

GLOBAL INTEGRITY SUMMIT

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OUTCOME PAPERS

Professionalisation



Towards an Integrity 20

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PROFESSIONALISATION

In the lead up to the financial crisis, professional lawyers drew up collateralised debt obligations (CDOs) and other examples of what Warren Buffet called 'instruments of mass destruction', auditors signed-off on many books loaded with such instruments – and bankers who like to call themselves 'financial professionals' drew huge fees from a process that drove the world to the financial precipice. Professions need to consider how they might have contributed to the global financial crisis and other problems considered by the G20, and how these groups can contribute to solutions, recognising the positive and responsible role that professions can play in improving governance standards.

Many groups with a claimed expertise for sale have sought to be recognised as 'professions' – with the prestige, autonomy, power and ability to charge higher fees. The great learned professions of medicine and law were joined by dentists, architects, accountants and engineers in the nineteenth century and 'allied health professions' (nurses, pharmacists, psychologists) in the twentieth. There have been moves to professionalise other areas (for example, journalism) and to re-professionalise the military. The scandals in the financial services industry around the GFC have led to pushes to professionalise various groups within the financial services industry. Some are keen to clean up the profession; others seem keen for the prestige and the claim of self-regulation as an alternative to government regulation. Some were annoyed that accountants did not have to get licenses to give financial advice, failing to realise that this was founded on a professional code and safeguards far in excess of anything proposed for finance 'professionals'.

Few seem to have focussed on the central element of a profession – service to the community whose delivery constitutes a public good. A group is not a profession simply because they proclaim themselves such. A profession involves a body of knowledge, institutions for imparting it and a dedicated and identified group of experts who apply that knowledge for the benefit of the community they claim to serve.

PUBLIC GOOD

The centrality of the public good is expressed in a number of ways. Most professions recognise duties to a public good and clients, placing the first above the second and both above their own interests. Lawyers recognise a duty to law and the system of justice. Accountants see their distinguishing mark as acting in the public interest 'to assist in maintaining the orderly functioning of commerce'. The professional services they provide to clients are designed to serve the public good to which the profession is committed. But if serving their client defeats the public good. Some lawyers put it that the duty to the court is always prior to the duty to the client. But others see that their duty to the court and justice is via the representation of their client in ways that advance justice rather than impede it. A similar view can be seen in the accountancy profession – doing their professional best to ensure the integrity and reliability of the financial and accounting information on which so many rely.

The dedication to the public good does not make professions into charities or government agencies and professionals can charge fees for the service they render. Those who serve best may earn particularly high fees, in line with the service they do and the public good they promote. But generating those fees can never be the central rationale or justification of the profession.

A professional should never design or recommend services in order to maximise fees. A doctor must not recommend a procedure because it makes more money. A lawyer must not recommend tactics to increase cost or delay – even if the client wants this action to intimidate or bankrupt the opponent. This addresses another vital point. Even though most professionals work for corporate or individual clients, they are not supposed to serve their clients at the cost of the public good to which the profession is dedicated. Even though many professionals work for large and often profit-making corporations (engineering firms, private hospitals, corporatised legal practices), they are employed as professionals. Their employers should realise that they cannot be expected or required to compromise their professional standards and service to the public good for the sake of higher profits. Even if some professionals may breach these requirements and some professions develop a range of excuses for practices that might otherwise be seen to breach them, there is, for most, a genuine commitment to these principles by the profession and the vast bulk of relevant professionals. It would be very hard to say this about the 'financial services industry' over the past 20–30 years, where the search for fees has proved paramount.

The legal and accountancy professions have been tempted by their share of the fees available and need to review their own contribution to the mess. In doing so, they will not only deal with some of the 'specific threats' which the accountancy code emphasises professionals must address. They will also assist other potential professions.

BODY OF KNOWLEDGE

The other sharp distinction between professional bodies and the finance industry is in relation to the 'body of knowledge' that should be at the core of the profession and which it develops, communicates and applies. The best professions have multiple means for challenging that body of knowledge – through public contestation in the academy, in professional bodies and, in law, through the structure of adversarial court processes. Such challenges are critical to the development of that body of knowledge and its application in the service of the community. While no profession lives up to the above ideals in full, all acknowledge them and try. It is not clear that this is generally true of the finance industry which is attracted to theories which would appear to promote their interests.

Two of the most egregious examples are the 'efficient markets hypothesis' (EMH) and the allied 'rational expectations theory'. The assumption of perfect knowledge and rationality of market participants was more than just an overstatement to make the mathematics work. It built in assumptions that would make government intervention by definition unnecessary and ineffective. It profoundly misunderstood a central part of the market dynamic. The goal of most market players is to exploit differential knowledge to their advantage – and sometimes to create differential knowledge by conduct that skirts misleading and deceptive conduct and abuse of market power. These theories also ignored the huge swings in markets, the existence of market sentiment and the fact that greed and panic are not matters of random statistical variation but are highly infectious; indeed, they are probably more infectious in those whose only declared interest is in making money. Professor Ian Harper was honest in saying that the members of the Wallis Inquiry into financial services all believed in it and the collapse of the EMH meant we needed a new inquiry and a complete rethink.

A profession is always interrogating and challenging the ideas that form part of its knowledge and is particularly careful about those propositions that suit its own practitioners. If something appears to be too good to be true, it probably is too good to be true and should be tested. Constant internal criticism means that major mistakes such as EMH are avoided. (Have there not been such monumentally failed theories at the heart of medicine, engineering or law in the last century?) When mistakes unfold, it is incumbent on professionals to understand why they got it so wrong and persisted with it despite the criticisms of many who were proven right. The professions should then critically re-examine their theories and prescriptions. If members of a profession are not prepared to do so, they should not have a job, let alone be listened to. While it is not suggested that it is necessary for an EMH purge, free market enthusiasts emphasise the importance of putting an economic cost on failure. This does not mean that they cannot play a leading role in new thinking. One can learn from error; and the larger the error the greater the possibility of learning. Indeed, it is quite possible that those who thought EMH as nonsense from the beginning may learn less. Even if EMH had been true, John Stuart Mill reminded us that truth is always strengthened by confrontation with its opposite.

ETHICS

A profession involves body of individuals, committed to applying their skills and knowledge to that public good, in which entry to the profession is dependent on establishing their skills and knowledge and abiding by a code of ethics. That code of ethics places the public good first, the client second and the professional third. Continued membership of the profession involves maintaining and developing those skills and knowledge and abiding by the code of conduct. Those who fail to do so are thrown out of the profession by other professionals under procedures initially established by the profession but generally give the force of law.

Professional pride in, and public respect for, a profession is increased by those who live up to the highest standards of the profession – and the speed with which the profession disposes of its bad apples. Professional duty is also an ethic. It involves personal values that professionals come to internalize and see as part of their working identity. The ethic constitutes a role that the professional takes pride in and comes to see as part of their way of life. Those who fail to live up to the standard are perceived to have betrayed the group, and the standards of excellence it requires.

INTEGRITY WITHIN THE FIRM

Institutional integrity involves an institution asking hard questions about its values, giving honest and public answers and living by them. Doing so for an institution is more complex than for an individual but it is both possible and necessary. This starts with the vital questions that must be asked of any institution or organisation: What is it for? Why should it exist? What justifies the organisation to the community in which it operates given that the community generally provides privileges? Why is the community within which it operates better for the existence of the government or corporation?

Asking those questions involves an institutional and collective effort under its own formal and informal constitutional processes (including getting acceptance from relevant outsiders – for example, shareholders and or relevant regulators).

An organisation has integrity if it lives by its answers. However, it does so in a different way. It cannot merely be a personal commitment but an institutional commitment that involves creating mechanisms which make it more likely that the organisation keeps to the values it has publicly declared and to which it is publicly committed. Organisations are responsible for not only their public value statements, but also their operational values and decisions. These mechanisms are collectively called an 'integrity system'. Leaders of financial institutions would do well to commence this process and consider the justification for their existence, for the concentration of resources within them and the special privileges accorded them. Why is the community better off for their existence? Is it better off? These are questions that should always be asked – the difference is that there is now a demand for answers from outside as well as a need to provide them internally.

INTEGRITY FOR PROFESSIONS

Institutional integrity is critical for law firms, accountancy firms and financial institutions. It is even more central for the professions they form or would form. Such professionals need to consider the values that are at the core of the profession – the public good they claim to further. They need to ask themselves hard questions about their values and live by their answers. They should be doing this at the best of times – and especially where their actions appear to have damaged the public good which justifies respect, reputation and privileges. Most strong professions were formed when the majority of their members were sole or small practitioners. The advent of large firms (and the proposed professionalisation of activities such as banking which are already typified by large organisations) poses a temptation to argue that professional duties clash with duties to the shareholders or management. There is no more of a clash than that which exists between lawyers' professional duty and their desire to make money. The former cannot be compromised for the latter. Indeed, the latter can only be secured by the former. If an organisation wants to employ a professional, they must seek to employ them as a professional – whatever the employer (law firm, corporation, government) and whatever the profession.

Large law and accountancy firms should, and often do, contribute to the development of their professions. The same should be true of any new banking profession.

COMMUNITY COMFORT

Once agreement is reached on the elements of integrity and profession, the community is entitled to know how government intends to assure adherence. What is the best way to 'regulate' the individual professional and the group profession and how would those models of regulation intersect with the requirement for integrity in corporations? A regulatory system that actively seeks to wrestle with this complexity rather than preference the simplistic, legal fictions of corporations and shareholder primacy (as a proxy for community) is long overdue. Ultimately, the capacity to practice in certain sorts of occupations where public interest and trust is at stake is not a right but a privilege that is ultimately granted by the society. Genuine professions acknowledge this by having ethical standards and legal and institutional measures to ensure they are upheld. If new practices are shown to impact powerfully on public wellbeing, then the society can rightly ensure these practices are only performed within appropriate bounds, as determined by appropriate professional standards and duties.

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