# THE MALPRACTICES COMMISSION

[For some overview of what local and imperial bankers have been up to here during the past 200 years:

www.surplusvalue.org.au/mcqueen/political_economy/political_economy_bankers.html ]

## Terms of Reference

The terms of reference for the current Commission are to investigate malpractices in financial institutions. The remit for the 1935-6 Commission was to report on the 'Monetary and Banking **Systems'**. Contrast malpractices with system.

The institutions under investigation are the Banks and the Superannuation Funds. Neither functions without a battery of other institutions: accountants, actuaries, auditors, rating agencies, lawyers, lobbyists and Business Schools. Furthermore, all those of auxiliaries are directly engaged in Stock Exchanges, Foreign Exchange and Futures markets. Many are global enterprises. In particular, the banks are locked into foreign banks for fund-raising. The price-fixing scam between ANZ, Deutsche, Citibank and JP Morgan is exceptional only in terms of how little money was involved.

An interrogation of malpractices by banks and retail Super funds is not even half-way towards unraveling how these institutions operate if their supporting institutions are ignored. Taken together, they are still less than the regime of credit essential for capitalism.

The contrast is not just between an inquiry confined to malpractices by certain financial institutions and one into an entire monetary and banking system. Even the latter would still be a million miles from an inquiry into the whole of the capitalist system. That gap is expressed in the difference between a Royal Commission and a Peoples Court.

Only a Peoples Court into that entire system would dare to interrogate the prevalence of the malpractices rampant in the financial sector. Meanwhile, in a gesture towards republicanism, these pages will speak of the Malpractices Commission, not a 'Royal' one.

## A humble petition to Commissioner Hayne

The more shock-horror headlines tumble out of your investigations into the financial sector, the more we citizens are distraught because our regular consolation is denied us: what's happened to that One Rotten Apple in the barrel? The best that the system's defenders have managed is to picture the financial sector as one big rotten apple at the core of an otherwise healthy system of free enterprise.

Adam and Eve tasted the fruit of the Tree of Knowledge and were made to earn their keep by the sweat of their brows. We already carry that penalty. Denied the opioid of the One Rotten Apple, Mr Commissioner, we will be unable to tell the Devil Incarnate from his One Rotten Apple. Please, Mr Commissioner, spare us such anguish.

Paris threw Golden Apples before Atalanta in the expectation that she could not resist stooping to pick up the glittering prize and thus allow him to win the race and the greater prize of Helen. The result was the destruction of Troy. Please, Mr Commissioner, spare us that fate. We shall happily trade all the Golden Apples in Christendom for the comfort of One Rotten One.

Please Mr Commissioner, make the Business Council, the Institute of Directors and their kind restore our faith in the essential soundness of capitalism by giving us back their One Rotten Apple.

## Kultur

Whenever I hear the term 'bank Kultur' I reach for my Mauser.

Whichever PR firm came up with 'Kultur' for corporate crime more than earned its million-dollar fee. There's something 'civilised' about having the wrong Kultur. Not like a CFMEU organiser who has to bellow 'fuck' in order to get a site made half-way safe.

'Culture' also sounds like something we absorb, like the air – polluted though it might be.

We are being sold the line that 'bank Kultur' is acquired in the same way we do our native tongue, innocently. In truth, corporate Kultur is learned behaviour. It is inculcated into staff, by bonuses and through example. The gouging of super fees by the retail Super funds run by the banks and the AMP is a meticulously structured operational method honed across decades. To ascribe such habitual thieving to an inchoate 'Kultur' is to revive belief in phlogiston and the aether.

There is nothing unique to banks about a 'Kultur' of malfeasance. It is but one more expression of the needs of capital to expand in order to persist.

If 'Kultur' is to blame, a whack of responsibility must be sheeted home to Universities. The Schools of Business that have displaced Faculties of

Commerce and Economics retain one shred of virtue: their label is not deceptive. Indeed, they have cooked up a subject branded ‘Business Economics’.

Business Schools also offer courses on ‘Business Ethics’, which is more than an oxymoron. Universities train executives in how to get away with it. But should they get sprung, they then enter their pass mark in ‘Ethics’ as a plea bargain.

Transfield’s co-founder, Franco Belgiorno-Nettis, subsidised the visual arts out of the profits he made from exploiting workers while swindling customers and governments. He confessed to his corporation’s official historian that he had engaged in corruption and strong-arm tactics: ‘We cover this with a veneer of civilisation.’ In a class society, each act of civilisation is fed by a piece of barbarism exacted from workers whose creativity and suffering pay for the benefactor’s generosity. Such is the ‘Kultur’ of capitalism.

Murder is for amateurs. Robbery takes practice.

## **Authorities**

A Peoples Commission should examine why regulatory authorities have been so ineffective. There is no shortage of them: the Australian Securities and Investment Commission (ASIC); the Australian Consumer and Competition Commission (ACCC); the Australian Prudential Regulatory Authority (APRA); Austrack, and even the Reserve Bank.

The reasons for failure begin from

(a): the fact that commercial law expresses the needs of capital raised to an obligatory norm. In the words of Adam Smith: ‘Laws and government may be considered in every case as a combination of the rich to oppress the poor, and preserve to themselves the inequality of the goods.’ In 1833, Britain’s Attorney-General advised the Cabinet that making manslaughter the appropriate charge against a master whose negligence had caused the death of a servant ‘would create a serious objection to the investment of capital.’

Consumer protection is subject to that framework. In 2005, NSW Chief Justice Speigelman ruled ‘Unconscionability is a concept which requires a high level of moral obloquy. It if were to be applied as if it were equivalent to what was “fair” or “just”, it would transform commercial relationships.’

To make sure that the courts never make that mistake

(b) judges are chosen for their expertise in commercial litigation and who, whether deliberately biased or not, have absorbed as natural the working assumptions of the practices upon which they are called to deliberate. Those prejudices are institutionalised, first by their training, secondly, by their experiences at the Bar, and finally through operating within inheritances from the Common Law and by precedents set in the interpretation of Statue Law. In reaching their decisions, judges are constrained by the fear that an exemplary penalty will be overturned on appeal for being out of line with business standards.

(c) a legislative framework through which Freehills can drive a bullock team;

(d) takes years to gather evidence which has to be sent to a external law firm to be pulled apart and then reassembled before deciding whether it is worth the time, money and effort of going to trial. The authorities face the certainty that the accused has the resources to drag the case on for years, all the way to the High Court on appeal. Dick Pratt should have died in gaol for price-fixing but had the ACCC taken him to trial instead of securing a $40m. out-of-court settlement, the proceedings would have outlived him by several years;

(e) the decision to proceed to prosecution is also seen as a second-best option because it is hard to convince juries about intangibles. Unlike a murder trial, there is no corpse and no weapon. Instead, financial offences are constructed on intricate maneuvering. It was no accident that Alan Bond went to clink over a physical object, a $59m. Van Gogh painting, not the billions with which he played fast and loose;

(f) both those circumstances contribute to why regulatory authorities settle out of court. On top of which, they were under-resourced long before the Coalition slashed their budgets.

## Crumbs

$700 million has been exacted on the Commonwealth Bank for more than 50,000 instances of facilitating money laundering over three years.

$700m. out of $9,000m. 2016-17 profits is about 13 percent. But the offences went on for three years during which the CBA declared profits of totaling $20,000m. which works out at closer to 3 percent.

Had a bikie gang been up to the same, its members would have had their assets seized.

Had some Muslim facilitated the transfer of funds to Hamas, her house would have been raided by Dutton's goon squads and she would have thrown in the slammer for several years after a partly secret trial.

If the legal costs of appearing before the Malpractices Commission, and the PR effort headed by Anna Blight, are tax deductible as legitimate expenses, why not the $700m. fine? After all, both are incurred in normal course of bank business.

The crummy penalty is not a matter of double-standards but of no standards when it comes to corporate crooks. The proof came when CBA's share price went up on news of the $700m. fine.

## Swindles

> 'The capitalist class of a given country, taken as a whole, cannot defraud itself.' Marx, *Capital*, I, p. 266.

'Bankers steal pennies from the eyes of dead men' is topped by 'Bank evicts blind pensioner.' Shock headlines out of the malpractices Commission deflect attention away from what will never be investigated under the rule of capital: the necessity that the agents of capital have to swindle on top of its everyday exploitation of all labour.

Marx's critical analysis of political economy can appear contradictory. On the one hand, he shows how exploitation under capitalism is based on an equal exchange between capital and labour. In that case, the sum of wages that we get matches the socially necessary costs of reproducing the timed unit of labour-power we must sell as wage-slaves. Yet, despite this equal exchange, exploitation is part of all such sales and not an exception. Wage-slaves for 7-Eleven would have been exploited even if they had not also been swindled.

Two common errors are: 1). to equate the appropriation of surplus-value with theft – a direct swindle; and 2). to equate swindling with the kind of exploitation that comes out of an equal exchange.

Nonetheless, *Capital* is flush with instances of swindling – not only of wage-slaves, but also of other capitalists and of both corporate and household customers.[1] The law of equivalents and the law of the jungle do more than co-exist within capitalism. They nourish each other. Marx's conceptualising of competition between capitals allows us to understand how equal exchange, exploitation and swindling work together.

The first two are primary and inseparable. Without the exploitation from equal exchange there can be no capitalism. Swindling is widespread in any and every class-based system. Its manifestations are contingent, and shaped by shifts in the mode of production.

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[1] In the Penguin edition: Volume I: pages 96, 237, 250-1, 254, 264, 266, 907. Volume II: pages 97; 137; 208; 228; 582 584. Volume III: pages 134, 138, 321, 331, 342, 359, 395-6, 407, 422n, 446-9, 488, 551-3, 555, chapter 26, 570-3, 678-9 banks as bandits, 740, 742n, 745, 763, and 966. *Theories of Surplus-value*, (Moscow), Part III, pp. 91 and 454.

Within capitalism, the production of surplus-value is grounded on the exploitation from equal exchanges. The realms of circulation provide the field for swindling. Although exploitation and swindling are utterly different, their operations intersect as we see in the labour-capital relation.

On average, wages cover the socially necessary costs of the labour-power that wage-slaves are forced to sell in order to exist. Of course, what is average across a class must vary for its sub-sets. In addition to exploitation, there is wage theft. 7-Eleven underpayments were at the extreme kind. But sneakier forms are widespread with cash-in-hand. In addition to clawing back money-wages and entitlements, employers go after unpaid overtime. Here, workers might get the equivalent of the costs of reproducing their labour-power but the rate of their exploitation is driven up by their being forced to work off-the-clock. Piece-rates are a proven way to get that result.

Wage-slaves confront capital as employers but also as the sellers of the goods that we need to reproduce our labour-power. In most cases, the items we need come from capitals other than our own boss.

In some countries, wages are paid in kind at inflated prices (known as 'truck'), or workers are forced to buy at the company store. In those parts of the world, workers are thereby trapped into debt-peonage at exorbitant rates of interest.

These methods for clawing back wages are exceptional in Australia. What is universal is how social capital sets about to reclaim some of the wages by price-fixing or adulteration.

Until the 1970s, the police of almost every thing we bought was fixed under a policy known as retail-price maintenance. Any retailer who charged her customer less had supplies cut off. Today, the swindles of price-fixing happen far back in the supply chains. Global banks conspire to set benchmark interest rates (LIBOR). AMCOR and VISY fixed the price of cardboard boxes to steal from every Australian – a fraction of a cent each time but enough for Dick Pratt to scoop up tens of millions of dollars.

Moreover, the agents running the cartels race for the exits when the regulators turn. We have just seen J.P. Morgan roll over to give evidence against its partners, ANZ, Citibank and Deutsche. Not only is there no honour among thieves but, as Marx remarks, honour has its price without having a value.

<u>Ideological</u>

'Buy cheap! Sell dear!' is the il-logic of the agents and personifications of capital. They confuse prices with value, and represent both as determined solely by supply and demand. All is subjective: we pay more if the use-value has a higher marginal utility to us. If commodities have no inherent value and if prices are subjective 'buy cheap and sell dear' is an open invitation to cheat.

This lop-sided account is a necessary fiction to avoid the reality of capitalist exploitation. If all that happens is that firms outsmart each other in a price war, what makes it possible for an entire economy to grow? Such dealings sufficed when the prevailing mode did not have to expand in order to exist. That was usually the case for ancient slavery and the first serfdoms.

One indisputable fact about capitalism is that its pots of gold, along with its collection of commodities, are more immense than they were 200 years ago. That explosion cannot have happened by redistributing a pre-existing quantum of wealth. Buying and selling speed that expansion but they could not be its cause. New wealth can come only from the exploitation of labour applied to plundering the riches of nature.

To avoid the facts of wage-slavery and despoliation, capitalism's academic apologists buzz about the level of commerce. Their significance is why Marx dismisses them as vulgar economists, 'vulgar' meaning everyday speech, not ill-mannered. But there are also vulgar Marxians who get agitated about bank malpractices without putting in the hard work needed to understand how a regime of credit is essential to the expanded reproduction of capital.

## 'It's only human nature'

One response to the exposures at the Malpractice Commission is to put the blame on greed as an inescapable fact of life. Stealing is indeed one of the activities of which human beings are capable. The extent and manifestations of thievery, however, are not encoded in our genes. What and how much we nick are conditioned by the ways in which we live. Pinching an egg from under a goose is a long way from enclosing all the farms on which all the geese depend.

## Personifications

We become what we do. That summation of historical materialism applies to us as a species, as a class and as individuals. Its workings inform Costa-Gavras's 2012 feature film, *Capital*, in which a brilliant young socialist from regional France secures his place at the top of a global bank after realising that the only value that his fellow executives respect is the size of his package. Not having the time to spend a fraction of his nine million Euros is beside the point: the point is the moral authority that his higher salary gives him over his rivals.

Christina Stead's *A House of All Nations* (1938) 800-page novel set in a private Parisian bank between the wars does for high (i.e. low) finance what Balzac did for 'the principle of money' in post-Napoleonic France. The bank's director operates on the golden rule: 'No one ever had enough money.' He employs only Communists because they have the sharpest understanding of how capitalism works and because they are so embarrassed at working for his bank that they do not steal from him. In the judgement of *The Oxford Mate to Australian Literature* (1994), *House of All Nations* is 'epic in scale, encyclopedic in detail, cinematic in form …' Or one could say that the novel is a fictional companion to volume two of Marx's *Capital*.

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Although swindling is universal, its sources and forms are subject to time and place. The dirty doings exposed at the Malpractices Commission need to be located in the blowback from the misnamed Global 'Financial' Crisis. Since then, low interest rates have coincided with stricter prudential requirements on banks to hold more funds in reserve to ride out the next eruption without getting more tax-funded bail-outs. Those twin pressures squeeze the chances for banks to 'take' – not 'make' – profits in their old ways. They can lend less and earn less when they do lend. Therefore, they have turned past shonky practices by Dodgy Bros into Standard Operating Procedures at the Big End of Town.

## De-regulation

A Peoples Court into the current financial system would begin from its de-regulation. In January 1979, then treasurer Howard appointed the Campbell Committee, headed by the boss of a real estate giant, Hookers. The other four Committee members came from the financial sector: one from the AMP, still a mutual; one out of the bank and stock-broking business run by the shyster Sir Ian Potter; one from the Reserve Bank; and one from the government's Resources Development Bank. That only one of the members was any kind of screen jockey is a sign of how different the political economy was before de-regulation.

Campbell's enthusiasm for financial deregulation began in the early 1960s when the third Menzies credit squeeze left the Hooker Corporation in effect bankrupt. Unable to get backing from of any local bank, Campbell raised more than six million pounds in the U.S. in 1964-5, including from Lockheed Aircraft. Those connections encouraged Campbell to spread Hooker's operations into Atlanta property developments, this time with backing from the Mellon Bank of Pennsylvania. Campbell directed Hookers into 'landbanking' – buying up cheap land at low interests rates and sitting on it until residential demand delivered a profit. The scheme flopped. By 1977, Hookers was again in effect bankrupt. This time, the merchant bank CitiNational rode to the rescue. In appointing Campbell, Howard set a fox to guard the chickens.

The regulatory environment had been shedding its rigidities before Howard tabled the Campbell Report in November 1981.

To survive the challenges from overseas competitors, the trading banks were concentrating to the current Big Four. The Bank of Adelaide fell to the National in 1979 after losses in the Sydney property market. On 1 October 1982, the Bank of New South Wales merged with the Commercial Bank to take on the western Pacific behind the banner of WESTPAC. These mergers spotlight how 'de-regulation' from state apparatuses is matched by greater if different regulatory clout through a concentration of capitals.

Were it not for legislative bans on mergers and foreign takeovers in the sector, Australians would be in the grip of only two huge banks, both owned overseas, as in New Zealand.

<u>The Real Deals</u>

Financial de-regulation did not plop up out of a clear blue sky. It had been building since 1960 to service the restructuring of global capital. Some of what is now called 'financialisation' grew out of the needs of corporations engaged with physical goods and services. Financialisation cannot be severed from those sectors, any more than it can be equated with them. All corporations engage in tussles for larger slices of the profit that has to be realised out of the surplus-value from the labour of wage-slaves. How those conflicts among capitals work out is transformed with each stage of capital expansion, and will be different in each nation-market-state at the same moments. 'The City' is comparable to Wall Street but not its cypher.

<u>Dollars and non-sense</u>

Similar specifics apply to the developments in the Australian economy, which rode on the sheep's back until the mineral export boom from the mid-1960s alleviated the recurrent balance-of-payments crises while the consequent appreciation of the dollar ate into the competitiveness of rural and processing sectors. Early in 1974, two Australian dollars got you almost three U.S. ones. Australians needed less money to buy imports while exporters lost sales because their goods cost more in U.S. dollars.

Making matters worse, the Whitlam dingbats in July 1973 slashed import tariffs across the board by 25 percent, doubling the impact of the rising local currency. 'Free trade' ideologues blinded themselves to the connections between financial drifts and real production. In the 2000s, leader of the 'Left' Doug Cameron had not woken up to the fact that a higher dollar from the mining boom had more than erased effective tariff levels. Nor did the Aussie's 30 percent slump preserve the car plants from closure. The big three auto-makers decided to devalorise because of global over-capacity. Those decisions were determined in the realm of physical goods, not by a flight of money-capital, still less because of a bad idea called Neo-Liberalism.

Over-drive

The most spectacular example of the multiple interlocks between financial doings and physical production came out of the 1973 price increase by the Organisation of Oil Producing Countries (OPEC). For more than a decade, the real returns to its members had fallen along with the depreciating U.S. currency. To redeem their rate of return, OPEC ministers tried to lift the barrel price for crude.

That spike speeded up GM and Ford's retooling away from gas-guzzlers in favour of 4- and 6-cylinder cars, sectors already dominated by Japanese makers. To maximise the benefits from mass production, the auto giants sourced components from multiple locations. Canberra gave GM-H permission to import automatic transmissions from its plant in the Philippines in exchange for exporting 200,000 engines.

Global corporates needed a financial system to match the flows of its physical capital.

Un-Real Estate

We have seen the leading role played by the property developer Hooker in financial de-regulation. Much more than the ambitions of one honcho tied the world of finance to that of bricks-and-mortar.

Because deregulation increased the volatility of interest and exchange rates, investors sought instant liquidity. Large-scale construction projects had long-lead times, and therefore tied up funds, impeding that escape route. Institutional investors looked beyond commercial property for security.

This reconfiguration of the market for commercial properties accompanied a change in their financing. Since the 1960s, there had been a drift away from the single owner, such as AMP, and towards securitisation with unit trusts, whether listed or not. Between 1980 and 1994, the funds in property trusts grew tenfold to $100bn.

According to the CEO at Building Owners and Managers Association, the message was clear: 'listed property is neither property nor equities. It is in a class of its own.' How 'clear' was the new status of listed property if it had to be defined by what it was not? Its elevation to 'a class of its own' looked like a confession that the managers had lost track of what they were marketing. At least, BOMA's CEO realised that: '[i]f the eighties reinforced one home truth it's that cash flow is sovereign.'

Looking back from 1993, the CEO of Macquarie Bank mused: 'Perhaps the Australian commercial office market was the first causality of the world de-regulation of capital flows.' Macquarie had been itself set up in 1985 to make the most of the new uncertainties.

For a fuller account of the thirty-year roller-coaster ride see http://www.surplusvalue.org.au/McQueen/BLF/blf_1986_de-reg.htm

Free for all

Throughout the 1970s, the exchange rate had come off the boil. Early in 1983, the $A was at parity with the $US. The incoming Hawke-Keating gang failed to staunch the bleeding. They gave Howard's de-regulation agenda its biggest boost. Their floating the dollar in December 1983 set the field for everything that has followed, only the tip of which is being exposed at the Malpractice Commission. *Euromoney* magazine named Keating 'Treasurer of the Year' in October 1984. Why wouldn't they?

Keating proved a quick study – too clever by half for the good of working people. He could parrot lines fed to him by the anti-union free-trade Treasury. What happened to the 'J-curve'?

Un-Funny Money

The deregulated money market powered a torrent of scandals in the Hawke-Keating era.

One was the marketing of loans in foreign currencies by a WESTPAC subsidiary. Their unraveling, and the bank's own loss of $1.66 billion, had led to the departure of the Bank's board by late 1992. Judges and ALP pollies tried their damnest to protect WESTPAC from the publication of incriminating letters. The bank took legal action to criminalise an ex-employee's supplying information to its victims. Killing the whistle-blower is the norm for bosses caught with their hands in the till. Outside the court, Communists sold *Tribune* which had reprinted the suppressed letters.

Ponzi Premiers

Dullards like ALP premiers Victoria's John Cain and John Bannon in Adelaide bought into the fantasy that making money out of money could redeem their States' economies after the decline in making physical commodities.

The irrational exuberance infected most sectors of governments and the backwaters of business. Geelong-based Pyramid Building Society underwent conversion to a loosey-goosey financier before being bailed out.

Three State ALP administrations put their faith in corporate cowboys: Tim Marcus Clark in Adelaide; Ian Johns in Victoria (later gaoled); and 'Last Resort' Laurie Connell in Perth. The State Banks of SA and Victoria switched from lending to home-buyers to chasing borrowers who had been spurned by the commercial banks as too risky. Clients included Bond, Skase and Herscu, the last named having taken over Hookers on his way to prison.

Losses of $2.7 billion State Bank of Victoria and its wayward arm Tricontinental led to a forced sale of the box and dice to the Commonwealth Bank. The Keating Liberals then grabbed at the chance to sell off the Peoples

Bank. What should have been a brake on the excesses of the Big Four was set up to become the worst offender.

Perched atop of W.A. Inc. was philatelist and soon-to-be jailbird, ALP's Brian Burke, held up by Connell's Rothwells Bank, Alan Bond and Robert Holmes a Court. Their donations through the NSW Right supported Hawke and Keating and protected mining companies from Aboriginal Land Rights.

<u>Banana republicans</u>

Keating bleats about 'the recession we had to have' if policy-makers were to drive inflation out of the system. He is as silent as the grave on how inflation went feral. During the early 1990s, the Reserve Bank claimed to be 'Using every arm of policy' to tame inflation and preserve jobs. It was. Its difficulty was that Keating's de-regulators had left the Reserve with only one arm: interest-rate hikes. The ALP had lopped off its other limbs. Driving interest-rates up to 18-20 per cent, the Reserve Bank managed to wreck Whelan the Wrecker.

That the economy could not limp along in the ways that it had is incontrovertible. The de-regulators did as much harm, proportionately, to the economy and to social well-being, as had the Stop-Go under Menzies. In Victoria, reaction to the financial fiascos ensured Kennett 1992 victory and the subsequent ruin of education, power supply and transport.

In addition, the ALP's programme of de-forms paved the way for their deepening under the next bout of Tory rule after 1996 – notably in industrial relations. At the Canberra Hyatt late in 1993, Keating promised the CEO's of the top corporations to remove all 'impediments' – aka the entitlements that workers had fought decades to win. Howard kept that promise with Worst Choices. Killard kept her tough cop on the block against construction unions and left all wage-slaves under Worst Choices Lite in her un-Fair Work Australia.

The outrage expressed by so many Australians at the exposure of malpractices as the Killer Performance Indicators throughout the financial sector has been fired up by forty years of governments' selling out our interests. We need to change more than the rules around industrial relations if we are to change those rules.