



Holding Governments to Account for Dishonest and Predatory Conduct

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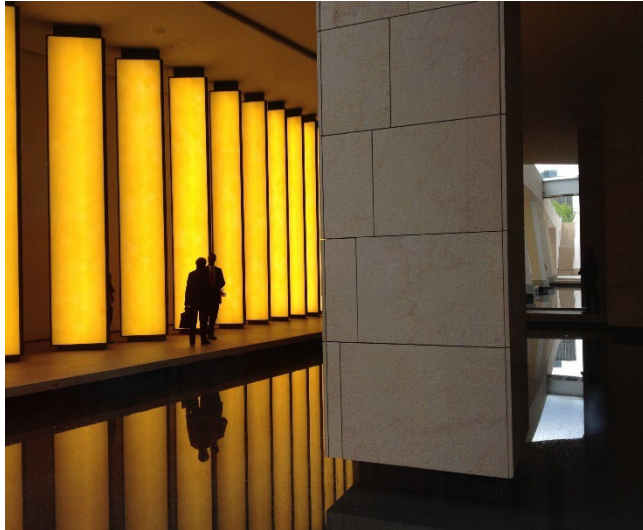
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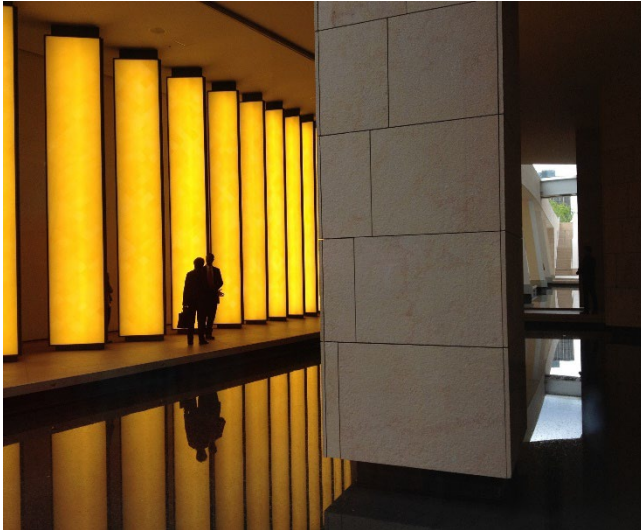
The modern corporate context



- Massive, multinational corporations with devolved structures
- Information silos
- The human actors through which a corporation acts change, leave, get promoted, die...
- 'Group think'
- Automation/AI

Corporations may not be best understood as the sum of their individual (human) parts, nor nexus of contracts etc

Corporate (group) responsibility



- The traditional emphasis on the human face of corporations has made it hugely complex, expensive and often impossible to hold corporations to account for egregious misconduct (FSRC, Crown Casino Royal Commissions, Law Commission inquiries in Australia and England)
- Fosters effective strategies of denial

Increasing efforts to develop doctrinal models of **organisational** culpability, eg Australia's 'Corporate Culture' provisions and (building on these) Bant's model of 'Systems Intentionality'

Foundations lie in theories of group responsibility

All about integrity...

- Automated 'debt recovery' scheme
- Based on income averaging
- Targeted at welfare recipients
- Guaranteed to result in false debts, and to exacerbate existing disadvantage

**RRC: Who knew what?
(Where's Wally...)**

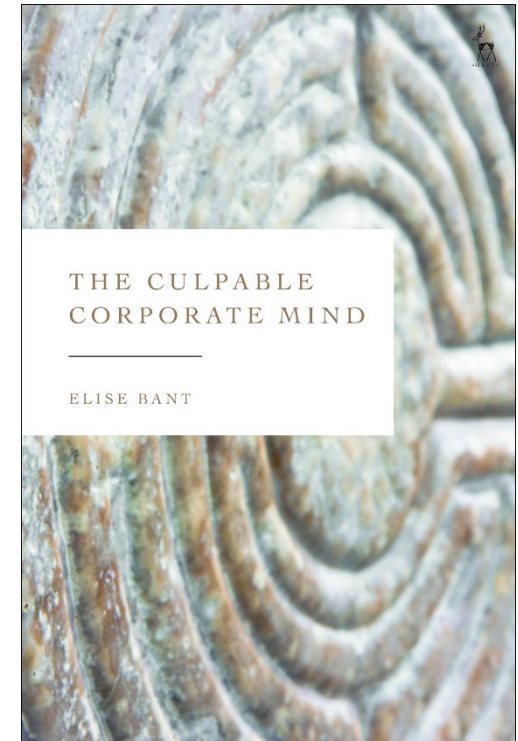


Systems Intentionality

‘Corporations manifest their state of mind through their systems of conduct, policies and practices.’

- A ‘system of conduct’ is a *plan of procedure*, or internal *method*
- A ‘practice’ may develop organically, commonly involving habitual or ‘customary’ patterns of behaviour
- A ‘policy’ operates at a higher level of generality, manifesting overarching purposes, beliefs and values. Closest to Corporate Culture.

<https://unravellingcorporatefraud.com/>



Systems Intentionality

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- A corporation’s system of conduct both *reveals* the corporate intention and *embodies* or *instantiates* that intention. I.e corporations think through their systems – and so, assessment and characterisation of the system enables us to know the corporate state of mind.
- Systems are inherently purposive: they co-ordinate and connect steps and processes *to some end*
- Knowledge of certain matters will be implicit in the system: eg a predatory business model that will only be profitable if a certain class of vulnerable consumers exists and is successfully exploited (*ASIC v National Exchange*).

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Robodebt revisited

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The purpose of Robodebt revisited

Integrity, or new revenue?

- A 'scheme'/deliberate strategy
- Not a mistake ('reactive corporate fault...')
- Package of supporting and omitted processes:
 - Reversal of onus
 - Removal of oversight and limitation periods
 - Kafka-esque evidential hurdles
 - Enforcement strategies



A dishonest and predatory mindset

Consider:

- Knowledge of false debts and existing disadvantage of class
- Choice architecture of scheme as a whole, to exacerbate existing vulnerability in furtherance of true purpose (revenue-raising)
- Deceptive narratives of denial



Conclusion: Looking forward

Minds matter in the law, so...

- A way of counteracting narratives of denial (eg the Horizon scandal...)
- A practical guide to rehabilitation of government bodies and toxic organisational cultures
- Implications for private law doctrines and remedies: eg misfeasance in public office, and exemplary damages
- Broader discussion of the nature of government culpability in law

