

The legal mind and integrity in the workplace: principled prerequisites for statesmanship in leadership

Robert J. McCarthy

Abstract

How a business does what it does (process) is as important as the product made or the services delivered. Executives recently have tended to focus exclusively on profits and neglect principles, to the overall detriment of society and the environment. The letter of the law and contracts, as well as the spirit of agreements, must be comingled if progress is to be made in addressing today's major issues.

McCarthy synthesizes the work of Blackstone, Carter, Heifetz and Howard in developing a foundation for integrity in the workplace, grounded in principles rather than people and power. Urging a focus on core issues rather than peripheral distracters, he suggests ways to bridge the gap between espoused values and daily behaviors.

Introduction

When "LAY LIES" sounds like a grammarian's trick exercise instead of another CEO misleading employees and shareholders, (1) our economy is in trouble. While much of the nation lamented the plight of Enron investors and employees, the very purpose (MISSION) of the company and its design (ORGANIZATIONAL STRUCTURE) was seldom questioned as long as people were making money while ignoring basic premises. This is a sign of a society in trouble (Was the nature of the problem in the very name? Might Shakespeare have called it GOWRONG or perhaps ENDRUN?)

When LEAKS become tsunami, whether from a grand jury or a highly placed government official, public focus tends to be on an individual or a company, not on a process that has been violated, and certainly not on the short and long term impact of such compromises on human interactions. Societal trust levels are placed at risk. The New York Times no longer just disseminates "All the News That's Fit to Print." The LIBBY LEAK causes one to wonder what Sulzberger, Jr. and company really learned from the Jayson Blair (2) and Judith Miller (3) incidents.

When "true" numbers no longer mattered to an Arthur Andersen, not just from Enron but from Waste Management Inc. and Sunbeam; nor for Deloitte for cable giant Adelphia as well, (4) but an auditing firm's interests lay (pun intended) instead with consulting engagements with the very same companies whose business practices they were to verify as compliant with generally accepted accounting principles (GAAP), who or what could be trusted?

To help answer that question and address the focus of this year's Oxford Round Table, The Influence of Sir William Blackstone on Business and American Education, I would suggest that we concentrate on principles as opposed to people, or perhaps better stated, on individuals who practice principles of a higher order, and should be recognized as true statesman, whether in business, government or education. One can begin such a journey of discovery by reading the lecture notes of Blackstone delivered here at Oxford, more than two centuries ago, on the elements of law, its letter, principles and spirit.

His Commentaries (5) serve as a balcony from which to view the law and the legal mind, as comfortably speaking from a carefully prepared text, he sought to craft the universals rather than the particulars of the Laws of England. The methodology of examination was scientific in nature. Scrutinizing a general law, its history as well as the rules and regulations that sprung from it, Blackstone explained the underlying fundamental principles that supported the law as well as the usefulness of it, comparing it, as needed, to

Forum on Public Policy

the natural law and those of other countries. (6) A rubric was unknowingly created that would result in his work being viewed as the most influential law book ever published in the English language. (7)

He wrote: "Society is formed for the protection of individuals; and states or government, for the preservation of society." (8)

"To interpret a law, we must enquire after the will of the maker; which may be collected either from the words, the context, the subject-matter, the effects and consequence, or the spirit and reason of the law" ... "For when this reason ceases, the law itself ought likewise to cease." (9)

For Blackstone words were "generally to be understood in their usual and most known signification; not so much regarding the propriety of grammar, as their general and popular use." (10)

So what happened over the two hundred plus years since Blackstone created his foundation for understanding the law? As we saw in the riveting film *The Paper Chase*, law students learn skills, to do a list of simple but important things. They learn to retain large numbers of rules organized into categorical systems (requisites for a contract, rules about breach, etc.). They learn "issue spotting," which means identifying the ways in which the rules are ambiguous, in conflict, or have a gap when applied to particular fact situations. They learn elementary case analysis, meaning the art of generating broad holdings for cases, so they will apply beyond their intuitive scope, and narrow holdings for cases, so that they won't apply where it as first seemed they would. (11)

A distinction is made between law and policy. Law professors convince students that legal reasoning exists, and is different from policy analysis, by bullying them into accepting as valid in particular cases arguments about legal correctness that are circular, question-begging, incoherent, or so vague as to be meaningless. Sometimes these are just arguments from authority, with the validity of the authoritative premise put outside discussion by professorial fiat. (12)

I don't believe this is what Sir William had in mind as the controversial Duncan Kennedy observed: "what is needed is to think about law in a way that will allow one to enter into it, to criticize without utterly rejecting it, and to manipulate it without self-abandonment." (13)

To bring much needed balance to business and society, we need a concentrated effort to refocus on the essence of Blackstone's observations and commitments, aided by 21st century thinkers and systems analysts such as Carter and Heifetz.

Having looked back, let us look down at the present, and set a cognitive course for our future. In his easy to read but hard to digest *The Death of Common Sense*, Howard graphically points out that rules have replaced thinking today and process replaced responsibility. (14) With the prevailing mindset that governing bodies can write laws "to cover every situation explicitly, the words of law expand like

Forum on Public Policy

floodwaters that have broken through a dike. Rules elaborate on prior rules; detail breeds detail." (15) As a result of all the regulations associated with the implementation of legislation, initiative is thwarted and evolution precluded.

We have deluded ourselves into thinking that the right decisions will be ensured if we build enough procedural protection. We have accomplished exactly the opposite.

Orthodoxy, not practicality, is the foundation of process. Its demons are corruption and favoritism, but the creed of this orthodoxy is a perfect uniformity. Only if all things are done the same way can government be fair. Sameness, everywhere for everybody, is the operating instruction of modern government. (16)

How sad. How frightening!

What is a path that one may morally follow and still have some semblance of societal order and benefit in view of the 2006 mental cloud cover? The well known writer and lecturer, Stephen L. Carter, Professor of Law at Yale University, outlines such a course of conduct with his definition of integrity as set forth in his book bearing that title. Carter does not equate integrity with mere honesty. It is far more than being truthful, although most, upon hearing the phrase "person of integrity" immediately think of someone who is honest--truthful. This is more than semantics, for the word--the concept of integrity, has several components: discernment, steadfastness, and forthrightness. (17)

Seeing integrity as "wholeness" from the Latin "integer" meaning uninjured, (18) Carter draws a line in the sand between the "right to do" something and the "right thing" to do, cognizant of the need for compromise and aware that not every cause is right. His succinctness in this complex arena is refreshing--the implications challenging--professionally and personally.

Discernment--

(Which is right and which is wrong).

Steadfastness--

(Acting on what you have discerned-even at personal cost).

Forthrightness--

(Saying openly that you are acting on your understanding of right from wrong).

For Carter, for Blackstone, for statesmen, there are indeed absolutes, not religiously or politically defined, but naturally determined. "Natural law is the rule of human action, prescribed by the Creator, and discoverable by the light of reason." (19) These are definites, not just a series of "it depends."

An individual must act on--not just think about--what has been clearly recognized. Inaction does not earn a Carter, but it may make one eligible for a Clyde. Will must be tested, risk run, if the second prerequisite is to be met.

Phase three brings out the potentially effective teacher in each of us. Sharing with those impacted by our

Forum on Public Policy

decision why we did what we did, what principles we considered in our deliberations, requires trust and openness, a willingness to influence and be influenced. "If we refuse to take the time for discernment, a discernment that might challenge cherished beliefs, then it is hard to see how we can ever construct a politics of integrity." (20)

"A person of integrity is willing to bear the consequences of her convictions, even when this is difficult ... when the consequences are unpleasant ... where there is no possibility of its loss, integrity cannot exist." (21)

The bottom line is we can never truly know whether we are acting from our true beliefs and embedded values, or some other reason, until such time as those principles are tested. The question of what principles are in play today is what the world, America and its citizens is asking George W. Bush, a question never asked of his father, a man whose lips you could read, whose mind you could view.

Thus periodically I revisit integrity, as I expect Blackstone would were he alive today, in view of our government's eavesdropping program, corporate reading of employee electronic communications, and media leak proclivities (not unlike the Watergate plumbers)--particularly this segment:

The deeper our commitment to our causes, the weaker may be our commitment to democracy, for it is in the nature of the true believer to have little patience with the majoritarian structures that get in the way of progress. Rather than accept the possibility of defeat in democratic politics, we try to enshrine our commitments as beyond the reach of argument, by shoehorning them into the vast and intimidating structure of constitutional rights or by crafting a rhetoric that makes those who stand against us necessarily stand with the forces of evil. (22)

The only escape for me from this insanity is the realization that We cannot expect our politicians to create a politics better than we are. If we the citizens, as we consider governance, think only of our own narrow interests, whether expressed in terms of "our" tax dollars or "our" constitutional rights, we can hardly expect to find a government, at the local, state, or national levels, that operates with a needed vision of national purpose. Instead, we find all politics as parochial and selfish as we are. (23)

And not in synch with the general spirit of the laws and principles of universal jurisprudence as contemplated in the Commentaries of Blackstone.

It clearly leads to some very basic questions, questions without easy answers and our third Blackstone stalwart, Ronald Heifetz, Director of the Leadership Education Project at the Kennedy School of Government at Harvard University. How special it is to have two of America's greatest institutions of higher learning supporting the lead of Oxford and Blackstone.

In *Leadership Without Easy Answers*, Heifetz creates a mold for 21st century statesmanship, and in so doing takes a bold, unexpected direction. Rather than having individuals in leadership positions adhering to the typical pattern of telling their people (employees or citizens) what they want to hear to appease

Forum on Public Policy

them, he instead advocates raising issues, questions, that are value, principle based.

"Trying to meet the multiple expectations of multiple constituents, candidates" union officials and CEOs "tend to downplay the hard issues, telling voters" the membership and employees "what they want to hear rather than challenging them to face the need for adjustments in their lives and hard trade-offs." (24) Contracts are signed, legislation passed, work rules modified, in an attempt to improve our lives but all are no substitute for initiation of a dialog focused on public values, attitudes and behaviors regarding long standing complex issues.

Our problems can only be diagnosed in light of our values. With different values, we screen reality for different information and put the facts together into a different picture. If a society values individual freedom, it will tend to highlight those aspects of reality that challenge freedom. And as a corollary, it will also be inclined to neglect those elements of reality upon which another society with another central value ... will focus. (25)

The distinction between technical work and adaptive work lies at the heart of Heifetz research. The former deals with routine but important issues such as how to construct a levee and where to locate it; while the latter is anything but routine, demanding innovation and learning from experience, such as how to create a new New Orleans. Authority itself can frequently address technical issues successfully but leadership is required to deal with adaptive matters. Being the creatures we are, it appears that only "urgency, well framed, promotes adaptive work, which in turn requires the orchestration of conflict." (26)

Go into any bookstore and you will see shelves filled with: how to manage sustained periods of stress; the crisis of leadership--unrealistic demands and inability to perform; attention--the currency of leadership. The bottom line is this: we need to identify the discrepancy between our values and our behavior--at the corporate level, in government, in our schools, and in our courts, and in so doing hopefully avoid irreconcilable positions.

Integrity in the administration of educational, business, or governmental policy probably will require a compendium of existing presumptions, rules, laws and principles, not unlike Blackstone's then exhaustive collection of English law. (27) But the spirit of decent and honorable behavior, the impetus for right conduct, will remain essentially the same: even-handedness for everyone affected, predictability, dedication to the common good, and earnest determination to set things back on track once they have gone astray. While contemporary mores in business and government may not provide much in the way of a social context for our professions, there has been for centuries in the West, and indeed throughout the world, a traditional role for teachers as originators and advocates of honorable behavior. Another word for the latter function is leadership.

In the spirit of, and in harmony with the legacy of Sir William Blackstone, may we once again refocus on the concepts of equity - integrity, common sense and questions of significance as Newton did on gravity--to keep us grounded.

Robert J. McCarthy, Senior Lecturer, University of Wyoming

Forum on Public Policy

References

- (1) Eichenwald, Kurt. (2005). *Conspiracy of Fools--A True Story*. New York: Broadway Books.
- (2) Rutten, Tim. (2003, May 14). *New York Times looks inward as its probe continues*. Los Angeles Times.
- (3) Dowd, Maureen. (2005, October 22). *Woman of Mass Destruction*. The New York Times.
- (4) Tofler, Barbara Ley. (2003). *Final Accounting*. New York: Broadway Books
- (5) Blackstone, Sir William. (1870). *Commentaries on the Laws of England*. Philadelphia: J. B. Lippincott & Co
- (6) Matthew, H. C. G. & Harrison, Brian. (Eds). (2004). *Oxford Dictionary of National Biography*. (Volume 6). New York: Oxford University Press.
- (7) Lauer, Theodore (personal communication, February 9, 2006). Professor Emeritus, University of Wyoming, College of Law.
- (8) Blackstone. *Ibid.*
- (9) *Ibid.*
- (10) *Ibid.*
- (11) Kennedy, Duncan. (1983). *Legal Education and the Reproduction of Hierarchy*. Cambridge: Afar.
- (12) *Ibid.*
- (13) *Ibid.*
- (14) Howard, Philip K. (1994). *The Death of Common Sense*. New York: Random House.
- (15) *Ibid*
- (16) *Ibid.*
- (17) Carter, Stephen A. (1996). *Integrity*. New York: Harper Collins.
- (18) *The Classic Latin Dictionary*. (1948). Chicago: Follett Publishing Company.
- (19) Blackstone. *Ibid.*
- (20) Carter. *Ibid.*

Forum on Public Policy

(21) McFall, Lynne. (1987). Integrity. In Stephen L. Carter. (1996). Integrity. New York: Harper Collins.

(22) Carter. Ibid.

(23) Ibid.

(24) Heifetz, Ronald A. (1994). Leadership Without Easy Answers. Cambridge, Massachusetts: Harvard University Press.

(25) Ibid.

(26) Ibid

(27) Conversation with Wallace McPhee, June 29, 2006.