# Professions and the role of professionals in restoring integrity

[Global Integrity Summit speech]

Revised and edited extract of a speech given by Dr Deen Sanders at the Global Integrity Summit, Brisbane on 9th September 2014.

How should we address failures of financial integrity and rebuild integrity of, and trust in, institutions?

As we have heard from many of the speakers, the problems are myriad, so I'm pleased to shift the discussion to solutions and be given the rebuilding challenge in my part of the session. As I was listening to the previous speakers I couldn't help but think that maybe the problem isn't with the regulatory options or with the tools of government but with the whole idea of the Institution and the Corporation itself. Perhaps we need to go back a few steps to reimagine the whole idea of the limited liability Corporation, which we should not forget is a relatively new innovation in legal structure, and instead begin to think about how we reintroduce individual obligation and notions of *personal* trust into the *structurally impersonal* model of the Corporation.

I ask this because it seems the more we investigate the concept of trust (in all its social and institutional forms),the more the evidence suggests the possibility that 'trust in institutions' is a social construct that was always built on shaky ground.

In the current environment it may be hard to fathom that belief in the inherent safety and trustworthiness of institutions was once commonplace. This trust in institutions was predicated on the belief/notion/assumption that they were large, successful, and made up of qualified staff. Therefore they must be trustworthy. This originated from a time when we saw intelligence as a proxy for success and when expertise was a word we often misconstrued as being synonymous with 'trust'.

Erosion of confidence and trust in institutions has been surprisingly fast since then and appears to be accelerating in a post "greed is good" era.

It should also be said that this general decline in trust is not a problem specific to institutions of finance. It is also the same challenge for institutions of government, institutions of learning, and most distressingly institutions of science and research.

We were once promised that ubiquitous information will bring a new nirvana where we are all equal in our knowledge – or at least capacity for knowledge.

Unfortunately though that fleeting "Knowledge Age" seems to have given way too quickly to the "Opinion Age", and nowhere moreso than in Australia, where saturation of information seems to have rendered trust and expertise secondary to "opinion" – at least in the hands of media, politics and personal subjectivities. Even research tools such as the Edelman Trust Barometer show us that in 2014 we believe "someone like us" as much as we believe a qualified academic or expert - with numbers rising faster for 'someone like us' than for any other category.[1]

That same report suggests that CEO's are the *second **least*** credible group. This puts them well below "someone like us" and above only that apparently most *untrustworthy* individual known as the government official or regulator.

So with those sort of perspectives, the question really shifts to whether there is even a *possible*, let alone *easy* way back to that past golden age of trust in corporations and institutions and the even more powerful question of - *would we want to*?

In 1995 Richard Scott wrote that the three pillars of institutions were: *Regulative*, *Normative* and *Cultural* and that all three are essential elements of balance in a successful institution.[2]

The premise of the sessions today are that virtually all of those three are out of balance in the modern state, and in the modern financial corporation in particular.

In order to rebalance the 'regulative pillar' we need to first understand how the 'normative' and 'cultural' pillars are integrated and work. Culture is often talked about as though it is a singular, separate problem and much of the regulatory research literature assumes that changes in culture can be implanted or summoned into existence by application of external rules and expectations.

I am frankly not convinced that the solution is just a matter of tweaking the regulatory structures so as to affect culture. Cultures originate from the combined behaviour of individuals and it is only changes in behaviour that can alter or eradicate them.

It seems to me that regulatory sciences would benefit from a larger dose of psychological doctrine because human beings and behaviour are always at the centre, whether it's success or failure. Whilst new regulatory systems or rules or inculcations of ethical governance might attempt to inoculate and establish a new culture, they will ultimately come into conflict with human beings who bring a different construct of behaviour and who, as we've established, would prefer and likely follow "someone like them", rather than a "government regulator".

To my mind the great dismay of the global financial crisis has been our apparent unwillingness to consider the role of the human being in the process. As US District Court Judge Jed Rakoff has

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1 Edeleman Trust Barometer, Global results, 2014
2 Richard W. Scott, *Institutions and organizations: ideas, interests and identities 4th Edition*, Sage: California, 2014.

noted, there has been a surprising unwillingness to pursue and prosecute individuals who were apparent actors in that crisis.[3] He makes the argument in a *New York Review of Books* article earlier this year that regulators and prosecutors have preferred instead to pursue corporate entities with the goal of transforming corporate cultures. This argument that "culture is the cause" and all individuals are subjugated to culture is a disturbing trend, not only in legal tradition but also in social development.

Some suggest we've resisted pursuing the corporate and cultural leaders because we think the people in these stories are "someone like us" - or perhaps someone we might once have wished to be.

Luckily I can put paid to this myth though,  because it turns out that your suspicions are probably right. There possibly is something different about the people who populate the leadership level of corporations. Thanks to work done by psychologists Hare and Babiak[4] we now know that you are 4 times more likely to run into an undiagnosed psychopath in the leadership offices of a modern corporation than you are in the mean streets of your city.

This might sound frightening on one hand but it does confirm your own suspicion that these people are *probably* not like you at all.

I have to emphasise that psychopathy in modern understanding is not a statement about evil - indeed in Hare's work it is seen more as a statement about having a blind spot for social norms and principles.

Hector Sants, ex CEO of the UK regulator, was channelling something of this when he suggested in 2009 that a "principles based approach does not work with individuals who have no principles."[5]

So even a new regulatory system, whilstever it focuses on top down governance is unlikely to properly restore confidence - unless it is so crippling in its controls that it eradicates any capacity for psychopathy. The only certain consequence of this is that it will also stifle innovation and growth.

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3 Rakoff, J., " The Financial Crisis: Why have no high-level executives been prosecuted?", *The New York Review of Books*, 9 January, 2014, http://www.nybooks.com/articles/archives/2014/jan/09/financial-crisis-why-no-executive-prosecutions/?insrc=toc

4 Babiak, P., Neumann, C. S. and Hare, R. D. (2010), Corporate psychopathy: Talking the walk. Behav. Sci. Law, 28: 174–193.

5 Inman, P., "'Be Very Frightened', FSA Warns Bankers", The Guardian, 13 March 2009, www.theguardian.com/business/2009/mar/12/regulators-fi nancial-crisis

So, if the top down approach is an unlikely source of regulatory or community confidence then should we turn to bottom up regulation instead? Focusing on where these organisations intersect with the community. Well, as we have seen in Australia, as well as Hong Kong, UK and other jurisdictions, that too has proven to be less than successful.

In Australia, moreso than other environments, we seem to have focused on individual loss as the key consequence of the global financial crisis, rather than corporate collapse – squarely focusing our legislative attentions on adviser malfeasance with protracted and problematic reforms such as FoFA (Future of Financial Advice). It is clear that FoFA, no matter what form it comes in, will never prevent another global financial crisis or even a single corporate collapse.

This is generally the problem with bottom up regulatory approaches. Whilst they may have meaningful impact on individuals they rarely shift the dial on wholesale cultures, especially at the level of product design where a single faulty product can damage thousands.

So, if the top is not the whole answer and the bottom is not the answer, then in our view this opens up the idea of poking and prodding the forgotten middle.

'The middle' is that space typically where the executives and professional advisers live, those people who once used to manage *things* and *processes* and *people*. The lawyers, actuaries, auditors, analysts and other qualified professionals whose job it once was to advise the CEOs at the top and the client facing people at the bottom, as to whether something is illegal, poor procedure or economically unwise.

Unfortunately for some time now this middle has been hollowed out, or at least assimilated through KPIs and bonus structures into the cultural norms of the institution, and it seems that somewhere along the way this group has been distracted from its externally mandated professional foundations. The rise of the in-house professional has been a quietly worrying shift in the world of professions, increasingly being talked about within professional regulatory circles because it detaches individuals from their professional community and forces them into a different role of obligation to the corporation and employer.

As a regulator of professions we at the Professional Standards Councils are particularly interested in the role that professions and professional standards can play in a better society, but more than that, we are also interested in the role they could *possibly* play in bringing a whole new external light to the gritty corners of corporations. If the middle layer of organisations is populated by professionals who, as *formal professionals*, owe duties to the public and obligations to their profession, then we need to magnify those duties so that they are not dampened or stifled by corporate overrides.

Professions *should be*:

- Channels of community and professional expectation of 'normal'
- a source of expertise
- a source of confidence and independent comfort
- defenders/protectors of consumers
- and, perhaps most importantly, exemplars and promoters of ethical conduct

The legislative design opportunity is how do we build and empower those expectations into organisations through specific legal protections for professionals, and in ways that reawakens the middle professionals to their role as agents of their profession and the community, rather than agents only of their employer?

Geoffrey Robertson spoke about just such an idea in his presentation at the Global Integrity Summit last evening, focusing on the role of accountants in reporting tax anomalies.

These are not just hopeful statements about the positive elements of professions but a call for legislative reform that encourages and protects a pathway for the community voice to be channelled directly into the heart of the corporation via the 'professional as community agent'. In emerging academic debate this is being called "middle out reform", which puts you uncomfortably in mind of growing waistlines rather than lean corporations, but perhaps it's that sort of counterintuitive thinking that is needed.[6]

To my mind building professional systems and individual obligation as a new layer to corporate regulation is not only a good idea – it is self evident from discussions at the Global Integrity Summit (Prof Sampford and Rajita and other panelists have emphasised it) that it might be the only *authentic* one.

Unfortunately, I have an abiding suspicion that we *cannot ever* restore trust in corporations whilst ever they remain distinctly separate from civil society and it's expectations – I'm also confident that the G20 is unlikely to be able or willing to address a wholesale reinvention of the limited liability corporation - but that's why we instead need to focus on reinventing regulation around empowering people inside corporations.

[6] Kathryn B. Janda & Yael Parag, 'A middle-out approach for improving energy performance in buildings', *Buidling Research & Information*, 41:1, 2013, 39-50.

Perversely - empowering *people* might be the only way to restore *institutional* integrity and trust.

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