bodies. Thus far, government intervention in professional standards have been restricted to the areas of health and social care as these are their core areas of service provision, and key targets for the media. As a nation of animal lovers, the veterinary profession may not be shielded from the media indefinitely.

Why has the RCVS been so inconsistent in its duty to perform its responsibilities? It might be interesting to do a diversity analysis on the judgements given out by the disciplinary committee. This is not an area of concern or interest in this paper, but it is interesting to note that now struck-off Messrs Morris, Walker, and Williams are all white males. Randall is a white female and was not even considered by a disciplinary panel. Basha originally qualified overseas. The economic and power discourses may relate to forms of institutional discrimination within the system in that there are higher expectations placed on British white males than others? Indeed, the Privy Council ruled that the RCVS had been overly harsh on Walker because he had such high standing in the veterinary community, and hence they thought he should be treated more harshly. It would appear that emotions have dominated logical application of standards throughout these cases. Baumeister & Heatherton (1996) identified misregulation as occurring due to false assumptions or misdirected efforts due to unwarranted

emphasis on emotions. They claim that underregulation occurs because of deficient standards, inadequate monitoring or inadequate strength. The RCVS could be argued to be guilty of both misregulation and underregulation in its application of false certification standards.

Alternatively, there may be some form of 'old boys club' in operation, as who trains and mentors whom may come into play. The names of those who sit on the Disciplinary Committees and consider the cases are not made public so any relationship that those hearing the case may have to the person being considered is not available for public scrutiny. This may not be the case, but the lack of transparency raises questions. If independent lay-people were included, as is the practice in industrial tribunals, then this issue would not arise.

Conclusions

What is clear is that the lack of consistency and engagement by the RCVS in issues that it should have had a firm and clear message on has resulted in the law courts taking away much of their autonomy and responsibility for the profession. As such, they are now a profession that is in trouble, as their membership will be well aware that the boundaries within which they can officiate have been severely limited. If we go back to their own ten guiding principles; the case of Randall practically wipes out the principle of false certification, which is also one of the three stated reasons for a finding of gross misconduct; the case of Walker wipes out the RCVS's ability to protect the integrity of the profession; and the case of Basha wipes out the need for CPD as you can always do it after you've fallen short of performance targets. Indeed, if you take the ten guiding principles literally, the RCVS has fallen short of at least five of them itself in its handling of professional misconduct. I still can't help but wonder what it was that I did that was so wrong in the Randall case that has led to such a mess?

By basing its judgements on the remorsefulness of the vets concerned (cases 1 & 3) rather than facts of the cases, their implications for the animals (case 1 in particular), owners and third parties concerned, such as insurance companies, DEFRA and racing bodies (see cases 2, 3 and 5 in particular), and confusing their role as a purveyor of standards and mentor to the profession (case 1 in particular), the RCVS has handed the mandate for occupational control to the courts which undermines its professional status according to Abbot's conceptualisation of professions (1988). It has brought into question the morality and ethics regulating the profession through its inconsistent application of its own guiding principles (a, c and f in particular) which negates Whitehead's (2002) view of professionalism, and undermines the trust of the public in the profession outlined by Koehn (1994) and Dent & Whitehead (2002). By allowing Basha to effectively retrain while on the job they have undermined the knowledge base outlined by Quinn et al (1996) and Eraut (2000).

False certification by its very nature is the guiding principle most likely to be compromised by the call of monetary gain within the profession. It is the one through which financial gain can be obtained and it is the one that is most open to exploitation. The actions of their own Disciplinary Committee with regard to the professional cornerstone of false certification have resulted in the RCVS undermining its own professional status and integrity. Quite how they are to recover from this position is questionable. Certainly the operations, actions and judgements of the committee require greater scrutinisation within the RCVS itself if Gramsci's concepts of deprofessionalisation and bureaucratization (Friedson, 1994) are to be held in check and the profession is to regain the ground it has lost.

After being the subject of public scrutiny on a number of occasions, The Law Society recognised the difficulty in serving the interests of promoting the profession while maintaining independence in regulating the profession and hence separated its regulatory board into an independent entity in January 2007, the Solicitors Regulating Authority (SRA).

The ability to self-regulate is dependent on the ability to be impartial and objective in the application of the regulations, standards and ethical codes that govern the profession. This is a difficult task for anyone to undertake within a profession, as it is human nature to empathise, even sympathise, with the situation a fellow professional may find themselves in. This, however, does not benefit the profession or wider society that the professional body is empowered to protect and serve. The introduction of lay-people on to disciplinary committees may be one way of starting to redress the imbalance. Hiving off the regulatory sector of the profession to a separate body, as per the lawyers above, may be another.

There are many ways that professional bodies can re-establish their credibility and trustworthiness, and transparency is paramount. The Royal College of Veterinary Surgeons is unlikely to be alone in its difficulties to self-regulate, indeed the accountants, medical professions and legal professions have already made adjustments to their regulatory processes in order to ensure a better regulatory regime. Self-regulation of professions under the economic pressures of modern life is clearly not working. Vets operate both as businesses and as professionals

It is simply a question of time before something triggers enough of a public outcry to make the so called 'professions' question their practice. In the nature of professionalism itself and the ethical basis of professionalism, it would be more appropriate if professional bodies undertook this audit themselves before any government or media pressure ensues. This might allow the professions to reclaim their position of esteem in society and the trustworthiness associated with self-regulation. The veterinary profession has more than enough evidence on which to examine its own practice now. While the RCVS may continue to have an important role to play in attracting people to the profession and promoting the business of veterinary science, it also needs to recognise that it can no longer self regulate in matters where business practice and professional ethics and standards clash.

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Managing Organisational Ethics: Professionalism, Duty and HR Practitioners

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Abstract

After almost 20 years of researching, teaching and consulting in business and organisational ethics, this emerging field seems to be facing an organisational dilemma. Who should manage the ethics and integrity systems that are slowly being adopted by Australian firms?

During consulting engagements with numerous Australian businesses it has become clear that the task of managing ethics and integrity systems, i.e. creation of codes of ethics, ethics committees, information programs, conducting of audits, etc, more often than not seems to be delegated to Human Resources Managers and their Departments. This trend appears to be unique to the Australian setting and contrary to the US where Ethics Officers and Compliance Officers assume this role.

The purpose of this paper is to consider the question of who is appropriate to manage the ethics function in the Australian context. A literature review will examine the concept of professionalism and what characteristics and duties qualifies an occupation as a profession. In particular it will identify the role of knowledge and the existence of an organisation or association that regulates and licences the individual to operate as a professional. It will then identify the roles, responsibilities and characteristics of ethics officers so as to determine the knowledge required to undertake this task in an organisation setting.

Given the predisposition to delegate this function to Human Resources practitioners in Australian Organisations, a review of formal Postgraduate Human Resources programs at the major Australian Universities will be undertaken. The objective of this task is to determine whether such programs contain any specific ethics content, in particular the creation of codes of ethics, codes of conduct, ethics training and the conducting of ethics audits. This will establish whether Australian Human Resource professions are sufficiently equipped with the knowledge and capabilities required to undertake this function through their formal education.

Keywords

Ethics, integrity, professionalism, Human Resources Managers

Introduction

Historically the term profession was applied to specific vocations such as medicine, law and engineering. What was characteristic of these professions was a high degree of expert knowledge attained over a significant period of time, high standards of practice and an association that restricted access and provided the licence to operate (May 1989). However, many vocations and crafts are now laying claim to the term "profession" including sports men and women, administrators, cleaners, etc,. Koehn (1994) suggests that term has been applied indiscriminately to anyone who exhibits a high level of style, skill or even cunning. However a review of literature relevant to professions and professionalism, suggests that many of these "occupations that lay claim to being professions, do not satisfy the conditions or posses the characteristics required to be classified as traditional professions. This raises the prospect of individuals who claim to be professionals but lack the expert knowledge typically associated with

a profession, are acting outside their expertise and therefore violating the professional a duty to act within the limits of their knowledge.

One such area that seems to typify this trend is the Human Resource Manager/specialist and the management of ethics polices and culture within Australian organisations. The author's consulting experience has identified that in many Australian organisations, in both public and private sectors, the ethics function is either delegated or claimed by human resource management practitioners (Segon, 2004). The emergence of the ethics officer function in the United States has resulted in clear roles, responsibilities and importantly an identification of the type of knowledge required to assume such positions (Collins, 2009; Adobor, 2006; Llopis, Reyes-Gonzales and Gasco, 2007; Izraeli and BarNir, 1998 and McNamee, 1991). As expert knowledge is one of the characteristics required of professionals a key question is whether Human Resource practitioners, who claim to be professionals, have the required expert knowledge to carry out this function? This paper will consider the concept of professionalism and the requirements to be considered a professional. It will examine the roles, duties and knowledge required of ethics officers and compare this to knowledge currently addressed in Human Resource Management postgraduate programs in Australian Universities that have been accredited by the Australian Human Resource Institute, being the association that represents the interest of human resource practitioners.

Professionalism

Koehn (1994) states that the notion of a professional is essentially a normative one because who qualifies as a professional varies according to the norms or standards of behaviour that that the professional is bound to obey. However she does summarise the basic characteristics of a professional to be trustworthy agent of clients either because they are experts or they are service providers who will obey a client's will for a fee. May (1989) states that Abraham Flexner's 1910 Carnegie report on medical education attempted to deliberately define the essence of a profession that has become the basis for identifying and legitimising other groups of workers as professionals.

Characteristics of Professionals

Watkins (1999) puts forward a view that the professions can be differentiated from other groups in society because of specific characteristics of its members including: the possession of specialised skills, the attainment of expert knowledge which is usually based on mastery acquired through intellectual and practical training and the existence of professional body or association that is charged with the maintenance of the profession and to ensure that members abide by appropriate standards.

According to Flexner (1910) to qualify as a profession an occupation had to satisfy six criteria:

1. Possess and draw upon a store of knowledge that was more ordinary than complex
2. Secure a theoretical grasp of the phenomenon with which it dealt
3. Apply its theoretical and complex knowledge to the practical solution of human and social problems
4. Strive to add and improve its stock of knowledge
5. Pass on what it knew to novice generations not in a haphazard fashion but deliberately and formally
6. Establish criteria of admission, legitimate practice and proper conduct and
7. Be imbued with altruistic spirit

May (1989) suggests that Flexner's original characteristics of professionals can be synthesized to three being an intellectual component, a moral component and an organisational component. De George (1999) and Ardaugh (2010) describe similar characteristics including the possession of expert knowledge, restriction of entry to the field of practice and management of the field by some form of association and a requirement of service to the public.

The Intellectual Component: Knowledge and Power

According to Gold, Rodgers, and Smith (2002) a major aspect of professionalism is the power derived from expert knowledge and skill and the ignorance or absence of such knowledge and skill on the part of the client. They further add that the client accessing this information cannot bridge the deficiency in knowledge, rather it has to be transformed into knowledge through considered application within a given context. Eraut (2000) provides a similar position on the nature of the expertness suggesting that the client is dependent on the professional because they are unable to address their problem by procedural knowledge alone or by following a manual. This is similar to Freidson (1970) classification of professional knowledge as "pure" knowledge that is largely theory and typically limited to codified science and a form of practical knowledge that guides the professional's application of the knowledge to the problems faced by society or the client.

Mangham and Pye (1991) and Cheetham and Chivers (2000) draw further distinctions between the two types of professional knowledge suggesting a category of "scientific knowledge" that includes logic, analysis and the ability to engage in rational deduction, and "behavioural knowledge" which they describe as including the tacit and intuitive understanding that are necessary for engagement. Gold, Rodgers, and Smith (2002) identify two distinct types of knowledge that typify professionals. The first is what, Eraut (2000) calls public or propositional knowledge that is usually acquired through formal learning which is also linked to professional accreditation. According to Abbott (1988), it is the abstract nature of this knowledge that distinguishes the professional from other individuals and groups because of their ability to apply this abstraction to problems, redefining them and the possession of what is required to solve them. Mangham and Pye (1991) argue that effective professional practice requires a combination of the two forms of knowledge and that whilst they are difficult to separate, each plays the role of informing the other at the point of action. Oakeshott (1962) provides a similar categorisation of "technical knowledge", which is capable of being articulated and codified and "practical knowledge", which is typically not easily codified.

This is consistent with May (1989) who suggests that a professional draws on a complex and esoteric body of knowledge that in not available or acquired by everybody. He further states that a characteristic of this knowledge is that it extends beyond mere training to education and development. He proposes that for this reason Flexner (1910) maintains that the professional education should be based in a university setting to distinguish it from apprenticeship systems and the crafts. Furthermore he states that a function of the professional is to continue to contribute to the body of knowledge through further research, however he does state that not all professionals need to be researchers but that the profession must lay the foundation for the advancement and progress in the field, typically at a University. Lusch and O'Brien (1997) suggest that a profession "is an occupation that requires extensive formal education and often formal requirements. Cogan (1953, p.33) defines it as "a vocation whose practice is founded upon an understanding of the theoretical structure of some department of learning or science, and upon the abilities accompanying such understanding". Wall (1998) and Winch (2004) similarly state that professionals are characterized by the possession of, particular kinds of knowledge, which are abstract and practical, massive in extent, difficult to master over a long period of time.

These distinctions also parallel May (1996) assertion that professionalism is made up of two significant attributes being conceptual knowledge associated with expertise (mastery) and behaviour standards, which apply within the workplace and society. This categorization is consistent with the input competency model of management development as advocated by McClelland (1973), Boyatzis (1982), Pedlar, Burgoyne and Boydell (2001); Hellriegel et al. (2007), Whetten and Cameron (2007) and the emotional intelligence model as described by Goleman, Boyatzis and McKee (2004) that suggests that the path to mastery is based on the development of competence that is made up of three components: conceptual knowledge: this represents the body of knowledge that underpins or explains concepts and processes which individuals must acquire in order to understand what is happening or what they need to do. It informs practice and is a key to being able to adapt to different context and to deal with different people, however it does not by itself mean they will become better managers. The second component is behavioural knowledge which are the actual behaviours or skills that individuals need to develop, often referred to as helping skills such as communication skills including active

listening, questioning skills, paraphrasing, assertiveness etc. Whilst the development of such skills is critical, without the conceptual knowledge of how they work and why and in what context they should be used, managers may be unable to adapt and change their behaviour to suit different contexts. The this and final component is attitudes, which as Segon and Booth (2010) alternatively describe as genuineness, that relates the way in which individuals interact with others and demonstrate our conceptual and behavioural skills.

Professional Duty and the Limits to Practice

Koehn (1994), Sager (1995), May (1996) and Warren (1995) suggest that true professions are bound by a duty to act within the limits of their knowledge. Does this then suggest that professions are also bound by a professional duty only engage in practices and provide advice to clients that is within their knowledge limits? If so then to do otherwise would be a violation of professional duty.

Beauchamp and Bowie (1997) state that professional practice standards hold that obligations and other standards of moral conduct are determined by the customary practice of the professional community. They suggest that proponents of such as positions argue that individuals are charged with various responsibilities or duties, for example, avoiding harm, honouring warranties avoiding conflicts of interest and obeying legal requirement. They also highlight that such individuals must use professional criteria for determining appropriate actions. They specifically state that any person with out expert knowledge is unqualified to determine what needs to be done. This suggests that professions have a duty to act within the limits of their expert knowledge. Whilst it does not imply that such knowledge cannot be extended, in fact Flexner (1910) May (1996) and others acknowledge that professionals are expected to advance their knowledge, it is also consist with the concept of the organisation of the profession that such additional knowledge needs to be acknowledged or accredited before it should be used. Bowie (1990) provides further guidance on the use of expert knowledge stating that the chief function of a professional is not to use their specialist knowledge to maximise income, rather it is to use it to protect ignorant clients from being exploited by others.

Who should Responsible for Organisational Ethics?

According to Trevino and Nelson (1999, 2006) ethics is an integral part of the organisation's overall culture. Designing an ethical organisation means systematically analysing all aspects of the organisation's culture and aligning them so that they support ethical behaviour and discourage unethical behaviour. Preston (1994) the creation and adoption of an ethical system within an organisation, which can also be termed the *institutionalisation of ethics,* should be seen as a multi-faceted approach that 'main-streams' concerns about the ethical issues facing organisations. Sampford (1994) also outlined a general strategy for the institutionalisation of ethics specific to the public sector, the principles of which are equally applicable to other industries and organisations. Many other ethical theorists such as Hoffman (1995), Kitson and Campbell (1996), Ritchie (1996); Ferrell and Fraedrich and Ferrell (2006), Lagan (2005) and Trevino and Nelson (1999, 2006) have developed similar guidelines which essentially detail the components of an organisational ethical framework. Hoffman, Driscoll and Painter-Morland (2001) identified that the ethics initiative could be deemed to start with senior managers making an explicit commitment to long-term success. They stress that the executive level of an organisation needs to assume responsibility for ethics and ensuring appropriate resources and clear responsibility be established. They argued that ethics must be managed like any other internal function. Just as the financial integrity of an organisation is established through the appointment of financial officers, and, with larger organisations, finance sections and divisions, so too must the ethical system be characterised by a structured approach that would increase in importance as organisational size increases.

Buchholz (1989) attributed major problems with codes to the difficulty of determining who in the organisation should have the power and authority for enforcement, the difficulty of getting information about violations, and the problems of uniform and impartial enforcement. Ferrell and Fraedrich (1997) maintained the importance of having a manager in charge of the ethics programme to insure implementation. Many American Fortune 1000 firms have recognised this importance through the appointment of ethics officers. The obvious advantage is the dedication of an organisational

structure to ethical management. Ferrell and Fraedrich (1997) also highlighted the importance of a high level manager responsible for coordinating, developing, revising and ensuring compliance with the programme. The involvement and support of high-level management is mandatory as is ownership and involvement by lower level staff (Connock et. al. 1995).

Ethics Officers As Managers of Organisational Ethics

Collins (2009) states that legislative requirements in the US provide a judicial incentive for assigning a high level employee the responsibility of managing ethical performance. Many organisations in the US have created the position of ethics compliance officer that allows sensitive information to be shared without being diluted by the chain of command. Llopis, Reyes Gonzales and Gasco (2007) state that an ethics officer can be simply described as the manager whose main responsibility is achieving the appropriate standards or codes of ethics in an organisation. More precisely the ethics officer is someone who makes sure the firm is doing its best to satisfy internal and external stakeholders. Hoffman (1995) states that the role of an ethics officer is to oversee the corporate ethics program and help steers the company around ethical pitfalls. Driscoll and Hoffman (2000) suggest that whilst ethical responsibility should be assumed by all members of the organisation, the coordination and management of the system designed to establish, inform and maintain those standards cannot be left to each individual but rather needs to be seen as a function within the organisation as with other business functions such as auditing, human resources, marketing etc.

Expert Knowledge required by Ethics Officers

Collins (2009) identifies that the appointment of an ethics compliance officer, or in effect the manager of the ethics framework must be based on expertise and an understanding of the organisation. Adobor (2006) states that the ethics officer role is unique in organisation in that it faces multiple and competing expectations from internal and external organisational stakeholders. This is consistent with Llopis, Reyes-Gonzales, and Gasco (2007) who suggest that the essential requirement of an ethics officer can be summarised as having a wider knowledge of the firm, mastering management techniques as well as theoretical and practical issues related to business ethics as with other senior executives having hierarchical authority or legitimate power to exert influence within the organisation. Izraeli and BarNir (1998) state that ethics officer must be trained in moral awareness and ethics theories (McNamee, 1992) and experienced in resolving ethical dilemmas. Such conceptual understanding is necessary to enable identification of moral dilemmas, an analysis of consequences of decisions and the promotion of social responsibility through educational programs.

Collins (2009) provides a similar multi-skill or multi-duty role including that managing the internal reposting system, assessing areas of ethical risk, monitor adherence to code of ethics and or conduct, oversee the ethics communication strategy, develop and interpret ethical polices oversee training and development in ethics and collect and analyse data and report such to senior executives. Adobor (2006) states that ethics officers need specific knowledge related to the field of governance and ethics such as any legislative requires such as Sarbanes-Oxley in the US and by comparison equal employment opportunity legislation and Section 73 of the Australian federal criminal code which pertains to bribery of foreign officials. However he also highlight that in addition to this specific knowledge, another type of competence is required which is knowledge of the firm's business, products and industry characteristics which he refers to as business knowledge. He cites Spreitzer et al. (1997) who state that such knowledge is a key factor for executive success. Adobor (2006) maintains that ethics officers with such business knowledge will have a better understanding of the organisation, the information it holds and how to access it. He suggests that such knowledge should result in the ethics officer experiencing less task complexity, ambiguity and positive affect role performance.

This again seems to reinforce the concept that an ethics officer seems to require an understanding of professional ethics as part of their professional knowledge.

Ethics Officer Duties and Job Function

Adobor (2006); Llopis, Reyes-Gonzales, and Gasco (2007); Izraeli and BarNir (1998) Trevino and Nelson (1999, 2006) Driscoll and Hoffman (2000) Hoffman, Driscoll and Painter-Morland (2001) all recognise the ethics officer function as involving specific roles and responsibilities as well as several characteristics that are necessary for effective role performance. Adobor (2006) highlights that individual role performance is to some extent based on the nature of the task and personal characteristics of the individual including their competencies and ability to deal with role conflict, ambiguity and influencing ability, Trevino (1986) suggests that ethics officers are supposed to be champions of ethical integrity and so their own moral integrity can be a key factor in performance.

Adobor (2006) highlights distinct categories of job function for ethics officers:

1. Ethics Education- this includes training design, training delivery and international program development.
2. Manage Compliance: this includes management of program documentation, direct handling of hotline or guideline and internal reporting. Assessing and reviewing vulnerabilities, i.e. ethics risk assessments establishing company policies and procedures and presentation and delivery of external presentations.
3. Adviser top management: this includes senior management and or board of director briefing and communications
4. Investigative oversight: this includes overseeing and conducting investigations of wrongdoing, and lastly
5. Corporate Social Responsibility, which includes communicate relation, corporate foundation/giving, shareholder relations, diversity issues and environmental compliance and human rights.

They state that each of these requirements is a necessary condition for an ethics officer to be effective, yet each one separately is not sufficient. Only all five characteristics will enable the EO to function at a sufficient level to promote the social responsibility of the firm. This seems to be consistent with Mangham and Pye (1991) concept that effective professional practice requires a combination of the forms of knowledge and that whilst they are difficult to separate, each plays the role of informing the other at the point of action.

Furthermore Collins (2009), Llopis, Reyes-Gonzales, and Gasco (2007) and Izraeli and BarNir (1998) highlight that ethics officer should ideally be a persona of senior authority with the trust of executive and the ability to influence decision-making but free from political pressure. Trevino and Nelson (1999, 2006) highlight that in many organisations functional structures often result in the ethics function being located within a specific departments such as audit or human resources that leads to a perception of a functional task rather than a holistic strategy relevant to the entre organisational culture. They argue that this is a major reason why the function should be independent and report directly to the CEO.

Human Resources and the Ethics Function

As identified in the introduction, anecdotal information and consulting experiences by the author suggest that in many Australian companies the organisational ethics function typically placed in the Human Resources department (Segon, 2004). The role of Human Resource practitioners within the context of organisational ethics has some attention over recent years. Winstanley, Woodall and Heery (1996) suggested that the HR function included a role of ethical stewardship that involved raising awareness about ethical issues, promoting ethical behaviour and in disseminating ethical leadership practices amongst leaders and managers. They also describe the as including communicating codes of ethical conduct, devising and providing ethics training to employees, managing compliance and monitoring arrangements, and taking a lead in enforcement proceedings. Woodd (1997) suggests that HR specialists need to be at the heart of policy design and implementation, to raise the issues and stimulate debate on ethics in the employment of people. In order to do so she suggests that will necessitate a degree of “expertise” in their field, emphasizing the need for continuing professional

development. She further notes that this requirement for any profession and be shared by the associated institute. These descriptions appear consistent with characteristic of professional practice as described by May (1989) and Flexner (1910), De George (1999) and Ardaugh (2010) ad also some of the various roles of the ethics officer as described by Adobor (2006); Llopis, Reyes-Gonzales, and Gasco (2007); Izraeli and BarNir (1998) Trevino and Nelson (1999, 2006) Driscoll and Hoffman (2000) and Hoffman, Driscoll and Painter-Morland (2001).

A general hypothesis could be established that if human resource managers are to be responsible for organisational ethics, then they would posses relevant theoretical and complex knowledge related to ethics in addition to knowledge as skill concerning organisational issues and the specific issues facing their particular business or organisation. Furthermore this knowledge should therefore be an integral part of the formal education that individuals must acquire to move from novice to master in their professional field.

A simple method to determine this is to examine the range of formal education available to human resource practitioners to determine whether the appropriate expert content is covered. As the literature review highlighted the importance of senior positions holding the ethics officer function it is proposed that senior human resource positions are likely to be characterised by individuals holding postgraduate qualifications in human resource management. This is also consistent with the position advocated by May (1989) and Flexner (1910) that professional education should be based in a university setting and Lusch and O'Brien (1997) and Cogan (1953) that a profession involves extensive formal education and often formal requirements whose practice is founded upon an understanding of the theoretical structure.

Review of Australian Human Resource Management Postgraduate Qualifications

Based on the characteristic of a profession that an association of some type exists that licenses or accredits the professional, the appropriate body identified for the Australian context is the Australian Human Resources Institute (AHRI). The Institute "provides research, education and support to promote the standing of the profession and engender human resource management best practice within workplaces" It also specifically addresses the issue of human resource practitioners stating that it "also assists HR practitioners and people managers to excel in their profession through the provision of valued benefits and services that contribute to their workplace effectiveness and career development". The Institute also lists a series of strategic imperatives:

- Educate and lead HR practitioners and people managers to improve standards, practices and impact
- Be the career partner for HR practitioners and people managers
- Become the HR centre of excellence that organisations use to build their human resource management capability
- Provide relevant and accessible education, professional development and networking opportunities
- Provide services, tools and resources that contribute to professional effectiveness (http://www.ahri.com.au/scripts/cgiip.exe/WService=AHRILIVE/ccms.r?PageId=10920).

AHRI includes both institutional and individual membership and offers an accreditation service to formal education providers in addition to offering its own short courses, diploma and continuing educations programs to its members and to members of the public. These characteristics appear consistent with some of the characteristics of a profession as noted by May (1989); Flexner's (1910); De George (1999) and Ardaugh (2010) concerning the existence of an a association that provides and Eraut (2000) position concerning knowledge that is usually acquired through formal learning which is also linked to professional accreditation. The Institute's imperative to improve practices and impact and to further education is consistent with Flexner's position that the a function of the professional is to continue to contribute to the body of knowledge through further research, however he does state that not all professionals need to be researchers but that the profession must lay the foundation for the

advancement and progress in the field. The fact that AHRI accredits formal educational programs would parallel Lusch and O'Brien (1997) suggestion that a profession is an occupation that requires extensive formal education and often formal registration or accreditation requirements. What is not consistent with the conditions of a profession put forward by Flexner (1910) is the requirements that the Institute or Association be the regulator of the profession and license or restrict access to the profession.

In order to determine whether Australian Human Resource managers are equipped to manage the organisational ethics function a review of the postgraduate human resource management programs accredited by AHRI was conducted. This involved accessing the program structure for the relevant masters degree to establish the content of the subject matter that all students undertaking the program were required to undertake. In other words only the compulsory core subjects were considered as electives or free subjects means that a comparison across the programs is not possible, as electives by definition would mean that individuals would not necessary select the same subjects and therefore would have divergent knowledge.

As at August 2010, the AHRI website lists 26 accredited Masters programs from 20 different Australian Universities. These programs ranged from specific Masters in Human Resource Management and Industrial Relations to Masters of Commerce and Masters of Business Administration with major concentrations in Human Resource Management and Industrial Relations. 19 Masters courses were examined based on the published structures listed on the University website linked from the AHRI accreditation web page. As previously identified only core or compulsory courses were identified with the exception being whether the individual program page identified any elective course in business or applied ethics. Given the variations in subject titles the author assumed that some subjects with like titles covered the same content, for example, subjects titled Strategic Human Resources and Human Resource Planning, were considered the same, subjects with strategic HR and HR Strategy were considered the same, and subjects dealing with Change, Consultancy or Transformation were identified as having the same content.

As can be seen from table 1 below, the majority of subjects across the 19 masters programs were largely related to human resource management or industrial relations content. The most common subjects across all programs were Human Resource Management, Strategic Human Resources and Performance management with generic Leadership, Management and Organisational Behaviour subjects also prominent. Only one Masters program identified an ethics related course as compulsory or a core subject being the Masters of Human Resource Management at Griffith University with a subject in Corporate Social Responsibility. Three Universities, University of Canberra, University of South Australia and University of Western Sydney, specifically identified business ethics or organisational ethics as a elective available to students undertaking their Masters programs. As this study was limited to published material it is not possible to deduce that the other Universities did not have business ethics electives available, however, Matten and Moon (2004) and Segon and Booth (2010) found that that only those students who elect to undertake these courses are exposed to concepts of business ethics etc.

Table 1

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R
University of Technology, Sydney Master of Business in H.R.M.	x	x	x		x	x	x											
UTS, MBA in H.R.		x	x		x	x		x										
Latrobe University Post Grad Dip in H.R.M.					x			x	x									
Charles Sturt University Masters of H.R.M.	x	x	x					x		x								
University of Sydney Master of H.R and I.R		x	x															
Curtin University Master of H. R.	x	x		x							x	x						
Monash University Masters of HRM	x	x		x		x				x			x					
Queensland University of Technology Master of Commerce (H.R.M.)	x	x								x								
University of Canberra, Master of H.R.M.	x	x	x	x	x			x		x	x	x						x
University of Melbourne Masters of H.R.M.		x		x	x				x	x								
University of South Australia. Masters of H.R.M.	x	x	x		x			x		x	x							x
University of Western Sydney Master of Commerce (H.R.M. and I.R.)	x		x	x		x		x	x			x	x					x
Deakin University Master of H.R.M.	x	x			x	x	x	x					x					
Griffith University Master of H.R.M.		x		x	x		x			x	x	x		x	x			
Murdoch University Master of H.R.M.	x	x			x					x	x							
Southern Cross University Master of H.R. and Organisational Development	x	x		x			x			x								
Swinburne University Master of Commerce (H.R.M.)	x	x			x	x	x			x			x			x	x	
University of New England Master of O.D. and H.R.M.																		

Legend
A= Subject called HRM
B= Subject called Strategic HRM
C= Subject called Industrial Relations
D= Subject called International or Global HR
E= Subject called Performance Management
F= Subject called Employment Relations
G= Subject called Organisational Development or Change Management
H= Subject called Industrial Law
I= Subject called Thesis or Research Project
J= Subject called Management, Leadership or Organisational Behaviour
K= Subject called Staffing
L= Subject called Remuneration
M= Subject called HR Issues
N= Subject called CSR
O= Subject called Training and Development and or Learning
P= Subject called Teams
Q= Subject called Business Context
R= Business Ethics Elective Subject

A comparison of the subjects would suggest that all of the Masters programs considered for this study, focus specifically on content matter related to human resource management, strategic human resources, industrial relations and general courses in management, leadership and organisational behaviour. Only one program, that offered by Griffith University, has a subject that could be seen as related to the field of organizational or business ethics, being Corporate Social Responsibility. Three other Universities, the University of Canberra, The University of South Australia and the University of Western Sydney identified specific subject in Business or Management Ethics as electives in their respective HR related masters programs.

Arguably, the content of the 19 Masters programs could be seen as satisfying three of Flexner (1910) six criteria to qualify as a profession, (a) the possession of a store of knowledge that was more ordinary than complex, (b) securing a theoretical grasp of the phenomenon and (c) application of its theoretical and complex knowledge to the practical solution of human and social problems. Similarly the subjects would constitute Mangham and Pye (1991); Oakeshott (1962); Cheetham and Chivers (2000); Gold, Rodgers, and Smith (2002) Eraut (2000) and Freidson (1970) categorisation of two types of knowledge, and consistent with the concept of competency being conceptual and behavioural knowledge (McClelland, 1973; Boyatzis, 1982; Pedlar, Burgoyne and Boydell, 2001; Hellriegel 2002; Whetten and Cameron, 2007 and Goleman, Boyatzis and McKee (2004). However, this knowledge appears specific to the domain of human resource management and related disciplines such as industrial relations and law with some general management but not business ethics, organisational ethics or applied philosophy. Thus, if one were to use the definition of the types of knowledge required by professionals to engage in a particular field, the current graduates of these masters program would not acquire the necessary professional knowledge to create, administer or manage ethics programs due to the absence of any content related to the five functions of ethics officers and noted by Adobor (2006).

A further comparison to the roles and functions of ethics officer identified by Adobor (2006), Llopis, Reyes-Gonzales, and Gasco (2007), Izraeli and BarNir (1998), Trevino and Nelson (1999, 2006), Driscoll and Hoffman (2000) and Hoffman, Driscoll and Painter-Morland (2001) suggests that Human Resource managers do not possess the ethics education necessary for undertaking this role. Nor do they possess the expertise to conduct ethics risk assessment and compliance issues related to ethics, a function described by Harrison (2001). They would however possess the knowledge required to advise boards and senior management about specific issues related to strategic human resources and they also have a broad understanding of business issues through studies in leadership, management etc,. However the absence of specific study in ethics would suggest that they are not qualified or do they possess the specific expert knowledge identified by Izraeli and BarNir (1998) who state that ethics officers must be trained in moral awareness and ethics theories and experienced in resolving ethical dilemmas. Whilst Llopis, Reyes-Gonzales, and Gasco (2007) suggest that the essential requirement of an ethics officer can be summarised as a wider knowledge of the firm, which arguably these M asters program may provide, including mastering management techniques, they do not address the specific theoretical and practical issues related to business ethics that Llopis, Reyes-Gonzales, and Gasco (2007) argue is required of ethics officers.

Conclusion

This paper has identified that professionalism is characterised by the possession of expert knowledge that is acquired over time that provides power over others who are unable to acquire, but require this knowledge as a means of finding practical solutions to problems. Furthermore it established that true professions are subject to numerous other conditions including the existence of an association that advances the interests of its members and accredits or licences them to practice thus restricting access to the profession. An n important ethical duty was also identified that professionals do not engage in activity outside their expertise. The role of etches officers was explained and the trend of human resource practitioners assuming this role in Australian organisations was highlighted. An examination of 19 Masters programs specialising in human resource management was conducted and it was established that virtual no ethics content was present in any of the compulsory aspects of these programs. As such it was concluded that Human Resource practitioners do acquire the required expert knowledge to manage and maintain organisational ethics and to do so would be a violation of their responsibilities if they were to be considered true professionals.

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Using New Technology for Remote Witnessing of Legal Documents in Victoria

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Abstract

Current legal requirements concerning the witnessing of affidavits and statutory declaration require the physical presence of both the authorised witness and the deponent. This can be time consuming process and seriously disadvantages people in remote rural areas and even those in urban areas with transport problems. Countries such as Australia with a low average population density and limited access to authorised witnesses will feel the effects of these limited laws to a greater degree. The current laws governing this process were developed for good reason, but recent technology advancements allow us to implement a witnessing method that does not require the physical proximity of either the deponent nor the witness. Current laws will not at this time permit this process, however, in this paper we outline a strategy for remote witnessing of documents that could be considered both secure and transparent for the legal process. This paper additionally presents the results of a survey undertaken to obtain comments from legal practitioners on this proposed method of remote witnessing.

Keywords

Agent, Communication, XML, Java, ACL, Architecture Framework

Introduction

Current legal requirements concerning the witnessing of affidavits and statutory declaration require the physical presence of both the authorised witness and the deponent. These requirements are contained in the Victorian 'Evidence Act' 1958, implied by the phrase 'in the presence of'. Affidavits and Statutory decelerations get their power as legal documents from the Evidence Act. Additionally, the administrative process for creating an Affidavit and Statutory Declaration is not specifically detailed in the Act, but has developed over time from the initial phrase detailed above from the Act.

The physical act of getting both the deponent and witness together can be time consuming in the best of circumstances. Add to this the fact Australia has a low population density with a large number of remote communities who are unable to easily obtain access to authorised witnesses. The current legal requirements outlined above also causes difficulty for people in areas with poor transport or those with disabilities that impede movement. The requirement for the physical presence of the witness and deponent was developed in a time when the current possibilities of technology could not be imagined. Current technology has developed to a point where a secure and transparent process for remote witnessing of legal documents can be implemented. Along with the technology component we need to develop a set of procedural steps to ensure the security and integrity of the witnessing process.

A high level overview of the remote witnessing process can be viewed in Figure 1. It is now possible to construct a procedural witnessing system to satisfy the general requirements of the 'in the presence of' clause in the current Act.

Figure 1 Possible new witness-deponent configuration

The technology solution makes use of the Internet, which is basically a global ubiquitous medium. The contribution of this paper is to provide a model for remote witnessing of documents utilising current technology. The model includes both a description of the required technology and configuration, as well as a set of procedures to be followed for using the technology configuration in order to maintain the integrity of the witnessing process. In the following sections, we provide a brief background of document witnessing, followed by a survey of legal professionals on the suitability and usability of remote witnessing. A brief analysis of this survey is provided. A detailed description of the technology configuration and set of procedural steps required to use the technology is given. Finally, conclusions and possibilities of further research are provided.

Background

Many aspects of the legal system have remained unchanged for hundreds of years. One aspect that has remained unchanged for some time is the process for witnessing documents. While there is a number of available documents outlining the procedural steps (Victorian parliament 2008), (Department of Justice (Victoria) 2005a), (Department of Justice (Victoria) 2005b), it is assumed that the deponent and witness will be together during the process. Although this may be the assumption in these documents, it is actually worded as 'in the presence of' in the Evidence Act 1958 (Victorian parliament 2008). This Act is what gives Statutory Declarations and Affidavits their legal authority. Additionally, the Evidence Act is the only place that dictates the requirements for the proximity of witness and deponent.

Butterworths Concise Australian Legal Dictionary defines presence as "The attendance, appearance, or existence of a person at a particular place at an identified time." (Butt 2004). This definition has served the traditional legal system well for many years before recent technological advancements. The original wording of the Evidence Act was constructed well before current technology provided us with any other possible alternative. In an environment where critical business meetings can occur with the participants never meeting face to face, it may be time to rethink the definition of the word presence. Particularly in relation to the clause '*in the presence of*'.

Recent changes and improvements to technology have provided methods for high quality audio visual communication over long distances (CISCO Systems 2009a). Indeed, as these technologies now utilise the Internet for communication, Long Distance can mean literally, anywhere. Technology similar to that which would be used in this proposed model has already been used by Australia's largest telecommunication provider Telstra, to project the presence of Telstra's chief technology officer Hugh Bradlow, over 700 kilometres for a business meeting (Reardon 2008).

Given that the only real interpretation requiring the presence of deponent and witness during the witnessing process is provided in the Evidence Act, there is a distinct lack of Literature attempting to redefine this requirement.

Survey and Analysis

Prior to the construction of a model for remote witnessing a survey was developed and sent to a number of legal practitioners in order to illicit the professional opinion of interested stakeholders. This was to help develop a set of procedural guidelines to maintain the integrity of the witnessing system. The survey was small and consisted of 10 open ended questions designed to obtain detailed responses. The survey questions are detailed below in Table 1.

Table 1: Survey questions

	What (Data)
1	What is your opinion of the possibility of honorary justices witnessing affidavits over large distances by Webcam?
2	Do you believe that electronically witnessed documents should be admissible in court?
3	Please list three to five of the major deponent identification requirements for a mote witnessing system.
4	Please list three to five potential challenges to the validity of remotely witnessed documents.
5	Please list three to five security requirements that you feel are important to ensure the security of an electronic witnessing system.
6	When a document is witnessed by a Webcam there are two versions of the document created with different signatures. Do you believe that a document electronically received by the Honorary Justice should become the original?
7	Do you believe a requirement should be that the data does not leave Australia?
8	Do you believe that to increase security a random number should be written on the top of the document to be witnessed to help improve security?
9	Do you believe that the document should not leave the field of vision of the camera for the entire duration of the witness
10	Would you believe a remote witnessing system that requires the following acceptable a) The data from the two computers never leaves Australia b) A random number being written on top of the page by the deponent at the time of witnessing c) The document never leaving the field of vision of the camera d) An identification system that requires the deponent to sign up for the remote witnessing service at a police station where a copy of their id is taken and digitised so the honorary justice can verify the deponents identity at the time of witness e) An electronic record of the video session and scanned document being recorded for verification of the procedure

The survey was sent to six legal professionals with five surveys returned. In most cases, the survey responses mirrored each other and a distillation of the responses is provided below:

1) All respondents believe that a remote witnessing system is potentially a good idea.
2) All respondents believe that a remotely witnessed documents should be admissible in court.
3) Most respondents have sighted the issue of providing 100 points of identification and the risk of fake ID, however one respondent believed there was no value in an identification system.
4) Out of the responses to this question, the following points were deemed the most important to the validity of the remote witnessing process.
   - Complying with signature requirements
   - Steps taken to prevent document tampering
   - How swearing on a religious book would be facilitated
   - Risk of forgery
   - Who has access to records to audit them
5) Out of the responses to this question, the following points were deemed the most important to the security of the remote witnessing process.
   - Recording sessions and documents
   - Recording details of the computer that the deponent is using
   - Privacy and security of stored information and ID
6) Respondents to this question were mixed but the majority of responses implied that the document that has been signed by the witness should become to original.
7) The majority of respondents did not see any value in ensuring the in-transit data remains in Australia.
8) The majority of the respondents stated that this or a more advanced form of document security should be a requirement.
9) The majority of the respondents stated that the document to be witnessed should remain inside the field of view of the camera at all times during the signing process.
10) All respondents to this question endorsed the idea of remote witnessing with the listed requirements as a framework.

The responses produced by the survey have provided significant information about what legal professionals consider important in a proposed remote witnessing system. A further analysis of some points from the survey responses follow:

Question 3: Please list of three to five of the major deponent identification requirements for a mote witnessing system.

The responses to this question covered issues regarding the amount of ID required and the validity of the ID which has to be used in the remote witnessing process.

A method around this is to have the deponent apply to get access to the remote witnessing system at their local police station. The police could verify identification of the deponent and then create an account for the deponent to be able to use the system.

Question 4: Please list three to five potential challenges to the validity of remotely witnessed documents.

The responses to this question were raising issues surrounding complying with legal requirements for sighting signatures, tampering with documents, auditing and the swearing process.

For sighting signatures, the most appropriate method for dealing with this is to ensure that the camera can focus on the pen as the deponent signs the document.

Tampering with documents on a remote witnessing system can be averted by keeping an electronic copy of the witnessed document on file with easy access by the courts. This process can be improved by ensuring that all deponents know that any document that they remotely witness will be stored on file for purposes including detection of altered documents.

Access to the witnessed documents should only be available to the courts and the deponent by application.

The swearing process for affidavits allows for a deponent to use a religious book, it would be in-practical for a witness to check the contents of a religious book over a Webcam to confirm its validity. For this reason it would be advisable to require that all affidavits are sworn by affirmation which does not require a religious book.

Question 5: Please list three to five security requirements that you feel are important to ensure the security of an electronic witnessing system.

The responses to this question mainly targeted access to the documents and files produced. Addressing all of the security requirements for a system may be excessive of work however all appropriate security measures must be taken to prevent access to the documents, recording and stored identification documents.

Question 6: When a document is witnessed by a Webcam there are two versions of the document created with different signatures. Do you believe that a document electronically received by the Honorary Justice should become the original?

The responses to this question were understandably mixed based on the training of the legal professional. The majority of responses that came back indicated that the signature of the authorised witness gives the document legal authority and is the preferred document to become the original.

Question 8: Do you believe that to increase security a random number should be written on the top of the document to be witnessed to help improve security?

The response to this question shows that there should be extra requirements on proving the authenticity of the documents. One such method is to instruct the deponent to leave a pre-determined marking on every page of the paper immediately before it is scanned and sent to the witness. An example of this would be the witness instructing the deponent to write the numbers ‘1234’ on top of the document they wish to be witnessed. The

deponent would then scan the document and send it to the witness who would then confirm that the number written on the received document matches the number that the deponent was instructed to write. This is an added step to further show the authenticity of the document that has been received by the witness.

Remote Witnessing Technology

With the recent advances in technology it is now possible to maintain a video and audio link between two locations using the Internet as a communications medium. The technology configuration required for the proposed Remote Witnessing process is shown below in Figure 2.

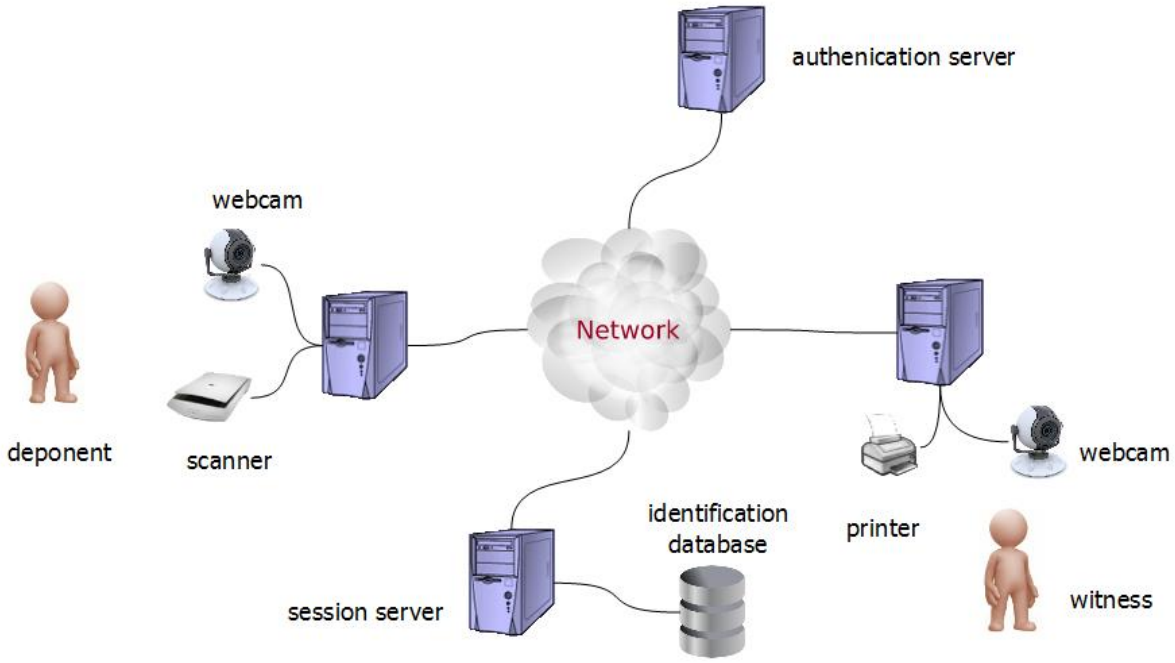

Figure 2 Possible new witness-deponent configuration

The major components shown in Figure 2 are:

- **Deponent Local System**
  This is the local system of the deponent. This system must have Broadband Internet access, as well as a scanner, Webcam and microphone.
- **Witness Local System**
  The local system for the witness. This system must have Broadband Internet access, as well as a printer, Webcam and microphone.
- **Session Server**
  The session server is used as an intermediary between the deponent and witness's computers, this facilitates third party recording of aspects the remote witnessing process from video and audio to the document that was to be witnessed.
- **Identification Database**
  The identification database contains electronic copies of the ID required for a witness to identify a deponent.
- **Authentication Server**
  The authentication server contains the user accounts which will be required to login to the software for the process.
- **Internet**
  The Internet becomes the medium via which the witness extends their presence to the deponent. As the Internet has developed into a global ubiquitous communication medium since the mid

1990's, this becomes the most cost effective and available communication channel for remote witnessing.

The Webcams and microphones become a critical component of the remote witnessing technology as together they allow us to achieve the essence of the '*in the presence of*' clause of the Evidence Act.

Software

Specialist software which is designed to support the remote witnessing process would need to be commissioned. The ideal software for this process would come in three parts to be able to perform as an effective framework for a procedural model to be fully developed.

The deponent would require a software client on their local computer that presents them with a simple method of communicating with the witness and exchanging the appropriate documents.

The witness will require a second software client that appears similar to the deponents client however, it will need specialised functionality to assist the witness. Some of the extra functionality that would be needed is to present the witness with electronic copies of identification as well as an administrative function to notify the appropriate staff when identification documents do not appear to match the deponent.

A software package that will seamlessly handle the communication process from both ends including recording functions while being a secure system.

Security

Security is a critical component to a system that has personal identifying documents stored electronically. The security of a remote witnessing system would have to be extremely well designed and monitored constantly.

Some security recommendations would be:

1) Encrypted hard drives
2) Stress tested programs
3) Encrypted communications
4) Database with multiple levels of access
5) Redundant storage to protect data
6) Frequent security audits
7) Significant user training
8) Virtual private networks
9) OS hardening

Procedural Steps for Remote Witnessing

The technology for remote witnessing discussed in the previous section only facilitates the procedural steps required to maintain the integrity of a remote witnessing process. The procedural steps have been designed to maintain the same level of transparent authenticity as that of the traditional witnessing process, with video records. The survey responses detailed in a previous section have provided valuable input from current legal practitioners in refining the following procedural steps as a necessary component for this model of remote witnessing.

1) Deponent will register for the remote witnessing system at a local Police Station.

   This will allow checking of the deponents identification which can then be entered into the ID Database which will be available to an authorised witness at the appropriate times.

   This step would only need to be completed on initial registration to the remote witnessing system and when the ID which is electronically stored expires.

2) Deponent launches software to connect to the server
3) Deponent automatically joins a queue that will connect them to the first available witness

4) Witness launches software to connect to the session server
5) Witness and Deponent are connected to each other.

   The witness and deponent are connected to each other to begin the witnessing process.

6) Witness identifies the Deponent

   The witness is provided with electronic scanned copies of the deponents ID which the witness can then use to confirm the deponents' identity.

7) Deponent performs the affirmation

   The deponent would perform the affirmation instead of swearing on a holy book as it lowers administrative overhead.

8) Deponent signs the document in the appropriate place

   As per traditional witnessing of documents the deponent signs the document within the electronic presence of the witness.

9) Witness provides a random number to be written at the top of every page

   The witness will provide the deponent with a random number that is generated by the program which will be written on top of every page to be signed by the witness. This is to add to the security of the process to show that the document received by the witness is without a doubt the one signed by the deponent.

10) The document is then scanned by the deponent and sent to the witness

    The deponent would place the documents to be scanned in their scanner and the program would scan and send the documents to the witness to be printed.

11) The witness would then confirm the authenticity of the documents.

    The witness would print the documents and confirm that the documents are the correct ones by checking the random number that was to be written on the top of the documents as well compare the signature on the document to that on any electronic ID.

12) The witness would sign and pass the documents on

    On the condition that the witness is satisfied that the documents are authentic the witness would then sign the documents which then become the original and passed on accordingly.

13) Recording keeping

    The process above would be recorded and placed in a suitable location to allow appropriate authorities to audit the process if it was ever questioned later.

Conclusion

This paper has presented a model for remote witnessing of legal documents. A model such as this will necessarily contain two major components: the technology component; and then a set of procedural steps to be followed.

The survey presented above provided a brief insight into the mind set of legal professionals. While only a small number of surveys were sent out the detailed responses provided an exemplary source of information. The detailed responses have helped provide a suitable framework on which to develop a set of technological and procedural requirements.

The technology component would involve having an appropriate hardware set-up on both the witness and deponents computers, as well as a set of servers to assist witnesses in performing critical background tasks such as witness identification. The final section of the technology component would be the end user software that will integrate all aspects of the process into a simple interface.

The procedural component of the remote witnessing process will involve a set of clearly defined steps which must be followed for a document to be valid. The finalised procedural methodology will be the subject to scrutiny and subsequently must be well refined and well tested.

Further Research and work

The development of a model for remote witnessing is just the beginning of a long process to realisation. Further research will be required in a number of areas including, legal interpretation for the clause 'in the presence of', political and public opinion and comment of the model, professional critical evaluation, as well as further investigation in to security and privacy issues.

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Lessons From the Twin Mega-Crises: The Financial Meltdown and the BP Oil Spill

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Abstract

This paper explores the synchronicity of two mega-crises we are now facing: The BP oil spill and the repercussions of the 2008 financial meltdown. It examines some key common threads in both of these crises. The overarching message is that firms must maintain a culture of social responsibility, must behave in an ethical manner, and must do everything possible to avoid societal harm. The three key lessons to be learned from the twin crises are to consider and mange risk in decision making; minimize conflicts of interest in the hope that executives will then not engage in actions that involve excessive risk to stakeholders; and that government regulation can be beneficial, rather than harmful to business and society – as long as it does not stifle innovation and growth.

Keywords

Risk management, social responsibility, societal harm, ethics, conflict of interest

Introduction

In recent decades, several crises have buffeted the United States economy. The savings and loan debacle of the 1980s and 1990s, which cost American taxpayers $124 billion and led to the failure of more than one thousand banks, was followed by numerous corporate scandals, at such firms as Enron, Adelphia, Global Crossing, WorldCom, and Tyco International, involving accounting fraud and financial irregularities. The Sarbanes-Oxley Act of 2002 was enacted as a reaction to these problems and to restore confidence in our economic system. Then in 2008, the largest Ponzi scheme in history, perpetrated by Bernard Madoff, made it apparent that our financial system was still not being monitored properly.

The above crises are nothing compared to the two mega-crises the United States is facing today: The financial meltdown of 2008 and the British Petroleum (BP) oil spill. The financial meltdown of 2008 has cost millions of jobs and trillions in assets. It will take years for the U.S.— and much of the world — to recover completely from this financial crisis. The BP oil spill is the worst in American history with about 5 million barrels of oil – a figure which translates to more than 200 million gallons of oil – poured into the Gulf of Mexico (Robertson and Krauss, 2010). It is even worse than the Ixtop oil spill of 1979-1980, which resulted in 139 million gallons of oil in the Gulf of Mexico. The damage caused by the BP oil spill will be in the tens of billions of dollars, and will be felt for many years to come.

Each of these cataclysmic failures is being studied separately, and in depth. The

experts want to know what went wrong and what, if anything, we can learn for the future. It can be even more interesting to look at them together. Is it just the randomness of the universe, a coincidence of chronology, that brought these two mega-crises together on adjacent pages of our daily newspapers (and web sites and news programs)? Or, can we actually learn something from this apparent synchronicity? That is the question addressed by this paper.

Risk Management

> *The major difference between a thing that might go wrong and a thing that cannot possibly go wrong is that when a thing that cannot possibly go wrong goes wrong it usually turns out to be impossible to get at or repair (Adams, 1992, pp. 137-138).*

One reason that econometric models often fail may be that they cannot account for every contingency, especially those with extremely low probabilities. Taleb (2010) developed the Black Swan Theory to explain the importance of very-low-probability events in finance, history, and technology. Because these events have extremely low probabilities they can almost never be predicted accurately by models; also, people tend to ignore them since they appear to be impossible. Unfortunately, black swan events are not impossible and happen more often than we think. For example, who could have predicted Hurricane Katrina, 9/11, the bankruptcy of Lehman, the BP oil spill, etc.? Rogoff (2010) makes the point that it is quite difficult for companies to "strike a balance between managing 'tail risk' – a very small risk of a very large disaster – and supporting innovation" (para. 8).

In manufacturing and operations, one way of reducing risk, even low probability risk, is with redundancy. Most airlines understand that passengers do not wish to risk their lives flying. While the probability of an airline pilot becoming incapacitated while flying a plane is very low, still, the government requires that airlines place a co-pilot in the cockpit. Similarly, jets have two engines; if one fails, the other serves as a backup. Of course, too much redundancy can cause its own problems. A jet with six engines would probably be more dangerous than one with two because of increased complexity and weight. Also, with redundancy involving people, each individual counts on someone else to make sure nothing goes wrong; no one takes responsibility. Redundancy can cause people to take big risks. There is a science to risk assessment and management. The goal is to make a system reliable and to manage risk. It is important to anticipate all the things that can go wrong. Also, it is important to have several ways to accomplish the same task, such as shutting down an out-of-control system.

When does it become important to monitor and manage risk, even the risk of things that "cannot possibly go wrong"? For both BP, and by extension the oil industry, and the financial institutions involved in the recent crises, the best answer is probably – before disaster occurs. Too late now, of course, but this begs the question(s) – could these mega-disasters have been averted? And, what can we learn for the future?

Historically, BP has had a very poor safety record, worse than most oil companies (Mouawad, 2010). According to experts in the oil business, BP has a history of taking too many risks, cutting corners, and skimping on safety in the service of higher profits and growth (Lyall, 2010). Some previous problems include a March 2005 explosion in a Texas City refinery owned by BP – 15 people died and 170 were injured. The facility was very old (built in 1934) and was not maintained well. An investigation by the U.S. Chemical Safety Board concluded that the explosion was caused by "organizational and safety deficiencies at all levels of BP" (p. A14). More than 300 safety violations were discovered at the Texas refinery and BP was fined $21 million – a record at that time.

The Thunder Horse oil platform in the Gulf of Mexico almost sank in 2005 in the aftermath of Hurricane Denis; it was actually tilting very ominously. The problems were due to a total disregard for safety. Some of the problems that were discovered included a check valve that had been installed backward and pipes not welded properly. There could have been a horrific oil spill at Thunder Horse, had the well been active. BP has had additional problems at its Ohio oil refinery (62 violations) and a 200,000 gallon oil spill on May 25, 2010 in Alaska (Lyall, 2010). BP had another crisis in 2006 when 267,000 gallons of oil leaked from their pipelines in Alaska. Investigators found that the cause of this oil spill was poorly maintained pipes that were corroded. The company did a very inadequate job of

inspecting the pipes on the North Slope in Prudhoe Bay, Alaska. BP had to pay more than $20 million in fines and compensation (Lyall, 2010).

Representative Bart Stupak of Michigan said the following regarding BP: "It is a corporate problem. Their mentality is to get in the foxhole and batten down the hatch. It just seems there is this pattern" (Mouawad, 2010, p. A22). Henry Waxman, Chairman of the House Energy and Commerce Committee, felt that "BP cut corner after corner to save a few million dollars here and a few hours there" (Lyall, 2010, p. A14). And David Michaels, OSHA administrator, had the following to say about BP (Lyall, 2010):

> *Senior management told us they are very serious about safety, but we observed that they haven't translated their words into safe working procedures and practices, and they have difficulty applying the lessons learned from refinery to refinery or even from within refineries (p. A14).*

It may be hard to believe, but a relatively inexpensive remote-controlled shut-off switch, might have prevented the horrific oil spill into the Gulf of Mexico as well as the loss of 11 lives. It seems that the Minerals Management Service (MMS) encourages but does not require deepwater rigs to have backup systems to trigger the blowout preventers. The MMS allowed BP to delay the testing of the blowout preventer because of problems with well control. When they finally tested the blowout preventer (this is supposed to be done every two weeks), it was tested at a lower pressure than is federally required, 6,500 pounds per square inch rather than 10,000 pounds per square inch. There is also concern that BP increased the risk of an accident by using a cheaper type of well casing. There are also questions as to whether tests were done on the quality of the cement work performed by contractors. Ken Salazar, the Interior Secretary, observed that "oil companies have a history of running the show at the agency" (Urbina, 2010c, p. A18).

In the financial industry, enormous bonuses encouraged executives to take risks with other people's money. Without doubt, the compensation practices in the financial industry, which encouraged excessive risk taking, contributed greatly to the financial crisis. By securitizing the subprime mortgages, the risk was shifted to others. Bankers and mortgage brokers kept giving out mortgage loans to people who could not afford them so they could earn huge bonuses. It is for this reason that the European Union is placing caps on bonuses paid to bankers – no more than 30% of a bonus in cash – in order to reduce excessive risk taking (Alderman, 2010). The rest of the bonus will be held back for three years to determine whether the profits are real or illusory. As we learned in 2008, the huge bonuses paid to bankers and other executives were not real. It became clear that the financial institutions were holding debt that had very little value. To make matters worse, financial institutions such as Bear Stearns were so highly leveraged that they had no financial cushion to withstand a crisis. It is not surprising that many banks and other companies ended up in bankruptcy.

Cohan (2008) feels very strongly that compensation reform in Wall Street is badly needed. He feels that the change from the old system where the big firms (e.g., Donaldson, Lufkin, and Jenrette; Merrill Lynch; Morgan Stanley; Goldman Sachs; Lazard; etc.) switched from being a partnership to a public company contributed to the financial debacle. When these firms were partnerships, there was collective liability; firms were much more cautious. Once they became corporations with common stock, "bankers and traders were encouraged to take short-term risks with shareholder's money" (Cohan, 2008, p. 13). These bankers and traders did not mind taking on more and more risk since their bonuses depended on the annual profits. They were using other people's money to become super wealthy. Siegel (2009) feels that the CEOs deserve most of the blame for the financial crisis. He also makes the point that when the major investment banks such as Lehman Brothers and Bear Stearns were partnerships, they were much more conservative since they were risking their own money. This all changed once they became public companies. Put these ingredients together – excessive risk taking, lack of accountability, and use of shareholder's money – and you get a financial meltdown.

What happened to Fannie Mae and Freddie Mac demonstrates the dangers of taking on too much risk. In 2000, Fannie Mae, under CEO Franklin D. Raines and CFO J. Timothy Howard decide to expand into riskier mortgages. They would use sophisticated computerized mathematical models and rank borrowers according to the risk level of the loan; the riskier the loan, the higher the fees that would be

charged to guarantee the mortgage. They felt that the computer models would ensure that the higher fees for the riskier mortgages would offset any losses from mortgage defaults. The company announced that it would purchase $2 trillion in loans from low-income (and risky) borrowers by 2010 (Duhigg, 2008). What this accomplished – besides enriching the executives at Fannie Mae – was that it made subprime mortgages, which in the past would have been avoided by lenders, more acceptable to banks all over the country. These banks did not have the sophistication or experience to understand the kind of risk they were taking on. Between 2001 and 2004, the subprime market grew from $160 billion to $540 billion (Duhigg, 2008).

As early as February 2003, Armando Falcon, Jr., who ran the Office of Federal Housing Enterprise Oversight (OFHEO), wrote a report that warned that Fannie and Freddie could default because they were taking on far too many mortgages and did not have the capital to protect themselves against losses. Falcon almost got fired for this report. In 2004, allegations of accounting fraud surfaced at Freddie and Fannie; both had to restate earnings. Daniel H. Mudd became CEO of Fannie Mae in 2005 after Raines and Howard resigned from Fannie Mae under a cloud of accusations. Under Mudd's watch, Fannie purchased even riskier mortgages—mortgages that were so new that the computer models could not analyze them properly. Mr. Mudd was warned by Enrico Dallavecchia, his chief risk officer, that the company was taking on too much risk and should charge more. According to Dallavecchia, Mudd's response was that "the market, shareholders, and Congress all thought the companies should be taking more risks, not fewer. Who am I supposed to fight with first?" (Duhigg, 2008, p. A34). In September, 2008, the Federal government had to take over Fannie Mae and Freddie Mac. They had taken on far too much risk, and were in serious trouble.

Crouhy (2010), in a discussion of risk management failures in the financial crisis, considers that the risk models (e.g., VaR) were extremely simple and not meant to describe complex financial instruments. Another problem was that there was almost no consideration of the consequences of liquidity risk. Firms were too leveraged and took spectacular risks with very little equity. Crouhy posits that risk models and improper risk assessment were the root cause of the financial crisis, compounded by overreliance on deceptive ratings of the credit rating agencies. Today we know that the AAA ratings given to collateralized debt obligations were ludicrous. These were extremely risky securities and deserved a much lower rating. How AAA ratings could be given to securities that are basically junk is addressed in the next section.

Conflict of Interest

In the early 1970s, credit-rating agencies such as Moody's starting charging fees for their ratings. Before that, they never took money from the issuer of the debt. Revenues came from the investors who purchased the publications of the credit-rating agencies. The original business model recognized that to charge the issuer of the security for the rating would lead to the suspicion that ratings would be for sale, i.e., there could be a conflict of interest (Morgenson, 2008). By ingratiating themselves with clients, the credit rating agencies were able to steer more business to themselves. In fact, providing ratings for complex financial securities was much more lucrative than doing the same for simple bonds. For example, rating a complex $350 million mortgage pool would generate approximately $250,000 in fees; rating $350 million of municipal bonds would only generate $50,000 in fees.

It is interesting to note that, of the subprime mortgage backed securities that were issued in 2006 and rated AAA by the rating agencies, 93% are currently rated as junk (Krugman, 2010a). Clearly, the conflict of interest has played a significant role in the corruption of the entire rating system. The rating agencies – Moody's, Standard & Poor, and Fitch – knew that they would lose clients if their ratings were too tough. This is confirmed by emails sent by employees of the credit rating agencies that mention "the ongoing threat of losing deals" and the need to "massage the subprime and alt-A numbers to preserve market share" (Krugman, 2010a, p. A23).

Another ongoing investigation conducted by New York prosecutors is aimed at eight major banks. They are investigating how these banks "created, rated, sold and traded mortgage securities that turned out to be some of the worst investments ever devised" (Schwartz and Dash, 2010, p. B1). The answer, of course, also relates to conflicts of interest. Banks made a huge amount of money selling these

garbage securities. Banking executives made huge bonuses and had little interest in investigating the true quality of these securities.

Washington Mutual (WaMu), which suffered the second largest bankruptcy in American history, failed largely because the bank approved mortgages to people with little income. They used adjustable rate mortgages (ARMs) to entice poor people to borrow money and approved almost every mortgage. The people obtaining the mortgages did not realize that the very low payments would not continue indefinitely and would eventually balloon. According to WaMu employees, CEO Kerry K. Killinger, put a huge amount of pressure on employees to lend money to borrowers who had little in the way of income or assets. Real estate agents were given fees of thousands of dollars for bringing borrowers to WaMu, and WaMu gave mortgage brokers generous commissions for the riskiest loans since they produced higher fees and resulted in increased compensation for executives. Between 2001 and 2007, Killinger earned approximately $88 million (Goodman and Morgenson, 2008). Clearly, the conflict of interest caused executives at WaMu to take on huge amounts of risk for his bank. These so called "misaligned incentives" encouraged foolhardy behavior. It is hard to act ethically when the bonuses are in the millions. The CEO was not risking his own money or his own house. The risk was borne by others; the bonuses went to him.

Bonuses made up a huge part of how people were compensated. These bonuses caused a huge conflict of interest. One individual at Merrill Lynch received $350,000 as salary but $35,000,000 as bonus pay. Bonuses were based on short-term profits; this distorted the way incentives work. Employees were encouraged to take huge risks since they were interested in the bonus, which were based on the earnings for that year. Thus, billions in bonuses were handed out by Merrill Lynch in 2006 when profits hit $7.5 billion. Of course, those profits were only an illusion as they were based on toxic mortgages. The bonuses were not rescinded after the company lost billions. E. Stanley O'Neal, former CEO of Merrill Lynch, not only collected millions of dollars in bonuses but was given a package worth about $161 million when he left Merrill Lynch.

A.I.G. Financial Products, a 377-person office based in London, nearly destroyed the mother company, a trillion-dollar firm with approximately 116,000 employees. This small office found a way to make money by selling credit default swaps to financial institutions holding very risky collateralized debt obligations. They made billions in bonuses selling super-risky garbage securities. Same story here: while they made a huge amount of money in bonuses; the risk was carried by the entire company.

Goldman Sachs has been accused by the Securities and Exchange Commission of selling mortgage securities that had virtually no chance of being successful. The mortgage bonds in the portfolio were allegedly selected by John A. Paulson, a hedge fund manager, who was betting against the mortgage market and would only make money if the securities failed (Story and Morgenson, 2010). Krugman (2010b, p. A23) calls what Goldman Sachs allegedly did as "looting." It takes a great deal of arrogance to develop and sell securities that are "deliberately designed to fail" so as to enable a valuable client to enrich himself from the failure. This goes far beyond what a number of Wall Street firms did in marketing securities to various naïve clients all over the world while trying to make exorbitant profits by betting that these risky, low-quality securities would drop in value. Goldman has agreed to pay a penalty of $550 million, the largest settlement in the SEC history. The settlement may be large but the company will barely feel it; Goldman made profits of $13.39 billion last year (Chan and Story, 2010).

Conflicts of interest are also a factor in the BP oil spill. The government has decided to divide the Minerals Management Service in two — one office would be concerned with environmental safety; the other, with collection of leasing revenues from the oil industry. The government believes that there were conflicts of interest since the same agency both collected revenues from drilling and was also responsible for environmental enforcement. Some countries separated the two functions, as did Britain after an oil rig accident 1988 (Zeller, 2010).

It is unmistakable that reducing or eliminating conflicts of interest will go a long way towards making it easier for people to behave ethically and prudently. Of course, politicians can work against conflicts of interest in the political realm. According to Lichtblau and Wyatt (2010), the financial industry, via

political action committees and private donations, provided congressional candidates with more than $1.7 billion in the last 10 years. A good part of these funds went to the financial committees that oversee financial regulation and are supposed to protect the public from dishonest financial practices. The energy industry is also doing its part in influencing legislators. The Office of Congressional Ethics is investigating eight members of Congress who received a considerable amount of money in contributions from the financial sector a few days before the House voted on a landmark bill to regulate the financial industry after the meltdown of 2008 (Lipton and Lichtblau, 2010). A significant portion of these contributions was received during a 10-day period before the crucial vote. A highly questionable practice involves corporations which attempt to influence politicians by financing university endowments – including endowed chairs, institutes, and academic centers – that honor those lawmakers (Lipton, 2010).

A general truism is that lapses in business ethics can always be traced back to an underlying conflict of interest. In the presence of such conflicts of interest as are discussed here, the invisible hand of an unregulated marketplace becomes just another mechanism for rampant self-interest and unmitigated greed.

Deregulation

> *Whether in Enron's creative accounting, the packaging of high-risk subprime mortgages as top-grade collateralized debt obligations, or Bernard Madoff's $50 billion scam operation, the recent riot of capitalist irresponsibility has shattered the fantasy that the free market, left to its own devices, will produce rationality and prosperity (Phelps, 2009, p. B11).*

Over the past several decades, many economists and politicians have encouraged the U.S. to move towards removing regulations. Regulations were seen as an obstacle towards free markets and, thus, deregulation was supposed to make the U.S. more innovative and successful. For example, the Glass-Steagall Act of 1933 had separated commercial banking from investment banking. The purpose of this regulatory wall was to reduce risk in the banking system. The Glass-Steagall Act of 1933 was repealed in 1999.

The belief that the invisible hand of the marketplace – i.e., everyone pursuing his or her own self interest – is sufficient to ensure a stable and healthy economy, and that little or no government regulation is necessary, has been attributed to Adam Smith (1776). Robinson (2007) asserts that the single-minded pursuit of self-interest has caused much harm to society and that we should cease associating Adam Smith with this doctrine. In actuality, in the book he believed would establish his reputation, *The Theory of Moral Sentiments*, Smith made it clear that he believed that economic growth depended on morality. He said "society… cannot subsist among those who are at all times ready to hurt and injure one another." Smith (1759; 2002:162) argued that:

> *Man… ought to regard himself, not as something separated and detached, but as a citizen of the world, a member of the vast commonwealth of nature and to the interest of this great community, he ought at all times to be willing that his own little interest should be sacrificed.*

To Smith, benevolence — not pursuit of self-interest — was one of the highest virtues (Pack 1991).

In 1937, at his second inaugural address, President Franklin D. Roosevelt said: "We have always known that heedless self-interest was bad morals; we know now that it is bad economics" (Roosevelt, 1937, para. 11). Lawrence H. Summers, now Director of President Barack Obama's White House National Economic Council, in a 2003 speech to the Chicago Economic Club, made the following remark:

> *For it is the irony of the market system that while its very success depends on harnessing the power of self-interest, its very sustainability depends upon people's willingness to engage in acts that are not self-interested (Summers, 2003, para. 19).*

Lowenstein (2008) points out that only six months after the Long Term Capital Management (LTCM) fiasco, then Chairman of the Federal Reserve Alan Greenspan "called for less burdensome derivatives regulation, arguing that banks could police themselves" (p. BU1). Long Term Capital Management, a hedge fund started in 1994 that went out of business in 2000, in 1998, had borrowed over $125 billion, but only had equity of $5 billion. The financial crisis started by LTCM at that time should have demonstrated how the entire financial system could be at risk because of the actions of one fund taking huge risks. Without the intervention of the Federal Reserve Bank and its $3.5 billion rescue package, the entire financial market might have collapsed.

It appears that even Alan Greenspan, former Chairman of the Federal Reserve, changed his mind about unregulated capitalism. Suskind (2008) reports that Alan Greenspan, at a meeting on February 22, 2002 after the Enron debacle, was upset with what was happening in the corporate world. Greenspan noted how easy it was for CEOs to "craft" financial statements in ways that could deceive the public. He slapped the table and exclaimed, "there's been too much gaming of the system. Capitalism is not working! There's been a corrupting of the system of capitalism" (Suskind, 2008, p. A29). Unfortunately, despite what happened at Enron, Greenspan continued to believe in unregulated capitalism.

Alan Greenspan did finally admit at a congressional hearing in October 2008 that investigated the financial meltdown of 2008 that he had relied too much on the "self-correcting power of free markets" (Andrews, 2008, p. B6). Greenspan also acknowledged that he did not anticipate the "self-destructive power of wanton mortgage lending" (Andrews, 2008, p. B6). When asked whether his ideology – i.e., belief in deregulation and that government regulators did not do a better job than free markets in correcting abuses – contributed to the financial crisis, he admitted that he had made a mistake and actually took partial responsibility. The mistakes to which Greenspan referred related to the sub-prime mortgages and out of control derivatives market. One hopes that there are very few economists out there that still believe that financial markets can regulate themselves.

The market for derivatives and credit default swaps (CDSs) became unregulated thanks to the Commodity Futures Modernization Act of 2000, which was pushed by the financial industry in the name of free markets and deregulation. The law also made it virtually impossible for states to use their own laws to prevent Wall Street from doing anything about these financial instruments. This bill was passed "at the height of Wall Street and Washington's love affair with deregulation, an infatuation that was endorsed by President Clinton at the White House and encouraged by Federal Reserve Chairman Alan Greenspan" (Kroft, 2008).

Eric Dinallo, the insurance superintendent of New York State, had the following to say regarding credit default swaps (Kroft, 2008):

> *As the market began to seize up and as the market for the underlying obligations began to perform poorly, everybody wanted to get paid, had a right to get paid on those credit default swaps. And there was no 'there' there. There was no money behind the commitments. And people came up short. And so that's to a large extent what happened to Bear Sterns, Lehman Brothers, and the holding company of AIG. It's legalized gambling. It was illegal gambling. And we made it legal gambling…with absolutely no regulatory controls. Zero, as far as I can tell.*

In response to the question as to whether the CDSs market was like a "bookie operation," Dinallo said: "Yes, and it used to be illegal. It was very illegal 100 years ago."

Other steps were taken to reduce regulation of the banking system. On April 28, 2004 there was a meeting between five major investment banks and the five members of the S.E.C. The investment banks wanted an exemption from a regulation that limited the amount of debt – known as the net capital rule – they could show on their balance sheets. By increasing the amount of debt, they would be able to invest in the "opaque world of mortgage-backed securities" (Labaton, 2008, p. A23) and credit default swaps (CDSs). The S.E.C. agreed to loosen the capital rules and also decided to allow the investment banks to monitor their own riskiness by using computer models to analyze the riskiness of various securities, i.e., switch to a voluntary regulatory program (Labaton, 2008). The firms did act on the new requirements and took on huge amounts of debt. Thus, the leverage ratio at Bear Stearns

rose to 33:1; this made the firm very risky since it held only $1 of equity for $33 of debt. Regarding what transpired, Professor James D. Cox, an expert on securities law and accounting at Duke, said:

> *We foolishly believed that the firms had a strong culture of self-preservation and responsibility and would have the discipline not to be excessively borrowing … Letting the firms police themselves made sense to me because I didn't think the S.E.C. had the staff and wherewithal to impose its own standards and I foolishly thought the market would impose its own self-discipline. We've all learned a terrible lesson (Labaton, 2008, p. A23).*

President George W. Bush wanted to encourage homeownership, especially among minorities. Unfortunately, his approach, which encouraged easy lending with little regulation, helped contribute to the financial crisis (Becker, Stolberg, and Labaton, 2008). The increase in homeownership was accomplished through the use of toxic mortgages. President Bush also encouraged mortgage brokers and corporate America to come up with innovative solutions to enable low-income people to own homes. Various states, at one point, did try to enact legislation against predatory lending but were blocked by the Federal government. The attorney general of North Carolina said: "They took 50 sheriffs off the beat at a time when lending was becoming the Wild West" (Becker, Stolberg, and Labaton, 2008, p. 36).

Amartya Sen's 2010 commencement speech to students of St. Michael's College might very well sum up how many economists feel about deregulation today. The Nobel laureate stated the following: "A well-functioning market economy can make a huge contribution to the growth of incomes and living standards. In the absence of sensible regulations, the market can also yield a complete disaster" (Dillon, 2010, p. A22).

Similarly, in the offshore oil drilling industry, Federal regulators appear to have failed to properly oversee drilling in the Gulf. The April 20, 2010 Deepwater Horizon blowout, even worse than the Exxon Valdez oil spill of 1989, poured huge quantities of oil into the Gulf of Mexico. It is another consequence of trusting companies to do a good job of regulating themselves. It is becoming clear that the Minerals Management Service (MMS) which is supposed to protect the environment did not do its job well. In fact, a huge scandal is unfolding at the Minerals Management Service involving corruption, sex, and drugs. This agency of the Interior Department, accused of having a "culture of substance abuse and promiscuity," did not adequately protect the environment (Savage, 2010, p. A1). Another scandal that is coming to light regarding the MMS is that it has allowed numerous oil companies to drill all over the Gulf of Mexico without obtaining the required permits from the other agencies – e.g., the National Oceanic and Atmospheric Administration (NOAA) – whose job it is to assess the environmental impact of drilling. Indeed, it appears that the MMS routinely ignored warnings of their own engineers and biologists regarding safety and environmental issues. Scientists working for MMS are claiming that they were routinely pressured into changing any reports that indicated that drilling could lead to an environmental mishap (Urbina, 2010a, 2010b). It is becoming evident that the entire system of regulating offshore drilling needs to be overhauled. The MMS has approximately 60 inspectors to oversee 4,000 offshore oil facilities in the Gulf. Clearly, more inspectors are needed. The MMS encouraged the offshore oil rigs to have backup systems to activate the blowout preventers. However, there was no enforcement (Belsie, 2010).

Abraham (2010, p. A27) calls the gulf oil spill "a disaster Congress voted for." Congress encouraged more drilling for oil back in 1995 by reducing its share of the proceeds from oil and gas drilling. The additional money going to the offshore drillers was supposed to encourage them to find more oil. Congress did indeed encourage more drilling, and at the same time reduced the staff needed to regulate the industry, despite the fact that drilling in deeper water posed additional risks. In fact, the 2001 President's National Energy Policy directed the agencies to eliminate regulations that were – supposedly – "excessive and redundant" (p. A27).

One would hope that these two mega-disasters affecting the financial system and the environment should put to rest once and for all the myth that markets can regulate themselves and that, therefore, no government regulation is necessary. There is no question that regulation is needed. Of course, this does not mean that government should overdo it with regulations. Too much regulation can stifle

innovation but a reasonable amount of regulation can ensure that markets function in a fair way and spread prosperity to all.

Savitz and Weber (2006) use the example of the whaling industry as a symbol to show what happens when companies pursue profits without considering the "triple bottom line," which considers an organization's success to be based on economic, environmental, and social performance,[2] rather than only profit. The whaling industry once employed 70,000 people and was an important American industry. It began to decline in the mid-1840s when the number of whales dropped precipitously because the firms did not consider the future, and only were concerned with current profits. Savitz and Weber (2006, p. x) state: "a sustainable corporation is one that creates profits for its shareholders while protecting the environment and improving the lives of those with whom it interacts." Unfortunately, most companies do not think this way and we are seeing many examples of firms that are not interested in the triple bottom line. In fact, overfishing is still causing problems in many countries; this is one reason why regulation is necessary.

Whenever a resource is held in common by a group of individuals, it will always be in the interest of each individual to exploit the resource. The tragedy is that eventually the resource will be completely depleted. For instance, if a forest is community property, everyone in town will keep logging it until the forest has been totally consumed. This problem is known as the "tragedy of the commons," a term coined by Hardin (1968). That is another example of a situation where regulation is necessary.

Warner (2010) feels that we should be called a "nation of dysregulation." After seeing the effects of the

> *...failure of the levees during Hurricane Katrina, the Wall Street meltdown of 2008, the collapse of the housing market and now the BP spill, we have come to what feels like a moment of reckoning, with some tentative signs that our country's decades-long love affair with deregulation is starting to chill (p. 11).*

A majority of Americans believe that a weak regulatory system is the major cause of the BP spill (Warner, 2010). Dr. Peter Whybrow, Director of the Semel Institute for Neuroscience and Human Behavior, feels that living in a culture of overindulgence, compulsive getting, need for instant gratification, and hyperconsumption has weakened our self-regulatory system. This "orgy of self-indulgence" is responsible for the obesity epidemic in the U.S.as well as the willingness to go into excessive debt to purchase homes and products we cannot really afford (Warner, 2010). It is interesting that researchers are connecting the problem of lack of self-regulation with the overall issue of deregulation.

Rogoff (2010) makes the comparison between the BP oil spill and the financial crisis. Both, in his opinion, demonstrate how, when technology (or financial instruments) is very complex, it becomes almost impossible to adapt regulation. This means that government will either regulate too much or too little. After all, regulators cannot keep changing the rules even if technology is constantly evolving. Rogoff also states: "Economics teaches us that when there is huge uncertainty about catastrophic risks, it is dangerous to rely too much on the price mechanism to get incentives right" (para. 13).

Conclusion

Risk, conflicts of interest, and deregulation. These are the common elements that conspired to create the synchronicity of these two current mega-crises – the financial meltdown and subsequent recession and the BP oil catastrophe. One obvious important lesson to be learned is that greed is not good. It should now be apparent that unbridled greed was responsible for both debacles, which provide us with valuable insights into the proper way to run an economy.

Another overarching lesson is that firms have to maintain a culture of social responsibility. Corporate social responsibility means that firms have to focus on more than simply maximizing shareholder

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[2] Sometimes referred to as the three P's – people, planet, and profit.

wealth. One definition of corporate social responsibility (CSR) is cited in Hollender and Fenichell (2004, p. 29):

> *... an ongoing commitment by business to behave ethically and to contribute to economic development when demonstrating respect for people, communities, society at large, and the environment. In short, CSR marries the concepts of global citizenship with environmental stewardship and sustainable development.*

Corporate social responsibility is often a broader and richer concept than business ethics alone. It certainly includes business ethics but also takes into account such concepts as helping one's community and global citizenship. Lantos (2001) asserts that there are three types of CSR: ethical, altruistic, and strategic. One can argue against altruistic CSR since helping others can reduce the profits of the firm and thus hurt the shareholders. Strategic CSR focuses on doing good in a way that benefits the firm. Ethical CSR, which is concerned with avoiding societal harm, is something that all organizations must advocate.

Today's twin mega-crises teach us that it is vital to minimize conflicts of interest in order to encourage executives to behave in an ethical manner. Secondly, firms must consider risk in decision making. These risks should include possible harm to the environment, employees, customers, the United States, the world, and, of course, shareholders. By removing or reducing conflicts of interest, it becomes much less likely that executives will engage in extremely risky behaviors.

With a sole proprietorship, the owner is less likely to take excessive risks that could result in the loss of one's family business and home. With a corporation, especially when there are obvious conflicts of interest, it is unlikely that an executive will *not* take unwarranted risks. Would a banker take a one in a million chance of destroying the livelihood of thousands of employees to make a definite $50 million bonus? How about a one in a million chance of destroying the world financial system and millions of jobs for a sure $300 million bonus? Do we even want executives to make those decisions?

It is unfortunate that self-regulation does not usually work. The greed motive is often too strong. Many industries work within the constraints of various regulations and prosper. There are codes and guidelines for every construction project in the United States. Would you want your children to drive a car over a bridge that was not built to code? Fly in a jet that does not abide by FAA safety guidelines? For those who feel government regulation is totally unnecessary, note how many dangerous products have recently come out of China. These include toys with dangerous amounts of lead, poisonous pet food, flammable baby clothes, tainted sea food, poisonous toothpaste, adulterated dairy products, and much more. In fact, according to a European Union report, China was the source of most dangerous products (New York Times, 2008). China is now in the process of strengthening regulation of its products. The Avandia diabetes drug saga also demonstrates that many firms cannot be trusted to report unfavorable statistical findings when it will affect profits. It appears that GlaxoSmithKline, the manufacturer of Avandia, purposely suppressed results that indicated that the drug was riskier for the heart than a competing drug for diabetics. An email message sent by an executive cautioned someone to make sure that "these data should not see the light of day" (Silverman, 2010, para. 2).

Warren Buffett once said that "It takes 20 years to build a reputation and five minutes to ruin it." The twin mega-crises have shown us how true this is. Think of what has happened to the stellar reputations of such firms as BP, Goldman Sachs, Fannie Mae, Freddie Mac, AIG, Merrill Lynch, and others. It is not only reputation that has diminished. BP lost many billions of dollars of market value (at one point $70 billion) because of the market crisis, and there is a strong possibility that it will be taken over by another firm once the crisis is over (Winston, 2010). The reputation of Goldman Sachs has been ruined. It has been described by *Rolling Stone* magazine as "a great vampire squid wrapped around the face of humanity" (Taibbi, 2010, para. 1).

… And once we thought that no one could sink lower than Enron.

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