

THE FOUR GOODS

GOOD GOVERNANCE

GOOD ETHICS

GOOD BUSINESS

GOOD HUMAN RIGHTS

Fiji Law Society Conference

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Some years ago I was in the United States and was invited to Saturday lunch with the women of the Harvard Business School. In the world of accountants at that time Harvard was the 'holy grail' of management training. It was my ultimate dream and yet I walked away having seen the 'feet of clay' and never wishing to go there. Why? Here was America's best and brightest on an 18 month 'pressure cooker' course to an MBA - Most without a background in accounting or economics but with majors in their first degree ranging from French, Marketing, Elizabethan poetry, prehistory archaeology, to modern dance. They were in their first semester immersed in the accounting I had learned as a 13 year old in the New Zealand high school system. But the realisation of how superficial their accounting knowledge was going to be at the end of 18 months was what not filled with me revulsion. What did that was their response to questions from me which revealed they were running on agenda that had only one principle 'the pursuit of maximum profit at any cost'.

You will understand why 20 years on when this generation of managers have moved into control I remain unsurprised at some of the recent corporate failures in the United States.

I don't propose to take the somewhat flippant title of this paper and deal with each issue in sequence. I am not going to go down the traditional route of speakers and define corporate governance. Rather I am going to draw together

what could constitute good governance both in the corporate sector and the public sector as the conclusion at the end of this paper. There has been three generations of public sector management during my time in the New Zealand public sector. Taking education as an example The first generation was concerned about inputs how many \$ were needed to purchase how many salaries, schools, paper, pens, blackboards to provide for education, the second was concerned with outputs, what programmes did you need to provide reading writing and arithmetic skills, the third is current and is about outcomes, In order to have an adult literate community with the skills to contribute in a modern economy what skills should they acquire in a education system and what standards should they reach at the way points.

I propose concentrating on outputs and outcomes. discussing very briefly the history of Corporate Governance and the way we do business and then look in more detail in the synergy developing between domestic corporate law and international commitments and/or international law and discuss what this coming together could mean for both the Public and Private sectors of small Pacific nations such as yours and mine. The structure of this morning's paper is;

Corporate Governance and Common Law

Domestic Laws Accounting Standards and International Commitments

Contemporary Issues

- Business Failure
- Climate Change
- International Accounting Standards
- Improved Global Communication
- Government and Privatisation
- The Influence of Global Organisations
- The growth of Stakeholder Groups

Outputs

- Accountability and transparency
- Triple? Bottom Line Reporting
- Domestic legislation congruent with International commitments
- Global Compact
- Kyoto Protocol
- Corporate Responses
- Managing Diversity

Conclusion – Outcomes

Recently I was involved in a discussion about the role of Company Directors and their responsibilities. The group was in New Zealand, the leader of the discussion was a South African Judge, I was a New Zealand Company Director of an Australian company and the discussion was largely about some changes taking place in Great Britain. What was it that enabled us to carry on a debate

where we could all understand the issues. It was not globalisation it was that all the countries mentioned are Commonwealth Countries and all of us had an understanding of British (Commonwealth) Common Law. Right up until the beginning of the 20th century in New Zealand the Common Law was what regulated our businesses. The establishment of limited liability companies/partnerships had enabled the raising of capital from the Public, the expansion of colonial powers, exploration and settlement of the Pacific, and the management of risk of what was even then, globalisation on a local scale – Pacific to mother Countries.

The four key principles of being a director of those businesses were expressed in the Common Law as;

Duty of good faith

Duty of care

Duty of skill

Duty of diligence

Similar attitudes could be seen in New Zealand amongst some of the colonial politicians in New Zealand as they sought to establish democracy. (I will not comment on the motivations of current ones). However such broad duties are capable of many and varied and idiosyncratic interpretations as to their meanings.

However good, common law doesn't always protect consumers, sort out the charlatans and enable quick efficient remedies against companies that are defrauding the public. It cannot guarantee the equitable treatment of shareholders or provide them with the information they need to make decisions about investing in a business. Even staff need protection of good employment Law. In response to corporate and director failure more and more prescriptive company law, securities law, consumer law , employment law and more recently environmental law etc. was passed by legislatures. They all subscribe to the good intentions of ensuring the creation of wealth. The early legislation was primarily prescriptive in nature e.g. in New Zealand Companies Act 1955 and the legislation it replaced. The Companies Act 1993 tilted slightly towards a more principled approach as it allowed companies to write their own Constitutions and eliminated the need for Memorandums and Articles of Association. It increased both the ability of a company to determine it's own destiny while making directors more responsible. ...*"the 1990's are the decade when empowerment is sweeping the corporate boardrooms..."*¹

At the same time that business law was developing so were Accounting Standards. These were intended to bring consistency to Financial statements and eliminate creative accounting. Yes there was some creative accounting but accounting standards do not eliminate elements of judgment that will always be province of the accounts preparers. These standards have been localised and

¹ Harvard Business Review January/February 1995 J W Lorsch

developed by a variety of accounting standards boards, professional associations and government agencies. In New Zealand they concentrated on ensuring that the reader understood the principle and could apply it to a given set of facts. New Zealand had their standards, so did the UK, so did USA, so did Japan and Australia had theirs. If accounting is an information science they were not all speaking the same language.

At the same time as these developments of business law there were substantial advances in International Law driven by the United Nations after the second World War. The Universal Declaration of Human Rights (1948) says in its preamble;

The General Assembly,² Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations. To the end that every individual *and every organ of society*, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms.....³

Many states went on to ratify other UN Covenants and conventions the better know of which are;

Covenant on Civil and Political Rights

² United Nations

³ Universal Declaration of Human rights

Covenant on Economic Social and Cultural rights

Convention on the elimination of all forms of Racial Discrimination

Convention on the Elimination of all Forms of Discrimination against Women

Convention on the Rights of the Child

These were international commitments and firmly kept by many governments in a box labelled “For the consumption of the rest of the World – not for domestic consumption and certainly not for business”. The assumption was that the Universal Declaration of Human Rights was principally addressed to governments⁴

Some countries have developed Constitutions which establish some of these rights domestically and others have established social safety nets that deal with some of the rights contained in the International covenants e.g. The right to primary school education.

The consequence has been the assumption that the promotion and protection of human rights was a government responsibility. There has developed a de facto separation of responsibilities between government and business. The Public Sector assumed primary responsibility for protecting human rights including freedom from fear and want and the Private Sector was left to get on with the grubby business of capitalism and making money.

⁴ Journal of Business Ethics 27: 205 – 214 2000

You can see we are now back to where this paper started as Milton Friedman put it;

The social responsibility of the modern corporation is simply to maximise profit.....⁵

So we can ask ourselves what are the global trends that are forcing us to face up to the facts that human rights are everyone's business.

Business Failure

Almost every country can tell their story of spectacular company failures. HIH Australia, Enron USA, Fortex NZ. All leave devastated staff and customers.

About this time last year I was at a symposium hosted by the Reserve Bank of New Zealand on the subject of Financial System oversight. Some real bankers including myself had been invited. The failures of companies which can lead to the failures of banks were much discussed. The conclusions of the group was that there were three precipitating factors;

Management failure usually accompanied by fraud

Weak Internal Controls and risk management systems

Spiky markets

Directors who fail to see any of them

⁵ Quoted in Journal – refer note 4

Climate Change

You don't need to be a scientist to see the change of climate and the environment in our life time. The debate amongst experts on whether this is just a cycle or whether it is a consequence of 19th and 20th Century farming and development practices is irrelevant. The demand on every front from the lobbyists to Ministries for the environment is for sustainable development.

*'Sustainable Development meeting the needs of the present without compromising the ability and future generations to meet their needs'*⁶

Development that will meet the needs of today's population without reducing the alternatives for our children and their children to meet their needs. This local phenomenon has been reinforced by several global meetings the latest being the Millennium Development Goals 2000.⁷

Improved Global Communications

The information technology revolution links the world as never before. The ability or dissatisfied customers, or voters, or lobbyists or anarchists to communicate is frightening. My email address is widely known in the human rights world and I am constantly being implored not to fill my car with BP or Shell this week over some imagined or real misdemeanour on their part. The changes forced on Nike

⁶ UN Brundtland Commission 1987

⁷ Millenium Development Goals - Goal 7

and Shell are well known. On one hand the internet provides us with good information it can just as easily provide us with mischievous or incorrect information and in the context of this paper simply too much.

More Global Conferences

Social Summit+5, WTO rounds, World Economic Forum, Agenda 21, Rio – Davos – Beijing – Durban. It seems we have all been to one. Whatever we may make of these talk fests they achieved on one of their objectives improved communication of ideas. Whether at the conference or after from the delegates or papers there is a homogenisation of ideas

Government and Privatisation

The lines between the public and the private sector have become blurred as some government functions have been privatised, there is contracting out to companies to government agencies and public and private partnerships and joint ventures have been developed. In this environment it is difficult to enforce two different standards. In New Zealand for a time it was legal for a government agency to discriminate against an individual in some circumstances where a private sector business could not. This loophole has been closed because it was not acceptable to the community to have the government operating on a lesser standard.

The Influence of Global organisations

The World Bank has already warned large corporations that they must get their act together on sustainability and adopt accounting practices like triple bottom line⁸.

The World Bank requires all developments funded by them to be reported on a sustainable development basis. The influence of the requirements of World Bank, IMF, and development agencies to improve governance and reporting is impacting on both governments and companies.

Economic restructuring engendered by assistance from many of these organisations unless carefully planned can increase the vulnerability of the most vulnerable members of the community. Dame Silvia Cartwright now Governor General of New Zealand was a former member of the UN Committee on Women. I remember her saying 'when I hear the words economic restructuring I shudder and quietly add the words women and children beware'.

The other Global organisation to show its strength in the last 10 years has been the Commission for Human Rights. The office of Human Rights Commissioner was established after the UN Vienna Conference on Human Rights in 1993. The second Commissioner Mary Robinson determined to make one of her priorities the improvement of Human Rights within Sovereign States. She has encouraged

⁸ M. King The Director June 2003 Page 19

and supported the development of National Human Rights Institutions within countries – hence – the Fijian Human Rights Commission. She also refused to lock up Human Rights in the Commission for Human Rights and required that all UN and allied agencies make developments subject to Human Rights Impact Reports. Staff were also required to undertake training to ensure that agencies became more aware of their responsibilities to deliver on improved Human Rights.

The growth of Stakeholder groups

An example of this is the number of Internationally recognised Non governmental organisations has grown from 6000 – 26000 during the 1990s⁹. There has also been the formation of the formal lobby industry to lobby governments and the Shareholder Associations to raise issues with Companies. It is not surprising that a more highly educated community believing in democracy is demanding greater accountabilities from leaders and greater transparency from organisations.

So if these are the inputs to the current focus on Governance what are the outputs

Accountability and Transparency

There has been a demand from a number of enquiries¹⁰ for the development of better standards for reporting and information in response to the corporate

⁹ The Economist 11 December 1999

¹⁰ e.g. Cadbury UK, HIH Aus., King SA

failures of the 90's. Some of these have taken the form of legislation e.g. Sarbanes Oxley USA and others have been in establishing new rules such as BASLE2 for the operation of the International Banking System. New International Accounting standards while not mandatory for New Zealand companies until 2007 are already having an impact. In some cases this is in response to a new strictness by Auditors. Audit firms can't pay for their mistakes any more or they will implode as Arthur Andersen. Professor Wayne Cartwright¹¹ has argued that government as well as business leaders need to life their game.

The government is the steward of New Zealand's triple bottom line. Its aim should be to achieve an ethical balance of wealth creation, social equity, and environmental sustainability.

This surely suggests that not only companies but also governments should be reporting on what they are doing on a comparable basis. It is interesting to note that included in Sustainability Annual Reporting Award winners in New Zealand recently was the Canterbury Regional Council. This was the first time an award had gone to local authority. Perhaps even more remarkable was the announcement by the Global Reporting Initiative¹² that the New Zealand Ministry of the Environment is the first Government agency to report using GRI Guidelines. This accountability, transparency and continuous disclosure while demanded originally of corporations is now being demanded of governments.

¹¹ Professor in the Department of International Business at the University of Auckland reported in NZ Herald

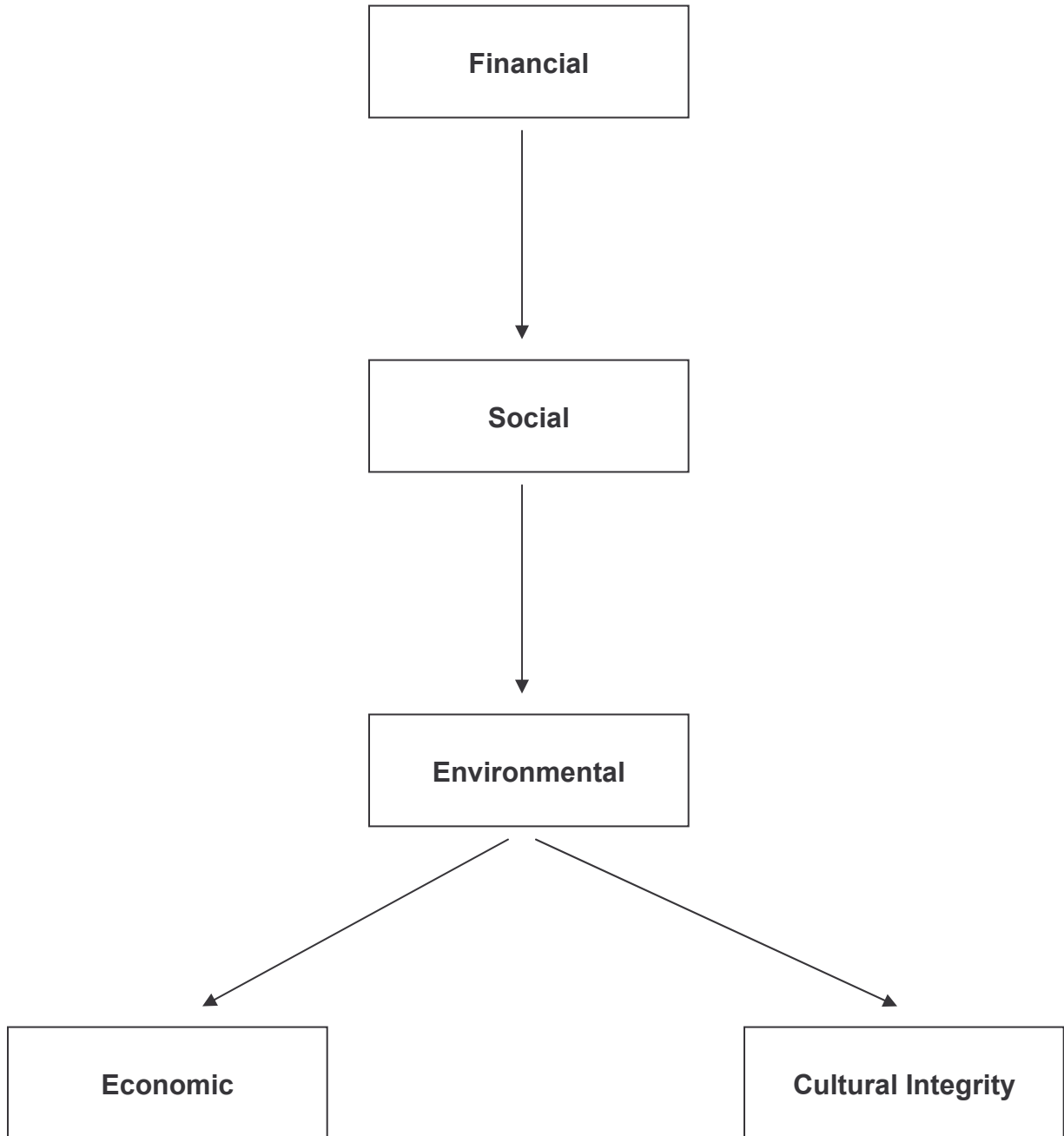
¹² www.globalreporting.org

Accountability for delivery of what is contained in Political Manifestos disclosures through the means of an 'Official Information Act' and Public Sector Codes of Practice and Standards during the life of a government.

Triple? Bottom Line Reporting

The demand to manage and account on a Sustainable basis has spread to include a demand for Triple or even Quadruple bottom line reporting. My first experience of actually doing this in practice was as a director of Metrowater Ltd. the retailer of water to Auckland New Zealand's largest city. Its by-line *Water for life*. It proved impossible to fit all we wanted to say about the impact of AAA grade water on the life of the city onto Financial, Social and Environmental headings. The Financial sector covered only the Company results. It was apparent that failure to supply water would have much greater economic impacts than just affecting the company bottom line so we added a section on macro/and micro economic benefits of our activities. Some commentators in New Zealand are beginning to suggest that there is another bottom line that should be reported on that of Cultural Integrity. In the New Zealand environment Public Sector organisations may be doing that already when they report on how they are taking the Treaty of Waitangi into account in their operations. Where there is an indigenous population such as in New Zealand or Fiji, or where there is a very diverse ethnic population such as in France or where there is a history of conflict as in Ireland over religion this idea has much to commend it.

Triple – Quadruple Bottom line reporting



Global Compact

The Office of the High Commissioner for Human Rights has developed a Global Compact¹³ as a framework for the development of corporate Human Rights standards. A copy of the Compact as presented by Kofi Annan to the World Economic Forum at Davos Switzerland is attached to this paper as Attachment One. It contains a framework to enable business to address three critical areas human rights, labour and the environment. It makes available the resources of the United Nations and the Office of the High Commissioner for Human Rights on a similar basis to that available to states in the pursuit of those objectives.

Kyoto Protocol

New Zealand has been an early adopter of the Kyoto Protocol on Climate Change in spite of considerable domestic unrest about New Zealand moving ahead of its major trading partners. Adoption of the protocol and the introduction of Kyoto compliant policies is seen as reinforcing New Zealand's clean green image to the benefit of our trade and tourism. I think as a former Chief Human Rights Commissioner I am allowed to be astounded at the relative speed to introduce taxes on cows and sheep (paid by their farmers) to reduce their flatulence c.f with slowness to bring into compliance many laws and standards related to people due to financial restraints.¹⁴ It seems important to me that the centrality of human rights is not lost in the rush to improve and protect the environment.

¹³ www.globalcompact.org

¹⁴ Consistency 2000 report New Zealand Human Rights Commission to Minister of Justice.

Domestic Legislation congruent with International Commitments

One of the government outcomes of the increasing domestic focus on Human rights has been the review or introduction of mechanisms to produce congruent legislation. In New Zealand this resulted in the Consistency 2000 report setting out what needed to be done to incorporate the international principles domestically. This resulted in a significant amount of legislation principally amending the Human Rights Act 1993. In Britain compliance with EU Charter on Human Rights has resulted in a mechanism where non complying legislation is referred to Parliament for their determination. In India and Indonesia projects have been instigated with the assistance of overseas agencies to identify the inconsistencies.

Corporate Responses

What might the outcome be for a corporation in its Internal Operations. National Australia Bank has approx 47,000 employees in approx 39 countries. Imagine trying to write some sort of Manual or Handbook that explained to everyone of those staff members what to do in every imaginable banking situation? An impossibility. But to get staff to know and understand the 7 principles by which we do business and who to go to for advice (The person to whom you report and if unsatisfied with the answer around one and up to the person to whom they report) and you have a plan for success. A recent survey by an external agency revealed 85% of staff could repeat and illustrate an understanding of the

principles an outstanding result in their view. Another example is The Code of Conduct for Alcan Aluminium Ltd. a Canadian Multinational. This Code states that ‘ *Alcan is guided by the principles of non-discrimination and respect for human rights and freedoms*’. Shell Oil has made a major re-commitment to sustainable development. According to Shell’s new look governance strategy there is no longer a choice between profits and principles – responsible corporate citizens now have to achieve the former while respecting the latter.¹⁵ It doesn’t really matter about the label, Charters, Principles, Codes of Ethics etc. what is important is the extent to which all staff understand and are committed to the principles. It should never be assumed that ‘discrimination’ or ‘corruption’ mean the same thing from the newest recruit to the senior manager. If the business is to be flourishing in 100 years vigilance to training will be essential. The principled rather than the prescriptive approach appears to be more successful.¹⁶

Managing Diversity

If Human Rights have been internalised one of the Outputs should better be understanding of diversity. Not just of staff or potential staff but also of customers. Many of the skills of the community could be locked up by our prejudice – everyone over 45 is past it – women should stay home with their children - only people of particular religions are reliable. What if we they released their entrepreneurial contribution to our business? What is remarkable in Wellington is the results of the long hard haul of increasing Maori tertiary

¹⁵ www.shell.com

¹⁶ For further discussion of these concepts Refer Business and Human Rights OHCHR

education –now the results can be seen in businesses and the public sector throughout New Zealand. What of our customers are they all white middle class. Looking at Banking advertising you would have thought so.

Conclusion

In conclusion can we look at some of the outcomes of a principled approach to governance based on sound human rights principles;

Businesses and Countries with good human rights records are more attractive to investors both the aid agencies and the corporate banker.

People like working for ethical companies and organisations easing recruitment and increasing retention.

Research shows that investors are prepared to pay a premium for shares in well governed companies.

An environment fit for our children and grandchildren to enjoy.

A defensible record if the country comes under attack by the media or the internet.

In New Zealand recently it has been proven that there is a clear link between poverty and early childhood deaths. Attention to the Convention on the Rights of the Child and the Economic, Social and Cultural rights are being called for.

An environment that will still be there in 100 years.

You don't give your detractors an opportunity to destroy your customer base by revealing human rights abuses.

Effective Corporate Charters Codes of Conduct or Ethics or The Standards by which we do Business.

Keeping Markets Open – Global purchases have a preference for purchasing products from countries where they can be assured that human rights are valued and there is no child labour and no environment degradation or where jobs are open to all.

And finally

It improves the TV advertising

BP Beyond Petroleum – campaign and BNZ – When you know what you want out of life,

Thank you

Attachment 1

GLOBAL COMPACT (www.unglobalcompact.org)

At the World Economic Forum in Davos in 99 Kofi Annan challenged individual corporations and representative business associations to support the nine principles listed below which emanate from universally agreed standards found in United Nations documents.

Human Rights

To support and respect the protection of internationally proclaimed human rights within their sphere of influence and

To make sure that they are not complicit in human rights abuses.

Labour

Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining

The elimination of all forms of forced and compulsory labour

The effective abolition of Child labour

The elimination of discrimination in respect of employment and occupation

Environment

Businesses should support a precautionary approach to environmental challenges.

Undertake initiatives to promote greater environmental responsibility

Encourage the development and diffusion of environmentally friendly technologies.