A series of articles on Governance by Michael Fass

The Trust Debate. 'The Business' 18 July 2004

There is a huge debate going on about trust. This has happened not only because of public concerns about, for example, the government's PR operations now known as 'spin' but also because of the way that the actions of individuals and institutions in both the public and private sectors are routinely questioned in ways unheard of in previous generations.

Whilst there has never been so much information available upon which to base judgements about who to trust, the public - and particularly private and corporate investors - have never been more suspicious about the motivations and behaviour of directors.

> 30% of the public trust business leaders compared to 92% who trust doctors and 69% who trust scientists and this in spite of scandals such as the Bristol Royal Infirmary and Porton Down!
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> 30 years ago the public agreed by 2:1 that the 'profits of companies help to make things better'. By 1999 this had been reversed.

These results suggest that people simply do not trust and that directors are one of those groups with a limited stock of trust with the public. The result is that trust is being replaced by an increasing burden of regulation which not only frustrates the entrepreneurial drive which is the life-blood of every business but also means that directors have to spend an excessive amount of their time on ensuring compliance and are in danger of neglecting their key task which is to lead their business successfully into the future.

An even more serious risk in regulation is that by removing the historic role and obligation that directors have, which is to fulfil their 'fiduciary' duty, voluntarily and as responsible individuals, this duty of faithfulness will be left to others so that, as in the US regulatory system, anything goes so long as it is not forbidden. It is that corporate culture which has led to the disasters which the UK has, so far, avoided

This loss of trust - leading as it can to loss of faithfulness – also risks eroding the very foundations of the original purpose of the limited company which was to release capital into enterprise by removing the personal liability of family enterprises with its threat of the debtors' jail and to replace it with the director's duty of faithfulness.
Investors, shareholder-owners and other stakeholders have all placed their trust in the directors of the company in which they have an interest and that trust assumes that directors understand this and will act faithfully towards it.

Directors therefore have a role to safeguard not only the interests of those with whom the company's activities are most closely associated but also to contribute to the renewal of the stock of trust in society as a whole. This takes much time and effort so that being a director needs to be learned and earned.

Unfortunately, fewer than 8% of company directors undertake some form of personal development for their role and too often it is assumed that because an individual has been a good manager that they will necessarily become a competent director.

80% of a manager's job is doing the same job as yesterday and the day before whilst making small incremental improvements but being a good director is about dealing with uncertainty and increasing complexity and requires wisdom, judgement, integrity and the ability to govern: It is these attitudes, attributes and tools that directors need to sharpen in the crucible of the boardroom.

Regrettably, this lack of professional development means that many directors are ignorant of their corporate roles. A better appreciation of the concept of fiduciary duty which has played such an important part in the nation's success at creating wealth over the past 150 years and still forms the basis for the economy, will help directors to become even better at their jobs and so find more ways to deal with all the daily dilemmas which they face. The whistleblower who first raised concerns about the way Enron was being managed said that boardroom salaries and self-serving boards of directors were distorting the way that trust is understood. Company directors have a key role to play to ensure that corporations are not engulfed in scandal with its inevitable consequence which will be more regulation but that they are clear about the ways that their duty of faithfulness can be renewed.

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An Act of Faith for Company Directors. 'The Business' 22 August 2004

Very few corporate scandals ever reach court and the number of company directors who are prosecuted for wrongdoing are very few. This is not only about the extraordinary degree of trust that the Companies Acts give to directors – their 'fiduciary duty – but also the liberal way that the Courts have interpreted that duty of trust – up to now! Company directors therefore have great power to do whatever they wish from the authority given to them in the company's Memorandum & Articles, the 'M&As'. But alongside this power and authority comes responsibility and it is this responsibility that is currently exercising corporate governors and the regulators who are beginning to be seen as a substitute for the law which many now believe is insufficiently robust to deal with some aspect of today's corporate culture .

The way that boards of directors exercise their power and authority will be determined to a great extent by the way they understand these words and the ideas that lie behind them and it is this that lies at the centre of the current debate.

Many will have experienced the discomfort of the unfettered use of power in the workplace and this is not only about the office bully who is easily spotted. Less easy to deal with is unrestricted power in the boardroom that can also become a real problem with its associated danger that the company itself may well be driven onto the rocks because of it.

Skilled directors and particularly those who, in addition, act as the board's chairperson learn to appreciate that without limits to power there can be no creative thinking at the board and that discussion without creativity, if allowed at all, will be a stale affair. Excellent chair people know that time spent in the boardroom on reporting and looking backwards at last month's or last year's mistakes lead nowhere but that time spent on looking forward, and practising the power and authority that can come from creating new visions for the future is the corporate power and authority that has real value.
How can the board and its directors become excellent in their use of power and authority? One way for this to happen is that each director takes time out to reflect upon the balance that has to be made between power and faithfulness – that is, the duty placed upon them by their appointment as a director, their 'fiduciary' duty.

This duty of faithfulness has ancient roots and a proud heritage. It came from ideas about the common good amongst the people of the Athenian state and has played its part in all the thinking that has gone into the development of democratic institutions since then. In recent years it has also been described as the duty that directors have not only to their investor-shareholders but also to the wider community of their customers, suppliers and other stakeholders. This approach can sometimes feel like the soft and politically correct option but there is now much evidence to show that companies who attend to their stakeholders return higher long- term benefits to their shareholders. This should not however weaken the power and authority of the directors to do what they think is right for the company for which they are responsible, but it does place their power and authority into a framework that can help them to appreciate that alongside power is also responsibility and that lying behind both is the even more onerous duty of faithfulness. How often do directors even discuss such issues let alone come to some conclusions about them? When did the board last discuss its own understanding of power and authority, its sources and uses and the limits that faithfulness places upon it?
One problem that directors have is the different meanings that power and authority have. What may appear to directors to be a very reasonable way forward for the company can appear stupid to its employees. Meanings are changing so that different people's understanding will effect attitudes to directors, the power they exercise and the leadership they provide in different ways.

Good corporate governance is therefore about what can and cannot be done; about directors learning to balance their power and authority with their responsibility and duty for faithfulness and about a continual process of reflection and learning about the way that power is understood and can be used. Corporate governance is therefore not a skill that once learned can be assumed to last a lifetime in the boardroom but is rather a dynamic and emergent process in which its practitioners – the faithful company directors of the Companies Acts - need to refresh their skills continually.

Follow the leader but choose your role model carefully. ‘The Business’ 19 September 2004

Leadership, and what it means, is one of the most confusing aspects of being a director today as there are many factors to be taken into account. First, the word leadership itself has some heavy cultural baggage. Until very recently, all discussion of leadership inevitably centred on the legacy of the communist and fascist dictators of the 1930s and ‘40s. This meant that leadership and leadership development were almost dirty words and companies often failed to develop their leaders. The only exception was the armed forces whose task it has always been to train leaders at every level. But even the military’s approaches have little appeal to today’s directors who have had no exposure to the rigours of such a life.

North American companies were much less coy about developing their leaders and after WWII began to provide such training through MBA programmes. Now, even these have been discredited as being irrelevant to the current needs of companies as the issues facing leaders become more complex and the famous ‘case study’ method of the MBA way of learning with its preferred class solution can no longer deal with the uncertainties of business and organisational life.

In their place, leaders can increasingly become the victims of the latest leadership fad promoted in airport bookshops or pay exorbitant fees for a day spent at the feet of a world-renowned guru peddling his or her pet solution.
All the evidence suggests that this is not the way to learn about leadership or to become a great leader. Company directors are called upon to be models of good governance and they do this by always keeping in mind their duty of faithfulness to others. The question great leaders ask themselves is not ‘how will this help me?’ but ‘how will this come across to those for whom I am responsible?’

The first skill that both business schools and the military teach is the skill of reflection and planning. The skilled director shows not only the vision and commitment that is expected of those who lead but is also a reflective individual who is aware and compassionate. Second, any leader is always going to be in relationship with those who choose to follow them. This means that great leaders are students of human nature and do not set out to isolate themselves from others. Great leaders consciously spend time learning and practising their leadership skills using a wide variety of different sources of inspiration. Above all, as the author Peter Senge - a keen observer of leaders - once wrote: ‘The core leadership strategy is simple: Be a model!’ But what kind of model? Lists of leadership models used always to contain names such as Caesar, Wellington and Churchill, all of whom displayed skills in oratory, tenacity and strategy but in today’s diverse society leadership models will now include football club managers, pop stars, and TV presenters alongside the Dalai Lama and Mother Teresa so that one person’s most admired leader is another’s most hated. There is therefore no longer any single model of leadership to which company directors can aspire. Directors in today’s world need to reach their own very personal conclusions about their preferred model so that they do not become simply followers of the latest leadership fad and risk bending and failing under the pressures of corporate events.

The authentic leader reflects upon a wide variety of different leadership models in order to shape their personal style and responses, which will include the way that the trust and confidence of others can be created and sustained. Authentic leadership includes qualities such as regard for the truth which when neglected can lead to some of the corporate scandals, which by association have damaged all those who practice the profession of being a director. Company directors who are good and faithful stewards of the company’s assets - which include its people - will develop virtues which will encourage others who hear to follow. This is the ‘charisma’ or spirit of the great leader. No leadership can be unrestrained, absolute or dictatorial leadership that allows no argument and tolerates no disagreement is the death of creativity, so that strong boards of directors – and in particular their non-executives – have a key role in providing robust debate to keep the great leader in the real world and not in that of their own invention which can often conveniently ignore or lead to the abuse of the interests of others. Directors who are able both to create visions for the future that others can follow and maintain their current governance roles are therefore capable of showing great leadership.