

Myth system or operational code?

Brian Martin

You're walking along a downtown street, not at an intersection, and cross to the other side to get to a shop. In Australia, legally, you're supposed to cross only at an intersection, when the "walk" light is on. But you decided it was safe enough to cross. Besides, loads of people were doing the same thing, and no one is ever charged with jaywalking (crossing a road when there's traffic). Or are they?



To understand what's going on here, it's useful to apply some labels. The official rules — the law in this case — can be called a myth system. The law says jaywalking is illegal, but most of the time the law is not enforced. The law on jaywalking is a type of myth or fiction.

What actually happens is that people routinely jaywalk and are never charged or even warned. This can be called the "operational code." People know, from experience or observation, that jaywalking is not penalised. That is the way the law is applied in practice — by not being enforced. If you know the code, namely non-enforcement, then you know when you can jaywalk without penalty.

Of course, jaywalking might be dangerous or annoy drivers. That's a different set of issues, also part of the operational code. It's unacceptable to stand in front of moving vehicles or to shout abuse at drivers. The operation code doesn't say anything goes, but rather prescribes acceptable violations of the law.

A friend of mine in Brisbane was fined \$50. His transgression? He was standing at a corner waiting for the "walk" light to go on, and stepped out onto the street one second beforehand. For a pensioner, \$50 was a big payment. Half a dozen other pedestri-

ans were at the same corner and stepped out before him, but they were younger and got away.

He was outraged and wrote a letter to the newspaper. He knew the operational code, which was that pedestrians are not fined for crossing early at a crosswalk. But he was fined. It turned out that the police applied the law in a technical fashion. They applied the rules of the myth system, thereby raising money at the expense of a few unlucky pedestrians.

You're driving along a suburban street about 10km/h above the speed limit. This is nothing special. Most other drivers do the same. In fact, you become annoyed when the driver ahead of you goes 5km/h less than the speed limit, though this is quite legal.

The myth system is that people are supposed to obey the law and transgressors are subject to penalties. The operational code is that breaking the law just a little, when no one is hurt, is okay. This helps explain some drivers' outrage over speed cameras. They are a challenge to the operational code, which is that driving safely is okay even when laws are technically broken.

Reisman on bribery

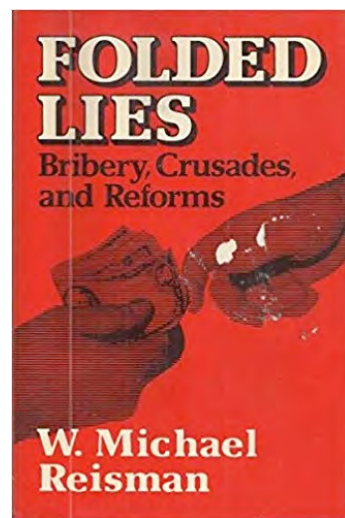
These thoughts are inspired by a book by W. Michael Reisman titled *Folded Lies: Bribery, Crusades, and Reforms*. Reisman applied the ideas of the myth system and the operational code to US corruption issues, especially bribery.

Folded Lies was published in 1979. I read it a few years later and took some notes. The book is written in a rather abstract style, yet filled with numerous examples from US politics and administration.

Recently I came across my old notes on the book and thought, "Hey, these ideas are relevant to whistleblowing." So I obtained a copy and read it again. Reisman didn't talk about whistleblowing but his ideas are directly relevant. Here's how he explains the myth system and operational code at the beginning of his book:

Most people learn early that there are things they can get away with; from the perspective of an observer, some social "wrongs" are selectively permitted. An observer may distinguish, in any social process, a *myth system* that clearly expresses

all the rules and prohibitions (the "rights" and "wrongs" of behavior expressed without nuances and shadings), and an *operational code* that tells "operators" when, by whom, and how certain "wrong" things may be done. An operator is someone who knows the code in his own social setting — certain lawyers, some police officers, some businessmen, an agent, a kid at school. (p. 1)



Whistleblowers versus the operational code

In many organisations, the operational code allows things to happen that an outsider would see as wrong or even terrible. In some families, beatings of children are a routine occurrence. In some churches, sexual abuse by clergy was not penalised. In some businesses, siphoning off money for personal use is accepted. In other businesses, dumping toxic waste into public waterways is the norm.

In most of these examples, the operational code allows certain activities that others, on the outside, might condemn. The outsiders are subscribers to the myth system. If they are informed about the activities, they want something done.

In many cases — far from all — whistleblowers endorse the myth system. They believe in honesty, fairness and the rule of law. So when they encounter damaging and dangerous activities, they want to do something about them.

Those on the inside, participating in the activities, are subscribers to the operational code. They can react with

fury when someone tries to invoke the myth system. After all, the operational code is *the way things are done*. Anyone who goes against this is a traitor.



Whistleblowers have a chance of making a difference when outsiders widely endorse the myth system and demand that something be done about abhorrent operational codes. A good example is paedophilia, which over the years has become increasingly stigmatised. As a result, paedophilia in churches became a massive scandal.

Another example is animal welfare, for which there is a growing movement and public concern. As a result, whistleblowers who expose ill treatment of animals, for example in the live animal trade, can trigger public outrage.

On the other hand, in areas where there is little public awareness or concern about issues, the operational code can continue with little disturbance. An example is cheating on income tax. The myth is that everyone pays their fair share of tax. The operational code for big businesses and wealthy individuals is that tax dodges will be exploited to the hilt, while governments are lobbied or pressured to maintain or expand loopholes.

Now and then there are media exposés of large companies that pay little or no tax, but these seem not to create a groundswell of rage against big-company tax evasion. One reason may be that tax avoidance is a national pastime, and minimising one's own tax is seen as acceptable. In other words, the operational code is that it is okay to avoid tax as long as you can get away with it. There are so many small cheaters that cheating is seen as normal.

Watchdogs

Government regulatory bodies, commonly known as watchdogs, are

supposed to ensure laws are followed and that the public is protected from unfair and dangerous activities. The myth is that these watchdogs are doing their job well and keeping corruption and abuse under control. In other words, you don't need to worry about injustice because the watchdogs are protecting you.

In many cases, regulatory agencies become close to the enterprises they are supposed to regulate, and become lapdogs: they are toothless and called "captured bureaucracies." Another way of understanding lapdogs is that they have subscribed to an operational code of minimal intervention, cooperation with regulated organisations and facilitation of their activities. The public might believe there is effective regulatory oversight, but this is a myth.

Next consider whistleblower protection. The myth is that whistleblower laws, and the agencies that are supposed to implement them, actually work. The operational code is that little will be done that confronts organisational elites. Organisations will not be given serious penalties, dismissed whistleblowers will not be reinstated, and managers who institute reprisals will not be penalised. Reisman writes:

The function of the legislative exercise is not to affect the pertinent behavior of the manifest target group, but rather to reaffirm on the ideological level that component of the myth, to reassure peripheral constituent groups of the continuing vigor of the myth, and perhaps even to prohibit them from similar practices. As elsewhere, the mere act of legislation functions as catharsis and assures the rank and file that the government is doing what it should, namely, making laws. (pp. 31–32)

Applied to whistleblowing, what Reisman is saying is that whistleblower laws aren't intended to affect the behaviour of employers but rather to encourage popular belief that the government is looking after whistleblowers. The aim is to sustain the myth of whistleblower protection while allowing organisational operational codes to continue as usual.

Whistleblowers, perhaps more than most members of the public, are subscribers to the myth system. They expect that watchdog agencies will

help them and they call for better whistleblower protection. However, the most that happens is governments come up with more rhetoric and more ineffective laws.



Implications

To be effective, whistleblowers need to understand the difference between the myth system and the operational code. This isn't always easy. The myth system is regularly endorsed by leaders, within organisations and in the media. So it is possible to hear heartfelt support for whistleblowers and to think that they will actually be supported. The challenge is to identify the operational code that is relevant to the situation, especially the code within an organisation. There is even an operational code within organised crime.

It is the operational code, namely the set of beliefs and practices that define what is expected and acceptable, that determines the response to a whistleblower. In general, the code within organisations is that whistleblowing isn't welcome.

This should be obvious. Governments say they support whistleblowers, but they also maintain laws that prohibit public servants speaking out, institute searches for leakers, pass laws to criminalise whistleblowers and journalists on national security matters, and do not enforce whistleblower laws when employers take reprisals against whistleblowers. To identify the operational code, look at what people do and set aside what they say.

It is also valuable to understand the power of the myth system, in particular when it can be used to challenge wrongdoing. Within an organisation, it might be common practice to cheat customers, avoid tax, dump chemicals and appoint cronies. However, outside the organisation there are two types of people who can help. Some of them are subscribers to the myth system:

they think it's wrong to cheat and cause damage, and they want something done about it.

The second group of helpers are ones who see an opportunity to pursue their own interests by invoking the myth system and triggering a crusade. Reisman says, "... there may be a point where perception of discrepancy between myth and operational code becomes so great that part of the content of the myth system changes, belief in it wanes, or crusades for reassertion of the myth burst forth." (p. 24)

Crusades and reforms

A crusade sounds like it might make a difference. Let's protect whistleblowers! However, Reisman says crusades are sound and fury, a lot of noise about fixing problems, but never really intended to change the basic way things happen.



In a crusade, politicians pass new laws, giving the appearance that the problem is being addressed. However, the laws don't work in practice, and perhaps were never intended to. There are several ways that new laws can be neutered. Sometimes it is by narrow writing of the law. For example, early Australian whistleblower laws gave no protection to private-sector employees, or when workers went to the media.

Another way to limit the impact of a new law is to give inadequate funding to the watchdog body, or burden it with onerous bureaucratic requirements. In Australia, anti-corruption agencies are woefully underfunded. In New South Wales, the Independent Commission Against Corruption can take up only a few percent of the matters brought to its attention.

Another technique is to staff regulatory bodies with incompetent staff, or ones who are sympathetic to the industry being regulated. The Australian Securities and Investment Commission, as revealed in the royal commission, was more attuned to the top management of banks than to the

revelations about corruption provided by whistleblowers.

In a crusade, a few individuals may be sacrificial lambs. They are penalised, lightly or heavily, for doing what hundreds of others did. To the public, it seems like justice has been done. Sometimes, though, there are no sacrificial lambs. In the global financial crisis, not a single US banker went to prison or was even charged, except for one who was actually a good guy.

What happens in a crusade is a symbolic endorsement of the myth system. The myth in Australia is that whistleblowers are valued and protected. The song and dance involved in passing new whistleblower protection laws encourages the belief that, yes, whistleblowers actually are valued and protected. Meanwhile, the operational code is largely unchanged: power structures remain untouched and routine practices stay the same. This means that it remains just as risky as before to blow the whistle.

Reisman uses the term "reform" to refer to changes in the operational code. For him, a reform means that people's behaviour changes. This can happen for various reasons. Sometimes the popular pressure for change is so great that elites decide they need to change their practices in order to maintain their money and status.

Reisman says you sometimes can't tell the difference between a crusade and a reform until years or decades later. For example, a reform might be quietly reverted, and some crusades eventually lead to changes in the operational code. To my mind, defining things this way just makes them confusing. Nonetheless, Reisman points to an important issue. To see whether laws are making a difference, check out the state of play down the track. Reisman:

Even if passed, "reform" legislation, that is, legislation actually *intended* to change the operational code, is not equivalent to reform, for it may be blunted by operators at lower levels of the bureaucracy who may prevent or indefinitely postpone the drafting of rules or secondary, implementing legislation. If implementing legislation is actually created, it may be starved to death by an inadequate budget allocation

or emasculated by the assignment of incompetents to positions of responsibility. If the implementing machinery actually tries to be effective, it may be overwhelmed by larger and superior legal teams who will mount adjudications protracted even beyond the wildest dreams of the pettifoggers of Bleak House or conclude settlements that are translated into overhead costs and passed on to consumers. (p. 114)

Whistleblower laws have been on the books in Australia since the 1990s. Yet it is exceedingly rare for one of the laws to be invoked against an employer who has taken reprisals against a whistleblower. This basically means that the laws are not being enforced — one of the typical ways that crusade-inspired legislation is prevented from having any impact on the operational code. So, in Reisman's terms, the entire exercise of passing Australian whistleblower laws has been a giant façade. It reassures members of the public that the government is looking after whistleblowers, while ensuring that there is no substantial change in actual practices within workplaces.

I am waiting for the day when governments consult with whistleblowers and produce an informative leaflet on how to be an anonymous leaker or an effective change agent, and then circulate it to employees around the country. That is a fantasy. Judging by past behaviour, governments will continue to assume that they are the saviours, that they will provide protection, so there's no need for employees to develop their skills or gain extra power. Governments will continue to promote the myth of protection, while operations will be same old, same old.



Brian Martin is editor of *The Whistle*.

The most outrageous whistleblower retaliation you've never heard of

Mark Worth
Executive Director,
European Centre for
Whistleblower Rights
16 January 2019

THIS IS THE STORY of Brigitte Fuzellier and Kolping International.

Chances are, neither of these names sound familiar to you. The unfortunate obscurity of this decade-old case is surpassed only by the atrocious acts of retaliation inflicted upon Fuzellier.

Kolping International is a large Catholic charity based in Cologne, Germany whose many Christian-themed slogans include, “We act on behalf of Jesus Christ.” In 2008 Kolping hired Fuzellier to run its operations in Paraguay and clean up its financial situation. A German citizen, Fuzellier is a well-known charity leader and community worker who has lived in Paraguay since 1987.



After Fuzellier discovered widespread and well-documented misconduct and degeneracy in Paraguay, Kolping fired her in 2010 and began an unabated retaliation campaign that has included public humiliation, smearing her reputation throughout her community, filing a series of dubious criminal charges, and using questionable legal tactics to limit her ability to travel.

The retaliation has been particularly insidious considering that no one has doubted what Fuzellier discovered in Paraguay.

Rather than being used as a school, a Kolping building funded by German taxpayer money was being used as a brothel. An entire soccer team is said to have availed itself of the services in the *Casa de Citas* (“House of Appointments”), according to a report by the German magazine *Der Spiegel*. Customers enjoyed beer and liquor before going upstairs, which was stocked with beds — “a true orgy.” The only equipment in the school was a single, poorly functioning sewing machine, Fuzellier said.

After reviewing the books, Fuzellier discovered that a large chunk of €1.4 million that Kolping received from German and EU foreign aid agencies did not go toward its intended purposes. Only after a series of investigations did Kolping repay €241,000 to the German government, according to media reports.

A probe by the EU’s anti-fraud office, OLAF, ended without explanation, says Fuzellier. She has signed bank cheques and other evidence that she says proves vast misspending of EU funds. You can see the cheques here, in the only known video about the scandal in English (<https://bit.ly/2ss6mNa>).

Fuzellier has piles of evidence about many other episodes and irregularities in Paraguay, including misuse of other public funds, suspicious purchases and sales of equipment and property, poor services to local residents, and threats to former employees. She said a bakery worker was killed when he fell headlong into a poorly-made, makeshift production machine. The bakery was supposed to have professional equipment, but instead was using a homemade machine.

Since firing Fuzellier nine years ago, Kolping and people associated with the Catholic charity have been engaged in a non-stop retaliation campaign against her. Because it only has been publicly reported in Spanish and German, the campaign is not known to the broader public. And it is virtually unknown within the international whistleblower protection community.

The campaign started with Kolping issuing a press release announcing its dismissal of Fuzellier that — ironically

— accused her of many of the same actions that Fuzellier has evidence Kolping committed.



Brigitte Fuzellier

Kolping managers then filed criminal defamation charges against her in Paraguay. Her “crime” was sending a private e-mail that was never publicly released. How Fuzellier could be charged with defamation — which requires a false statement to be published — remains a mystery. Fuzellier was convicted and only spared from prison after an international campaign raised €24,000 so she could pay a fine.

Fuzellier was then charged — falsely, she says — of financial misconduct. Because there is no evidence of misconduct, she wonders how Kolping managers convinced prosecutors in Paraguay to file the charges. As the case dragged on for four years, she was banned from leaving Paraguay. This virtually put an end to her Eco-Loofah business, which employed hundreds of local people including members of the indigenous Macá Tribe.

She was cleared of these charges last June. “After eight years,” she said at the time, “the persecution by Kolping has come to an end. My existence has been destroyed, but the truth has triumphed.” Now, people associated with Kolping are at it again. Last