CENTRE FOR RESEARCH IN RELIGION & SOCIAL POLICY | UNIVERSITY OF DIVINITY

RESPONSE TO THE INTERIM REPORT OF THE ROYAL COMMISSION INTO MISCONDUCT IN THE BANKING, SUPERANNUATION AND FINANCIAL SERVICES INDUSTRY

Introduction

This response is from the Centre for Research in Religion and Social Policy (RASP) of the University of Divinity (Melbourne). The Centre was established by the University in October 2016 to provide a means of engaging with the issues of the contemporary world through research and engagement activity. We recognise that the Royal Commission is undertaking a significant task and that the interim report represents a deeply considered and important stage in fulfilling the Royal Commission's mandate to enquire 'whether any conduct by financial services entities, including banks and their associated entities, might have amounted to misconduct'.

The recent release of the interim report heightened our awareness that the Commission was enquiring into matters that may benefit from the contribution of a theological perspective, in particular whether identified misconduct is 'attributable to the particular culture and governance practices of a financial services entity or broader cultural or governance practices in the relevant industry or relevant subsector'. Significantly, with the interim report published early in our development as a theological research centre with a focus on critical turning points in the history and future of capitalism, the importance to RASP of contributing to such an important matter as the Royal Commission into misconduct in the banking, superannuation and financial services industry has been highlighted.

In this submission, while we are not able to offer within the timeline well-researched policy responses to the issues identified in the interim report, we are able to indicate the main theological concerns that are raised by our reading of the interim report, and to suggest how they may contribute to a fuller conversation of the policy issues that are central to the Commission's task. We submit there are indications that a theological review of the Commission's interim report may bring a fresh, healing, and justice perspective to the complex policy issues with which the Commission is grappling.

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Culture

The question Commissioner Kenneth Hayne identified as one of two key questions the Commission had to answer is a critical question from the perspectives of both culture and governance: 'why such poor conduct had occurred'. The Commissioner's answer is: 'Too often, the answer seems to be greed – the pursuit of short-term profit at the expense of basic standards of honesty.' (p. xix) We agree that the prevalence and persistence of greed 'require consideration of the issues of culture, regulation and structure' (p.74), especially if greed is 'the root cause' of 'dishonest behaviour' (p. 121).

But what is 'greed'? Given that the Commissioner says greed is the root cause of misconduct in financial services, there is a relative absence of any discussion about what constitutes greed apart from the assertion it is 'conduct that ignored the most basic standards of honesty' (p.122). From a theological perspective, this minimal definition represents a disturbing silence, because silence in either public policy or private practice is a theological clue that idolatry is present. Idolatry distorts reality and/or keeps hidden the true nature of a violent or destructive spirit. That is, idolatry is a breach of the first Biblical commandment to reverence God as the centre of life, by instead giving the reverence of silent adoration to human achievement as the centre of life. In this case, the silence about what constitutes greed removes analysis of conduct or misconduct from the public sphere by explaining the cause of misconduct as a personal failure, a 'forgetting' of basic standards. We submit that the separation of private emotions and values – such as 'greed' and 'basic honesty' – from public facts – such as 'misconduct', is itself a cultural framing of what it means to be an autonomous person in western (including Australian) society. So the explanation of the fact of misconduct is that the greedy person's conduct ignored something they should have known, 'the basic standards of honesty'.

A theological reading of greed will distinguish itself from a post-Enlightenment understanding of greed as interpreted in the perspectives of modernity and post-modernity. *Webster's Dictionary* defines greed as 'a selfish and excessive desire for more of something than is needed', which is a relativistic definition that leaves open the question of who decides what is needed and what is too much. The Commissioner may be hamstrung by the Letters Patent for the Commission in his appeal to 'basic standards of honesty', for they proposed the benchmark for such basic standards be framed by 'community standards and expectations'. At this point, our discussion of culture intersects with the problems of governance. We will come to the problems of governance below.

The directive to make community standards and expectations of basic honesty the benchmark for determining what constitutes greed and honesty for those who work in financial services is theologically fraught for two reasons. First, the focus on the private sphere to explain 'misconduct' hides the power relations at work in the experience of injustice experienced by bank customers. Second, it fails to account for the fact that members of the community as well as bank directors, executives, staff and shareholders are all formed in the same post-Enlightenment culture that has disconnected or separated personal morality from public facts. The Commission notes there are areas where this culture is shared between bank managers and staff, as well as with those customers seeking home mortgage and small business loans, for example, where the customer's expectation is to get the best financial deal for themselves that they can. To narrow the focus on culture to the culture within a particular organisation or industry sector as required by the Terms of Reference hides the deeper cultural problem in western culture, which has elevated economic growth and financial success as key measures of personal and corporate worth. We are all immersed in this culture, to a greater or lesser degree.

So we submit that the interim report's conclusion that 'almost every piece of conduct identified and criticised in this report can be connected directly to the relevant actor gaining some monetary benefit from engaging in the conduct' (p.302) is symptomatic of idolatry in Australian/western culture rather than an industry sector or organisation-specific problem. The monetarisation of human life has caused structural change in Australian society that distorts the way people work, and which has been playing out in the banking and financial services industry. It creates power inequalities in relationships within the banks and between the banks and their customers, it diminishes economic injustice and downplays the harm done to victims as 'misconduct', and it dehumanises the social contract underpinning civil society.

For example, Corporations Law makes the primary legal responsibility of Directors to 'act in the best interests of the company and shareholders'. This suggests that in a culture that has made an idol of economic growth, conduct that ensures the best interests of the company is primarily focussed on the return to shareholders for their investment. This culture monetarises the definition of 'good conduct', and leaves the definition of' misconduct' to be defined by community standards, for which there is no cultural anchor.

This takes us to the heart of the questions facing the Commission. From a theological perspective, the question about what constitutes good human conduct cannot be answered outside the question of what it means to be human. The

Commissioner discloses his captivity to the prevailing cultural answer to this question with the apparent assumption in the report that greed is an internal motivation, while 'poor conduct' is an observable effect that is objectively verifiable. The Commissioner rightly says the prevalence and persistence of 'greed, avarice or the pursuit of profit' require consideration of the issue of culture.

But the deeper issue of 'culture' is the creation of human identity in western culture, which separates the interior or private sphere of life ('greed') from life in the public sphere of economics, politics and social status (conduct/misconduct). The Letters Patent and the Commission's acceptance of the culture of a modern scientific worldview – that separates 'facts' from 'values' – as the critical lens for the work of the Royal Commission have almost rendered it impotent to address the human identity question that sits at the root of so much 'poor conduct'.

We submit that human identity is more than the publicly observable behaviour that can be scientifically studied by the measurement of cause and effect. The problem is acute: if the root cause of 'misconduct' – which can be observed and measured – is 'greed', about which all that can be said is everybody knows it when they see it, then the means for addressing 'misconduct' are very thin. The Commissioner appears to acknowledge this dilemma by stating that further regulation may be counter-productive (pp. 289-291).

This takes us back to the individualistic definition of greed that predominates in western culture's ideology of modernity. But 'the Greek word *pleonexia,* originating from the Greek πλεονεξια, is the word that is most commonly translated as greed or covetousness in the New Testament. ... (A biblical view is that) greed (covetousness) fosters the taking of something that is not rightfully ours. Our culture's current relativistic definition of greed does not address this component.' (Institute for Faith, Work and Economics. (https://tifwe.org/what-is-greed accessed 6/10/2018). The Biblical understanding of covetousness (translated as 'greed') places empathy for the wellbeing of one's neighbour and reverence for God at its centre. In this view, interior feeling, empathy or desire is integrated with public conduct. There is no artificial separation of the private ('root cause') and the public ('misconduct') spheres of life. The recovery of the importance of human empathy for the harmed neighbour may be a singularly vital contribution from a theological review of the interim report. It is with this in mind that we offer the following policy response.

Ethics for the Banks, Superannuation Funds and the Financial Services Industry

Our awareness of the Royal Commission was raised by an invitation from Funds Management of the Uniting Church in Australia, the Synod of Victoria and Tasmania. The agency conducted a small seminar for account holders on the Royal Commission because Funds Management is an ethical investor, and was troubled by the unethical behaviour being uncovered by the Commission. The agency wanted to consult with account holders on what it had done in response to the public revelations, and to discuss its process for determining whether it was ethical to continue investing in an unethical enterprise. We were intrigued to learn that two of the four major banks sought meetings with Funds Management almost immediately the Church's concerns were raised with them by correspondence.

The Uniting Church has similar agencies in other states, and ecumenically we are interested to learn of the policies and practices of other church development funds, credit unions and ethical investors. RASP is therefore committed to pursuing opportunities for detailed research into the influence of ethical investors on the banking system, and to study the theological foundations for ethical investing.

It may be that the Royal Commission could give further consideration to enhancing the role of ethical investors in the Australian banking system.

We also understand that ethical investors such as Funds Management have adopted ethically tailored staff training and professional development programs to maintain their high level of accreditation as an ethical investor. This goes to the matter of developing and sustaining an ethical culture in a highly monetarised industry. Again, RASP's interest in flourishing workplace culture makes this an area of research interest.

It may be that the Royal Commission could give further consideration to how the banks' commitment to Corporate Social Responsibility may encourage partnerships with external education providers in developing robust professional development training for the various levels of bank directors, managers and staff.

Governance

The Anglican theologian Lesslie Newbigin adds that Paul, in *Colossians* 3:5 equates covetousness with idolatry, 'the putting of something that is not God in the place belonging to God'. (Newbigin, 1986, p. 109) This theological insight brings the need for our theological review of the work of the Royal Commission to the important consideration of governance. Paul's words are a reminder of the Christian belief that [redacted] atent for this Royal [redacted] ing of the Crown. Our [redacted] grace of God Queen of [redacted] ernance of her Royal [redacted] mission's Letters Patent [redacted] wn, that is, the Crown [redacted] r to the advice of the [redacted]

[redacted] nt also needs to be [redacted] ing role of the [redacted] rovided by the [redacted] set out in the Letters Patent . What is clear is that the Letters Patent eschew any reference to injustice, so the unjust behaviour of the sector is euphemised as 'poor conduct' or 'misconduct'. The shift from justice/injustice to good/poor behaviour places the observed behaviour into a 'measurable' framework of observance/breach of legislation, codes of practice or policy by the institution, and removes the hurt experienced by victims from the centre of the frame to that of witnesses to system failures.

We note the same shift in the operation of workers compensation law, where the death of a worker is hidden from the law, while the legal response to the death focuses further away on the employer's breach of an occupational health and safety regulation and a monetary fine. The monetarisation of this issue results in the same outcome which the Commissioner has noted, where reported 'misconduct' in the Commission has been dealt with by the courts, with the imposition of a fine. The harm experienced by the victim of unjust behaviour seems too often minimised or ignored.

The reality of harm done to customers – who in a theological perspective are 'neighbours' (or at least fellow citizens) of the perpetrator of harm – may be further explored through a detailed review of the interim report's case studies. A theological perspective may explore the use of euphemisms that form the basis of institutional risk management jargon, which hides theological truths and silences the voices of victims. For example, the euphemism 'transparency' focuses on institutional behaviours compared with the biblical and relational notion of 'truth', or the use of 'customer' to objectify a person when compared with the relational 'neighbour'. A biblical/theological perspective of what it means to be human for all those caught up in the work of the Royal Commission may bring a much needed recovery to the experience of those harmed.

The interim report invites policy responses that offer more than the failed legislative framework and policy prescriptions of the recent past, both in Australia and internationally. We acknowledge that our ability to contribute definitively and in a more detailed manner to this invitation within the timeline is beyond our current expertise. However, having set forth our concerns in a theological perspective, we will offer two further policy proposals for consideration.

Restorative justice for Victims of Institutional Harm in the Sector

It is instructive that as the banks' endeavour to repair the harm to their reputations, a number of Chief Executive Officers have met in private with customers harmed by their bank. This would be the first response in a restorative justice process dealing with harm or injustice to a victim, that is, to meet with the responsible person in an organisation which has perpetrated harm and offer an apology.

Restorative justice protocols assume that the responsible person who meets with the victim of the organisation's harm is usually the CEO. This meeting is usually preceded by a period of preparation for the parties by the restorative justice service, and an apology is followed by a discussion on agreed reparation or compensation, and a written agreement signed by both parties committing the responsible person to take action to prevent such harm happening again in their organisation.

RASP submits that a restorative justice service may encourage empathetic respect and restored relationships of trust for self (bank executives and staff) and neighbour (bank customer/client) in responding to harm done to sufferers of injustice in the banking sector. The policy challenge, which has been researched by a Unitingcare agency in Melbourne in relation to work-related deaths (http://apo.org.au/node/18630), is to establish a working relationship between such a service and the state's legal responsibility to prosecute misconduct.

It may be that the Royal Commission could give further consideration to the need for a restorative justice service to support the healing and recovery of victims of harm from the Australian banking system. We suggest that such a service may also contribute to humanising CEOs/senior managers by ensuring their participation in such a service when harm done needs to be acknowledged, apologised for and compensated. This in turn may strengthen their commitment to sustaining their institution's humanising work environment.

Governance in Theological Review

It is generally agreed good policy development will include provision for evaluation and review. In relation to future review of governance and compliance arrangements emanating from the Royal Commission, it is suggested that provision be made for organisations in the non-government sector to be assigned a role in evaluating changes made in response to the reports and recommendations of the Commission. Those assigned a role should include faith-based organisations which may bring a counter-narrative to the economic and political narratives of government, government agencies, and banking and finance sector corporations competing in a global economy.

The Centre for Research in Religion and Social Policy would be pleased to expand on its submission or undertake more detailed work to inform the Royal Commission in developing its final report.

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