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Banking culture and collective responsibility

A memorandum to the UK Parliamentary Commission on Banking Standards

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Origin and basis of submission

The author, a sociologist working in a law school,[1] researches and publishes on regulation of financial markets, with specific attention to the policy, regulatory and market conditions that propagate or mitigate crisis.[2] The work is carried out within a broadly socio-legal perspective. The focus for this submission is determined by the Parliamentary Commission’s terms of reference (for external readers, these can be found on its website). The views expressed here do not represent those of the author’s university.

Summary

S.1. Basic assumptions

- There is wide interest in connecting issues of (i) occupational culture, (ii) compliance/ misconduct, (iii) remuneration and (iv) clawback (the bonus/malus debate).

- Individual-focussed measures (supervision, remuneration and measures in civil or criminal law) must be supplemented by a wider, whole-firm regulatory strategy.

- Whilst attention has been drawn to 'the tone at the top', 'the tone in the middle' and 'the tone at the bottom' are as important. Collectively, mid- and lower-level staff see and know more than chief executives or boards. To reform culture, all levels need to be properly incentivised.

- In cases of rule-breaking, recklessness or malfeasance, clawing back a proportion of past and/or present remuneration is a matter of economic justice.

- However, questions about who to hold (co-)responsible and to target for recoveries need to be more imaginatively addressed than hitherto. Up to now, some of those working in the financial services industry have passively gained from the recklessness and misdemeanours of their peers – for example, through group bonuses – whilst not being at any risk of clawbacks unless they are also are flagrantly involved. All rewards for passive connivance should be withdrawn, indeed reversed.

S.2. Recommendations

- The Commission should recommend *collective* responsibility, financial accountability and clawbacks – applying laterally to co-workers of miscreants, as well as vertically to management. This would animate the occupational culture, incentivising all levels of banking staff, in a proactive and precautionary manner, to bring informal pressure to bear against reckless or improper practices and, where that fails, to trigger formal investigation, via reporting and whistleblowing.

- A forthright approach would be to go for such linked cultural and remuneration reforms across the whole sector. A more tentative and exploratory step would be to use the (partly) publicly-owned banks as a testing ground. An alternative would be to require such reforms selectively, as conditions of settlement with regulators. If monitoring over time finds that the changes seem positive, then that could provide ammunition for wider change across the industry.

S.3. Future work

- Further thought needs to be given to the relationship between occupational culture within banking, and broader shifts of sentiment associated with the business cycle.

- The relationship between (a) risk-taking and (b) the implicit public guarantees enjoyed by banks and liquidity support by central banks remains problematic.

* * *

Collective responsibility: why and how

1. *Introduction*. In this submission, a proactive strategy is proposed, looking at what could be achieved through an inculcation of collective responsibility and how that might be achieved. Secondly this submission explores why action against individuals – including criminal prosecutions – must be regarded as inadequate in terms of the Commission's terms of reference. This submission then turns to the question, raised during the deliberations of the Commission, about 'talent' and remuneration, addressing that question in the context of clawbacks. Finally, this submission opens up for discussion the question of whether and how occupational culture and collective responsibility might relate to the business cycle.

2. *Scope*. Reform of the occupational culture of banking is commonly mentioned as being a potential means of reducing misconduct by bank executives and staff, including 'rogue' trading, frauds, mis-selling, insider trading and long-running and widespread market manipulation (e.g. Libor rate fixing).[3] There is wide interest in connecting issues of (i) occupational culture, (ii) compliance/misconduct, (iii) remuneration and (iv) clawback (the bonus/malus debate). That interest in 'connecting the dots' is articulated here.

3. *Approach*. However, this submission does not follow the tradition of conceptualising governance in bifurcated terms, as (a) broadcasting to all staff some morally anodyne 'tone from the top' messages whilst, (b) occasionally and in a highly focused manner, applying forms of discipline such as clawbacks, sackings and/or criminal prosecution. Such bifurcated conceptions do not mark a break with the thinking and mechanisms that brought the industry to its current position. A better integration of 'carrots' and 'sticks' is needed.

4. *Economic justice*. Certainly, in cases of rule-breaking, recklessness or malfeasance, clawing back a proportion of past and/or present remuneration (deferred bonus, present salary, other benefits, whatever can be made available) is a matter of economic justice. Clawback does not preclude criminal prosecution.

5. *Targeting of clawbacks*. However, the question of whom to target for recoveries needs to be more critically and imaginatively addressed than hitherto. There exists within bank management a notion that "only a handful of staff are usually to blame" (a few rotten apples).[4] This is a self-serving line, because defining responsibility for scandals in terms of blame for a few individuals whitewashes those close by and above. It minimises the potential for clawbacks, because the pool for such recoveries is constructed as being small. Thus it ensures that the greatest proportion of the costs of misbehaviour and of regulatory fines continues to be un-recoverable. As for the future, the occasional handing over of a few scapegoats – those unfortunates for whom deniability is least available – is not effective in transforming occupational culture or practices within the industry.

6. *All levels of staff*. If the Commission's terms of reference are to be met, then any individual-focussed measures must be supplemented by a wider strategy, engaging with the occupational culture of the whole sector and incentivising all levels of banking staff. It is true that focussing action against a small number of individuals dovetails with criminal law, thus allowing strong disapproval to be shown. However, as made clear in evidence on sanctions submitted to the Commission by learned legal experts, criminal law is a rather blunt instrument in

this context. Without prejudice to the arguments favouring criminal prosecution, too much banging of that drum could detract from the search for wider, forward-looking and transformational regulatory strategies.

7. *Collective self-discipline*. What is needed is an approach that facilitates higher financial recoveries (economic justice), whilst also transforming the occupational culture of the financial services industry (preventative safeguards), by encouraging those working in the industry to more closely scrutinise and discipline each other. For this, the Commission should consider a form of *collective* responsibility and financial accountability, meriting collective clawbacks in cases of rule-breaking, recklessness or other malfeasance.

8. *Vertical clawbacks*. Financial responsibility and accountability should be extended both vertically and horizontally. Vertical clawbacks, extended to those who hold line supervisory or management responsibilities, are clearly merited. If superiors claim not to have known, then either they neglected their duties, tactically turned a blind eye or strategically ensured that they were never formally informed. If there is a reason for this logic not to extend to senior compliance officers, legal counsel, chief operating officers and indeed board members, let the argument be heard (c.f. evidence given by Lord Turner[5]).

9. *Lateral clawbacks* – affecting all those within the team, unit and/or bonus pool within which malfeasance occurs (for example, a sales team, prop trading desk or the department within which it sits) – would have the potential to positively incentivise a broader swathe of bank employees to take preventive action. A significant (quite high) level of clawback would be appropriate for those working alongside or near the locus of undesirable behaviour. In the absence of such an incentive, nearby staff might possibly disapprove of the behaviour but shrug it off (on the basis that it is not really their business, since they themselves are not directly involved and hence would not be held to account); or they might observe the behaviour with some amusement or excitement ('so that's how it works!'); or they might even facilitate it in small ways (carrying out tasks on request).

10. *How widely?* It could be for consideration whether a more modest level of clawback might be applied routinely across all departments and pay grades within a bank. On the one hand, such whole-staff accountability might have a broad reinforcing effect, in terms of occupational culture. On the other hand, it could be argued that staff in different departments, when they are distant from the behaviour disapproved of, would have little knowledge of or change to influence the behaviour. Nevertheless, such insularity and deniability needs to be reduced, encouraging all banks staff to look twice. This is partly a moral question but also partly an empirical question, answerable experimentally – by putting into effect various accountability regimes and observing their cultural consequences. In any case, there can be no argument against accountability for those who are close to malfeasance and observe it on an everyday basis.

11. *Proportionality and fairness.* Arguments against collective responsibility could be mounted from the perspectives of fairness and proportionality. In addressing such concerns, and it finding a balance, it can be argued that a strategy of collective responsibility would be merited on several grounds. Firstly, it could stimulate informal and formal controls within the industry, which so far have been noticeably absent, dormant or weak. Thus it could have a preventative effect and limit future wrong-doing. Secondly, targeting not only the one or few persons most centrally involved, but also wider sets of facilitating or knowing persons, would allow higher

cost-recovery. Thus banks could recover closer to 100% of the costs of compensating wronged market participants and of paying regulatory fines – in contrast to past and recent recoveries of much smaller proportions of such costs.

12. *Where to start*. If the Commission is interested in making changes in bank behaviour, culture and remuneration, yet is uncertain over the applicability of such changes generally, then the (partly) publically owned banks could be a testing ground. An alternative would be to require such reforms selectively, as conditions of settlement with regulators, following misbehaviour or negligence by a bank or its staff. If empirical work were to find that the changes seemed positive over time – considering for example financial results, regulatory compliance and staff engagement and morale – then that could provide ammunition for wider change in the industry. A more forthright approach would be to go for cultural and remuneration changes 'across the board' (in both meanings of the phrase).

13. *Experimentalist approach*. There are two ways in which the above strategy could be implemented: direction via legislation (as in the UK and EU debates on remuneration), or via codes of practice which the industry might prefer to offer, with a 'comply or explain' obligation. Either way, since this area of 'cultural engineering' is in its infancy, some flexibility in conceptions, requirements and modes of implementation could be useful in the early stages. What works, in which circumstances and why? It would be useful to explore *variations* in the implementation of cultural and remuneration reform in financial services: that points to top-down general principles, allowing for variations. If monitoring over time finds that some approaches lead to more positive outcomes than others, then that could provide ammunition for wider change across the industry (accepting that in practice control measures typically provoke mixed reactions).[6]

14. *Academia's contribution*. Until recently, much of what concerns the Parliamentary Commission (and policy-makers, regulators, the public more generally) has not been at the centre of public enquiry. Economics, the dominant conceptual frame of reference in the run-up to the crisis and continuing today, is not well equipped to address cultural issues, because of its somewhat dehumanised models of markets and its individualistic models of action. Law is sometimes more promising, as reflected in expert evidence given to the Commission by learned scholars, however the focus on criminal law is something of a millstone. For a more direct engagement with the Commission's terms of reference, some conceptual tools and empirical methodologies are found in the social sciences generally and in regulatory studies and socio-legal studies in particular. A closer bringing together of policy-making and such intellectual and empirical resources would be helpful.

<u>Limitations inherent in individual accountability</u>

15. *Professional standards and culture are collective*. It follows that focusing responsibility, accountability and clawbacks only upon those directly involved – and/or upon their immediate supervisors – would not sufficiently address the objectives of the Commission, concerning standards, culture, behaviour and risk-sharing.

16. *Several limitations*. In particular, focussing action only on a few bank staff – as is the current tendency – gives rise not only to lower cost-recoveries (see above) but also to further limitations: too narrow a focus in social terms, the danger of provoking counter-measures, and the mire (for present purposes) of criminal law.

17. *Whole organisation issues*. An atmosphere of fear can be created, however that may do little to create the broader cultural conditions in which the whole staff of a bank cooperate, internally and with regulators, to run a clean ship. Occupational culture, standards, behaviour and the prospects for self-control, positive influences upon colleagues and, when necessary, whistle-blowing are sector-wide and whole-firm issues.

18. *Danger of stimulating deniability.* Ironically, although accountability of supervisory and senior management seems morally justifiable, threat of tough action against those at the top can be counter-productive. It runs a risk of stimulating greater efforts to defend corporate and individual reputations, for example by ensuring that one does not know what one does not wish to know. Senior executives (chief executives, chief operating officers, corporate counsel, compliance and risk managers) may spend more of their time (and more of the bank's resources) in categorising, managing and neutralising legal and reputational threats.

19. *Practical limits of criminal law*. Criminal prosecution of individuals may face difficulties (broadly agreeing with evidence given in the session on 17 January 2013). This does not imply that criminal prosecutions may not be appropriate, just that consideration may be given also to other remedies, preventative means and cultural signals.

20. *Historical note*. Criminal prosecution of senior executives and other prominent individuals meets additional problems. We have been here before: consider the travails of the Serious Fraud Office. The difficulties may not result from a lack of specific offence categories; more generally they have to do with the questions of intent and the criminal standard of proof, especially when sophisticated defence teams are deployed.

21. *Not forgetting civil proceedings*. One clear implication in practical (instrumental) terms is that civil proceedings have more leverage, even if they lack some of the symbolic power and moral opprobrium of criminal law. Whilst public and populist anger may be driven by a sense of justice being frustrated and by incredulity over excesses in the context of public subsidy for the banks, policy-makers need to balance issues of symbolism against consideration of effectiveness.

22. *Some harmful behaviour cannot even be civilly proceeded against*. Whilst the more intrusive regulation that has been provoked by the crisis has helped to bring to light evidence of widespread market manipulation and frauds, the wider prudential, managerial and risk-management failures that caused the crisis were in many cases perfectly legal – the whole industry had an extended Ponzi moment (see paragraph 36 onwards).

23. *Summary of this section*. Prudential considerations demand forms of cultural change that cannot be delivered by individual scapegoating, civil proceedings or criminal prosecution. However, whole-organisation change could be driven by making remuneration a two-way street at organisational level (see paragraphs 4-12 above). In these terms, and contrary to some submissions made to the Commission, it is possible to legislate for cultural change. The conceptual hiving off of 'culture' from 'the economy' and 'law' is profoundly unhelpful.

Limitations inherent in 'the tone at the top'

24. *Top down morality?* Evidence given to the Commission to some extent reflects the contemporary tendency for regulatory bodies to conceptualise culture and behaviour in terms of 'the tone at the top' of an organisation (*inter alia* see FSA evidence concerning 'code staff'). On reflection, however, there are limitations to any approach that tries to engineer culture from the top downwards. Organisational life is not so simple, leaders sometimes dissimulate (visibly) and subordinates may respond to a wide variety of signals. Organisational life in investment banking, in particular, may be better likened to a collectivity of chameleons than to a flight of ducks.

25. *Deniability*. Those at the theoretical apex of the organisation may know the least about what is going on – partly because they are at some distance from the everyday lives, conversations, transactions and tactics of their subordinates, and partly because they may have a vested interest in *not* knowing in advance of any misdemeanours that might in the short-to-medium term be highly profitable for the bank.[7]

26. *Board members*. The stance above is even easier position for board members to take. That raises the question of what boards are for, however that is outside the current enquiry. The point for present purposes is the 'accountability firewall'.

27. *Implication for investigations*. As with responsibility, so with regulatory investigations: instead of going only 'up the chain', interviewing those employees who are best-defended in terms of the skills of cloaking, dissimulation and misdirection (as police previously used to do in drug trafficking investigations, thus often wasting years whilst getting nowhere – 'the trail peters out') investigators should go both laterally (both within the organisation and without) and also downwards, until they encounter persons who are less bound by *omertà*.

28. *Summary of this section*. Without wishing to dismiss concerns over 'the tone at the top', it is fair to observe that 'the tone in the middle' and 'the tone at the bottom' are important. In some respects, more important, since middle and low level employees see more and know more (collectively) that the board does. If robustly incentivised, middle and level employees are more likely to act to correct abuses, either by bringing informal pressure to bear, or by blowing the whistle. At present, such incentives are lacking, since some of those working in the financial services industry can passively gain from the recklessness and misdemeanours of their peers – because they share in the fruits thereof, through group bonuses and/or promotion opportunities – whilst not being at any risk of clawbacks unless they are also are flagrantly involved.

Engaging with the question of 'talent'

29. *The talent discourse*. Discussions in the Commission and more widely have identified an imbalance in the relationship between highly paid employees and the organisations that they work for. As has been observed within the Commission, the investment bank discourse on 'talent' is deployed in such a manner as to push up remuneration generally.[8]

30. *Heads I Win, Tails You Lose.* Typically, none of these individuals will lose anything if things go pear-shaped: they simply won't gain as much as they had hoped. If

potential gains could be balanced by the prospect of losing significant amounts then at least individuals would be incentivised to scrutinise their own behaviours and the behaviours of those around them.

31. *Group remuneration*. For the wider set of colleagues within the same trading group as a 'talented' trader or executive, the present prospect of sharing in any upside – whilst not be effected by any downside – may incentivise such colleagues to 'egg on' the risk-takers. It certainly does not provide a constraint. Culturally speaking and in terms of prudential concerns, this is not helpful.

32. *Public subsidy.* The above observations call for some explanation of why hitherto the talent mechanism – a form of leverage, in effect – might operate so strongly in financial services but less so in, say, manufacturing. Part of the answer is to be found in the implicit guarantees enjoyed by all but the smallest (or least connected) banks. Despite political conditions commonly understood in terms of neo-liberalism, exceptional support for banks not only continues today but also has been extended. Such subsidy can take several forms: (i) partial state ownership, which in the UK was combined with a Treasury strategy that the supported entities should be managed far as possible in a manner similar to before the crash;[9] (ii) asset-buying by central banks, coinciding with conditions in which delivering banks lend less and less to the real economy; (iii) ambiguity over future bailouts/bail-ins. Continuation of such subsidies works against normalisation of the culture of banking, insofar as public insurance for private recklessness institutionalises the latter and underpins its claim to talent.

33. *Impediments to change*. Unfortunately, public and central bank subsidy for banking has deep historical roots.[10] Best intentions aside, it may be difficult to curtail. There are cultural issues here in policy circles, as well as in banking.

34. *Distinguishing public ownership from public subsidy of risk*. The measures advocated in this submission would be equally applicable to publically and privately owed banks. Whilst the Treasury seeks to re-privatise all aspects of banking, it is an unsettled matter whether long-term public ownership of some (utility) elements of banking might be merited on grounds of ensuring common infrastructure as a public good. According to political taste, that might be achieved through strategic stakes or 100% ownership, at any level of government (EU, national, regional or local). But whatever the ownership arrangements, a one-way bet on remuneration makes no sense at all.

35. *Summary of this section*. On the question of what 'talented people' deserve, part of the answer must be the lack of negative incentive (malus) that might to some extent balance positive incentives (salary, bonus, pension arrangements, other benefits). If more of a balance – underpinned by the reduction in, if not removal of public subsidies – were to result in fewer people declaring themselves to be so talented, so conditions in the industry would normalise.

Collective responsibility linked to the challenge of the cycle of boom and bust

36. *Beyond 'rationality'.* Historical evidence suggests some limitations of 'skin in the game' (financial risk-sharing) and also that there may be potential for negative consequences as well as positive. Consider the point made in the Commission that "Some of the banks that collapsed at the time of the crisis had some of the

biggest shareholdings by executives and people who worked in the bank and that did not stop them taking those risks". That is certainly true.

37. *The importance of context.* This draws our attention to wider settings in which incentives are experienced – 'exogenous factors', as described during some of the evidence given to the Commission (although of course the behaviour of the banks help to construct those factors, which therefore are as much endogenous as exogenous). As economists and sociologists of diverse political stripes have pointed out,[11] as any market peaks, even experienced participants who have their own funds at risk are reluctant to exit, meanwhile naive late-comers and wannabes (including would-be 'star traders') hurry to join the party.

38. *Boom/bust*. Since governance arrangements should, ideally, be fit for all stages of capitalism's inherent boom/bust (rapture/despair) cycle, it is worthwhile to think through these issues. Here summarised is Joseph Schumpeter's three stages of slow initial development of a new market, followed by tulip-like mania (think subprime) and a fall into recession.

    - First, innovators and entrepreneurs – Schumpeter's heroes – propose new ideas to investors and the best ideas (in the eyes of the investors) are funded. This investment leads to a general expansion of the economy, as jobs are created in supplier firms, employees have more money to spend, they put aside some savings (part of which circulate to become available to support new investments) and so on. In this phase, the financial sector is seen by Schumpeter as playing a valuable role: it supports the 'real' economy (the latter really having that characteristic at that stage).

    - Second, the moment of danger arrives, as entrepreneurs and investors chase each other and, in a general atmosphere of overconfidence, make indiscriminative investments. As Leathers and Raines (2004, pp 672-3, see notes below) put it, writing just after the bursting of the 'tech bubble' in 2001 but before the onset of the present crisis, "pure financial speculation occurs and may intensify into a speculative mania". In this phase, people get carried along, taking up debts that will become burdensome in any downturn. The finance sector, or large parts of it, feels unable to stand back when things are going so swimmingly: in the familiar and hackneyed words of a previous chairman of the financial conglomerate Citigroup, Chuck Prince: "When the music stops, in terms of liquidity, things will be complicated. But, as long as the music is playing, you've got to get up and dance. We're still dancing".

    - Third, the *dénouement* duly arrives, as many investments fail to pay off, causing losses that banks and other investors compensate for by withdrawing or withholding credit from other, economically marginal firms – whereupon failures multiply and 'creative destruction' clears the decks for a resumption of the cycle. What happens then depends in part on policy. Schumpeter believed in a hands-off policy, allowing the decks to be cleared and new initiatives to emerge ('creative destruction' clearing the way for the next upswing).[12]

39. *Possible implications: counter-cyclical cultural/clawback arrangements.* The question is, to what extent is the above cycle-tendency hard-wired into the collective psyche in capitalist societies? If it is very strongly entrenched, then no amount of fluffing about governance, standards and culture would be worth the paper it is written upon. If, on the other hand, that tendency exists but is open to some extent to countervailing influences, then policy should seek to institutionalise

such tendencies within occupational cultures (thus paralleling attempts to make bank capital provisioning counter-cyclical). There could be quite an agenda here.

40. *Optimal conditions*. In what used to be called 'normal' times – i.e. in between boom (collective rapture) and bust (collective fear) – having one's own funds at risk might be expected to induce good judgment and reasonable caution, since the lack of excitement one way or the other enables one calmly to weigh up pros and cons. This seems a reasonable proposition, subject to empirical test.

41. *Taking away the punchbowl*. At the height of the boom, in conditions of generalised over-optimism, wide sections of society get carried away – house-buyers, mortgage-packagers, ratings agencies, investors, banks, regulators and policy-makers. It is difficult at such times for anyone, be they policy-maker, regulator or bank board, to 'take away the punchbowl'. In such a context, it might also prove difficult for bank employees to collectively discipline themselves, even if the measures advocated in this submission were to be in place. We don't know, because we did not have such arrangements in place prior to the crisis beginning in 2007. This could however be a matter for empirical test for the future.

42. *Flexibility*. In manifest downturns – such as the present time – having even a very small proportion of one's remuneration at risk may risk paralysis. Thus there may be a case for clawbacks, collective and otherwise, to be tapered to fit the times.

43. *Summary of this section*. The analytical and policy bottom line is that further thought needs to be given to possible interactions between the broader setting (including the waxing and waning of sentiment with the business cycle) and occupation culture, accountability and remuneration arrangements within banking.

Notes

[1] Erasmus School of Law (ESL) is a constituent part of Erasmus University Rotterdam, the Netherlands. ESL locates law in its economic and social context: http://www.esl.eur.nl/home

[2] This submission draws upon drafts of a book in preparation: *Democracy and Diversity in Financial Market Regulation*. It also draws upon the following: 'Knowing markets: would less be more?' *Economy and Society*, volume 41(3), pp 316-334. 'Regulatory sloth and activism in the effervescence of financial crisis', *Law & Policy*, volume 33(3), pp 428-448. 'Render Unto Caesar: EU financial market regulation meets political accountability', *Journal of European Integration,* 34(3), pp 205-221. 'Policy choices in financial market regulation: market rapture, club rules or democracy?', chapter 2 in Alexander, K and Moloney, N (eds), *Law Reform and Financial Markets*, Cheltenham: Elgar, chapter summary at http://ssrn.com/abstract=1946373.

[3] The scandals come so thick, fast and loudly that they hardly need documenting here, although there remain many questions over the efficacy of responses. See for example, 'The metamorphosis of insider trading in the face of regulatory enforcement', *Journal of Financial Regulation and Compliance*, 19(1), pp 75-84. 'The Governance of Securities: Ponzi finance, regulatory convergence, credit crunch', *British Journal of Criminology*, 50(1), pp 23-45. 'Theorising the Security and Exchange Commission's 2010 Settlement with Goldman Sachs: legislative weakness, reintegrative shaming or temporary business interruption for financial market power elites?', with Levi, M, in Antonopoulos, G et al (eds), *Usual and Unusual Organising Criminals in Europe,* Antwerp: Maklu, abstract at http://ssrn.com/abstract=1788885.

[4] As reported in Jenkins, P, 'Time to rehabilitate bankers' bonuses', *Financial Times*, 4 March 2013. http://www.ft.com/intl/cms/s/0/5867ba0e-84d2-11e2-aaf1-00144feabdc0.html

[5] Evidence 27 February 2013, Lord Turner's answer to Q4495.

[6] In my opinion the purpose of monitoring the implementation of cultural reform should be to get a sense of the emergence amonst bank staff of what, quite likely, would be a *variety* of responses and coping reactions. The three standard research response-categories to be found throughout the literatures on communication studies, cultural studies and regulatory compliance are as follows.

(a) Shades of agreement and acquiescence, enthusiastic or otherwise, so more or less complying with the letter if not always the spirit of the reforms (bearing in mind however that compliance sometimes has unanticipated consequences, which need to be looked for).

(b) Negotiated and innovative responses, including creative re-castings of the meanings and requirements of the reforms; and/or creating new or exploiting existing non-monitored channels, networks or pools (cultural equivalents of offshore trading or off balance sheet vehicles).

(c) Outright opposition, i.e. resistance and sabotage using all the resources of firms, legal and other advisors, trade associations and lobbyists – or possibly resistance by certain sections thereof, while other sections might respond in terms of (a) or (b) above.

We need to know. To look for, explore and comprehend the range of such cultural responses, qualitative methods will be most appropriate: semi-structured interviews, focus groups and 'soundings'. See for example aspects of Hawkins, K, 'Enforcing Regulation: Robert Kagan's contribution - and some questions', *Law & Social Inquiry,* 2013; also the sociological work mentioned in note 3 above. Such approaches differ from, but could complement, quantitative, 'concrete' indicators of bank culture and ethics (see indicators work led by Roger McCormick in the context of the LSE's Sustainable Finance Project, which seeks to develop such indicators and make them more accessible to the public on a comparative basis).

[7] As a member of the Commission neatly put it in relation to executives: "This may have happened on my watch, but I was not watching, so therefore I am not responsible for it".

[8] Evidence, Q32256, David Bolchover: 'The trader who wants x + y has a boss who wants 2x + 2y. He says, "This guy who works below me is so talented. Please" – to the guy above him who earns 3x + 3y – "we can't lose this guy. He can't go to a competitor. And guess what? I am his boss, so, by inference, I must be even more capable and talented than him. So don't lose me either.'

[9] CRESC, 2009, *An Alternative Report on UK Banking Reform*, Manchester: Centre for Research on Socio Cultural Change, see p14. More generally: Engelen, E et al, 2011, *After The Great Complacence: financial crisis and the politics of reform*, Oxford: OUP.

[10] Dorn, N, 'Lehman – lemon: "Too Connected To Fail" as a policy construct', *Law and Financial Markets Review*, 6(4), pp 271-283. http://dx.doi.org/10.5235/LFMR6.4.271

[11] Minsky, H. 2003, 'The financial instability hypothesis', pp 201-203 in Stilwell, F and Argyrous, G (eds), *Economics as a social* science: readings in political economy, North Melbourne: Pluto Press. Schumpeter, J. 1939, *Business Cycles: A Theoretical, Historical, and Statistical Analysis of the Capitalist Process*, New York and London: McGraw-Hill. Leathers, C and Raines, J, 2004, 'The Schumpeterian role of financial innovations in the New Economy's business cycle', *Cambridge Journal of Economics*, 28, 667-681.

[12] By contrast, policy since 2008 has been to preserve structures, this however being at the price of bank delevering and declining investment. PWC, 19 March 2013, 'Banks still long way to go to get rid of 'bad' loans', London, http://pwc.blogs.com/north/2013/03/banks-still-long-way-to-go-to-get-rid-of-bad-loans.html

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