

Firm ‘culture’ and Corporate Governance in Australia: A New Paradigm?

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Abstract—This paper examines firm culture and its connections with and to the wider corporate governance debate. Despite the current popularity of the term ‘culture’, this paper argues that the enduring and established field of corporate governance principles is far more important in the medium and longer terms for firm sustainability and improvement.

Keywords—*firm culture, corporate governance, culture*

I THE CULTURE OF FIRMS AND COMMUNITY STANDARDS

The term ‘culture’ is currently in the corporate spotlight in Australia, and has been discussed in *Governance Directions* earlier this year.ⁱ It is being used in an extensive manner to report on a range of organisational settings. It is amplified by the press and media reports, which have focused on cultural problems and shortcomings. This activity has been responded to by the announcement, and subsequent commencement of the Royal Commission into the banking sector,ⁱⁱ and the ongoing work and scrutiny provided by regulators, including the Australian Securities and Investment Commission (ASIC)ⁱⁱⁱ and the Australian Prudential Regulatory Authority (APRA)^{iv}. Tellingly, the draft terms of reference of the banking Royal Commission refer to the composite term of ‘culture and governance’ and foreground the term ‘culture.’ There is variously reference to ‘good governance and corporate culture,’^v ‘particular culture and governance practices’,^{vi} and ‘broader cultural or governance practices.’^{vii} Similarly, APRA’s investigation into the Commonwealth bank focuses explicitly on this apparently new combined set of equal factors. APRA’s press release provided that:

‘On 28 August, APRA announced it would establish a prudential inquiry following a number of issues which have raised concerns regarding the frameworks and practices in relation to the *governance, culture* and accountability within the CBA group, and have damaged the bank’s reputation and public standing.’^{viii} (italics added)

Additionally, the terms of reference of the banking Royal Commission make no fewer than three references to behaviour which falls below, or fails to meet ‘community standards and expectations.’^{ix} This leads to the questions: what is firm ‘culture’, and where and how can it be defined such that it meets these ‘standards’?

Culture as a new phenomenon, or a steady continuity?

The approach to be adopted to these questions will be of two potential kinds. One is to see the concept of ‘firm culture’ in the 21st century as essentially a new and enigmatic area, that derives from the alchemy of forces at play in social media, and seeks to impose more scrutiny, and better accountability. This is the argument of ‘newness.’

Alternatively, the clues as to what exactly firm culture is and looks like, and how firms can in turn deliver on optimal culture, may be found in recent firm and corporate history and the developments of the last few decades. This is the thesis of ‘continuity.’ It is based on seeking to continue to look closely at corporate governance. The issue may ultimately be simply that the term ‘culture’ sounds more exciting, whereas ‘the dull sounding subject of corporate governance’^x may be seen as no longer apposite.

Therefore the choice is between newness and gradualism. Newness is appealing because it provides an apparent break from the past, and identifies something which is evolving, mysterious and contemporary. Alternatively, we can look at the evidence based on history, and to continue the steady gradualist approach of investigation and research into how firms operate. There is a clear binary, or choice, at play.

The exigency of continuity

This article suggests that by far the best and most informative option is the latter; that is, to look at the work done in the last three decades and to see current developments as being well informed by this integrative approach.

In particular, the optimal single source of seeking to locate the culture of a particular firm or organisation is in the firm’s corporate governance; the answer to cultural shortcomings is intrinsically embedded in the wider corporate governance provision of the firm. It is the optimal starting place. Put another way, good culture presupposes and is based on, effective corporate governance provision.

What may be new is the terminology, and the use of ‘culture’ as a kind of catch-all term. However this is putting ‘old wine in new bottles.’ The underlying concepts and corporate shortcomings are not new. They are emanations of the long identified failings around corporate governance. Whilst the terms used to describe such behaviour has taken on a modern guise, the problems themselves are, in fact, age-old, and flare-up spasmodically. We should not, therefore, confuse the description given to the behaviour within firms as somehow

different to what has actually gone on before, and is going on now.

Does it matter that we now focus on culture as the new ‘catch-all’ phrase? Isn’t that a useful, if not convenient approach? The argument is that if a new and complex project to seek to capture ‘firm culture’ is commenced, it will take a lot of time, and produce a high opportunity cost. That opportunity cost will be that the corporate governance project, long and painstaking in its domestic and international development, will be reduced in both centrality and importance. Firm governance is too vital a concept to be abandoned, or reduced, even unwittingly, because attention is suddenly devoted by the academy, regulators and other key stakeholders to an alternative term, which is alluring in its apparent simplicity, and appears to capture the zeitgeist with its accessibility and newsworthiness. In the age of news received via smart phones and social media, it is important, however, to keep clear sight of the inter-related nature of these key terms and concepts.

Culture- its scope and function

The internationally renowned sociologist Raymond Williams wrote comprehensively on culture.^{xi} Culture was within the etymology of 20th century university learning and discipline knowledge, an important element of sociology. It was divided into high and low culture, in relation to its sources, and its impact in society. Andrew Hartman describes this divide as follows:

‘This mode of analysis understands culture as “high,” as standing above the barbarous, unrefined masses, as a true expression of the best a society has to offer, usually thought to be rooted in the universal. The second is that of “[Cultural Studies](#)” proper, centered on the Birmingham School in England, which valorized popular culture as the most important social expression. Birmingham theorists such as Stuart Hall imbued popular culture with political meaning, sometimes repressive, but often, counter-intuitively, subversive or transgressive.’^{xii}

It is the former of these- the higher order culture- that commentators and regulators are apparently referring to when they speak of the ‘culture’ of the firm; it is expressed as a set of ideals.

II CULTURE WITHIN THE FIRM- THE ENIGMA OF THE CONTEMPORARY DEBATE

In the internet age, we have also come to see culture within the firm as a proxy for being an attractive place to work, such as Google or Apple. References to ‘the emerging culture of the information age’ were appearing in books on topics such as corporate disclosure in Australia as early as 2003.^{xiii} This refers now, however, more broadly to a brand and workplace associated with innovation, entrepreneurship and success. Culture outside the firm can be viewed as part of the operating context and wider environment, taking competitors, regulators, and the broader legal environment of rules and self-regulation.

However, the references to ‘culture’ being made by important stakeholders in the debate may be unwittingly situating the argument in a more complex way, than is necessary. For example, Andrew Bailey, the Chair of the UK’s Financial Conduct Authority has said that culture within financial institutions is ‘everywhere and nowhere.’^{xiv} This theme of the ubiquity and mystique of culture within a given firm or organisational setting, has also been advocated by the Chair until recently of ASIC, Greg Medcraft.^{xv} He explained that his international counterpart, Mr Bailey’s reference:

‘was meant to convey that almost everything that goes on in an institution affects its culture, but there is distinctive external ‘thing’ called culture that acts as an input to institutional behaviour.’^{xvi}

Mr Medcraft provides his own definition of culture within the firm as:

‘Culture is a set of shared values and assumptions within an organisation. It reflect the underlying ‘mindset of an organisation’, the ‘unwritten rules’ for how things really work. It works silently in the background to direct how an organisation and its staff think, make decisions and actually behave.’^{xvii}

Rather than seeking to elicit the chimerical and elusive- the question of ‘what’ is culture within a firm?, it is far more productive to see the issue through the lens of corporate governance.

Culture and the firm in the last few years

Key institutions in society have been under sustained media scrutiny for apparently lacking a so-called acceptable culture. This is particularly applicable to banks and financial institutions.^{xviii} Culture has become the word *du jour* to capture in an easy-to-grasp shorthand the ills and shortcomings of such organisations.

Just twenty years ago, books with titles like *Collapse Incorporated: Tales, Safeguards and Responsibilities of Corporate Australia*^{xix} contained no reference to ‘culture’ in the index. Today, the term culture would likely be a central concern of such a book. Instead, the term ‘cult of the individual’ is referred to on several occasions.^{xx} Similarly, books covering Australian corporate malfeasance in the late 1980s^{xxi} and 1990s^{xxii} respectively contain no reference to the term ‘culture.’ This illustrates that words and concepts come into and out of vogue. Events and phenomena may have been remarkably similar across a few decades, but what they are called, and how they are described, may be quite radically different over time.

To reinforce this point, the preface to the book, *Collapse Incorporated*, presciently opens with:

‘Turmoil and uncertainty have dominated Australia’s recent corporate history and undermined the confidence of shareholders, employees and customers alike....*Collapse Incorporated* untangles recent events and explores the safeguards and responsibilities that are designed to protect

employees, shareholders and the economy at large.’^{xxiii}

The same types of failings were captured a decade prior to this in Trevor Sykes’ book, *The Bold Riders*, retracing the corporate excesses of the 1980s.^{xxiv} The Australian experience of corporate malfeasance every decade or so aligns with the international research done by Harvard academic, Mark J. Roe^{xxv} which suggests that over a regular periods there are manifestations of corporate wrong-doing which is then corrected by better structured oversight. There is a useful pattern of review, recalibration, and re-set, and this is what is occurring now in corporate Australia, albeit through the apparent lens of ‘culture.’ In fact, the focus should remain on corporate governance.^{xxvi} Changing the lexicon to ‘culture’, or diluting the centrality of governance, is likely to sideline the large and important body of work done in the last three decades on corporate governance.

The key point is the corporate bad behaviour and lack of standards is not new; the emphasis on the term ‘culture’ given to describe is, it appears, relatively new, however, and this is likely to distract attention from the valuable lessons and insights developed over a considerable period developed in relation to corporate governance.

The Criminal Code Act (1995) Cth by s.12.3(6) defines the concept of ‘corporate culture.’ It does so as follows:

"corporate culture" means an attitude, policy, rule, course of conduct or practice existing within the body corporate generally or in the part of the body corporate in which the relevant activities takes place.

This is an activities-related definition which could in theory be quite broad. It is also amorphous, given it refers to ‘attitudes’ as well as to ‘rules.’ At this point, is it unusual in seeking to set out a statutory definition of culture within the firm context. It may well assume wider importance in due course in light of the Royal Commission and related developments.

III CORPORATE GOVERNANCE AND ITS CULTURAL COMPONENT: CLASSIFICATION AND TAXONOMY

The modern epoch of corporate governance commenced with the publication of the Cadbury Report in December 1992.^{xxvii} The influential best-practice approach spread throughout the world, including having a marked influence in Australia, where self-regulation was most prominently adopted by the Australian Stock Exchange’s (ASX) ‘if not, why not’ approach now in its third iteration.^{xxviii}

It has since Cadbury been a long and complex journey seeking to define and understand the centrality of corporate governance for firms and organisations of any size and type^{xxix} and national setting.^{xxx}

John Farrar’s well-known depiction of the structure of corporate governance puts it succinctly; *business ethics and codes of conduct* are already part of, and intrinsic to, good governance, in just the same way as legal regulation, and explicit rules.^{xxxi} As such, corporate culture is *already* a subset

of existing corporate theory.^{xxxii} A renewed focus on the efficacy and relevance of existing corporate governance is more useful than starting a new debate in parallel about the elusive concept of ‘culture.’ The key point is that if there is a cultural failing in a firm, it will be due to a failure of governance, and a gap in accountability, oversight and control within the particular firm.^{xxxiii}

In this sense, it is important not to invert the proper order of inquiry. That ‘culture’ is a part of ‘corporate governance’ is a given within a firm. Corporate culture is more particularised, however, and should not be conflated with the general constructs of corporate governance, of which it forms a part.

This paper argues that whilst elements of firm culture are no doubt important, they should not be confused with the corporate governance project which has been sustained, shaped and improved, internationally and in Australia, over nearly three decades. Whilst reference to ‘culture’ is currently receiving much amplification, the positive ‘reinforcing processes’^{xxxiv} of refining the corporate governance project is more important. The governance concept should not, therefore, be derailed from its central and vital role, despite the contemporary *idee fixe*^{xxxv} about ‘culture’ within the firm.

ⁱ See for example, Adams, Michael, Borsellino, Grace, and Young, Angus, ‘Leading from the top: The missing piece in nurturing good corporate culture?’ Governance Directions, May 2017, 203-206.

ⁱⁱ The Royal Commission into the Banks
<<https://www.pm.gov.au/media/royal-commission-banks-and-financial-services>>

ⁱⁱⁱ Medcraft, Greg, ‘The Importance of Corporate Culture,’ (Speech delivered at the AHRI Senior HR Directors Forum Luncheon (Sydney, Australia) on 5 April, 2017, <<http://asic.gov.au/media/4211539/greg-medcraft-speech-to-ahri-senior-hr-directors-forum-luncheon-published-6-april-2017.pdf>>

^{iv} For reportage on APRA see ‘Byres’ Market’, *The Australian Financial Review*, Review Section, 15 September 2017, pp. 1, 4, 5 and 6.

^v <https://cdn.tspace.gov.au/uploads/sites/72/2017/11/DRAFT-TERMS-OF-REFERENCE.pdf> as per the Context

^{vi} Above n5, at paragraph 1 (d) i.

^{vii} Above n5, at paragraph 1 (d) i.

^{viii} <http://www.apra.gov.au/MediaReleases/Pages/17_38.aspx>

^{ix} Above n 2 the Royal Commission and also see *ASIC v Rich [2003] NSWSC 1229* in which Austin J referred to contemporary community expectations. The reasonable person test is now becoming akin to the reasonable village test.

^x Murray, Alan, *Revolt in the Boardroom: the new rules of power in corporate America*, Collins, NY, 2008, xiii.

^{xi} Williams, Raymond, (31 August 1921 – 26 January 1988), see for example *Culture*, Fontana New Sociology Series, Glasgow, Collins, 1981. US edition, *The Sociology of Culture*, New York, Schocken, 1982

^{xii} Hartman, Andrew, *What is Culture? Raymond Williams and the Theory of ‘Cultural Difference’*, <https://s-usih.org/2009/02/what-is-culture-raymond-williams-and/>

^{xiii} Uren, David, *The Transparent Corporation: Managing demands for disclosure*, Allen and Unwin, Sydney, 2003, Contents page referencing Chapter 1.

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- ^{xiv} Bailey, Andrew, Financial Conduct Authority, ‘Culture in Financial Institutions: it’s everywhere and nowhere,’ speech, 16 March 2017.
- ^{xv} Above n3.
- ^{xvi} Above n3, p.2.
- ^{xvii} Above n3, p.1.
- ^{xviii} It also applies to social and religious institutions, such as the various church organisations.
- ^{xix} *Collapse Incorporated: Tales, Safeguards and Responsibilities of Corporate Australia*, CCH Australia Limited, 2001
- ^{xx} Above n 18, refer to the Index where there are five references to the topic ‘cult of the individual.’
- ^{xxi} Graborsky, Peter and Sutton, Adam, (eds) *Stains on a White Collar: Fourteen studies in corporate crime or corporate harm*, Century Hutchinson, Sydney, 1989.
- ^{xxii} Easdown, Geoff and Wilms, Peter, *Ansett: The Collapse*, Lothian Books, Melbourne, 2002.
- ^{xxiii} Above n 19, Preface by Nathan Moyes, Publisher at ix. These words could just as readily emanate from the soon to-be-written preface to the Royal Commission on banks.
- ^{xxiv} Sykes, Trevor, *The Bold Riders: Behind Australia’s Corporate Collapses*, Allen & Unwin, Sydney, 1994.
- ^{xxv} See for example Mark J Roe, *Political determinants of Corporate Governance: Political Context, Corporate Impact*, OUP, 2003.
- ^{xxvi} In both its modern guise, and by reference to its steady development and improvement, as an international project, over some three decades.
- ^{xxvii} The Cadbury Report (UK), 1992 Chaired by Sir Adrian Cadbury and published December 1992.
- ^{xxviii} <<http://www.asx.com.au/documents/asx-compliance/cgc-principles-and-recommendations-3rd-edn.pdf>>
- ^{xxix} Many a doctoral thesis has been written which spends a good part of the first chapter simply seeking to outline and proscribe the post-Cadbury world of corporate governance.
- ^{xxx} See for example the extensive work done on the thesis of convergence of national systems of corporate governance. See, for example, Gordon, Jeffrey N., and Roe, Mark J., (eds) *Convergence and Persistence in Corporate Governance*, Cambridge University Press, 2004
- ^{xxxi} Farrar, John, *Corporate Governance: Theories, Principles and Practice*, 2nd ed, 2005, 4.
- ^{xxxii} For example, The Law Society of WA recently provided a seminar on *The Impact of Culture on Ethical Behaviour* (Wednesday 22 November, 2017, Perth). The secondary point is that the rules and formal law simply keeps growing; that is the unfortunate maxim of corporate law in Australia. There are a plethora of rules as evidence by the Corporations Act (Cth) 2001.
- ^{xxxiii} Crucially, these are classic concepts *already at the heart of effective corporate governance*.
- ^{xxxiv} Senge, Peter M., *The Fifth Discipline: The Art and Practice of the Learning Organization*, Random House, 1990, 81.
- ^{xxxv} An idea or desire that dominates the mind; an obsession.