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# The Global Banking Sector: Corruption, Institutional Purpose and Economic Justice

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**Abstract:** Corrupt, unethical and imprudent practices in the global banking sector have been identified as among the causes of the Global Financial Crisis (GFC). In this paper I (1) provide an analysis of institutional corruption that enables institutional corruption within the global banking sector to be (a) viewed in relation to economic injustice, and (b) demarcated from the unfortunate consequences of unavoidably risky market-based activity, poor judgment, ill-informed policy-making etc.; (2) argue for an understanding of and response to institutional corruption in the global banking sector that is holistic i.e., focuses on institutional purpose, industry structure and banking culture rather than simply structure or culture; and (3) argue for an account of moral responsibility for corruption and economic injustice in the global banking sector, and for combating it, in terms of meta-collective responsibility, a specific notion of collective moral responsibility that does not allow individual human actors to evade responsibility.

Corrupt, unethical, and imprudent practices in the global banking sector<sup>1</sup> have been identified as among the causes of the Global Financial Crisis (GFC) and its aftershock, the Sovereign Debt Crisis (SDC) (see Soros 2009; Turner et al. 2010; Miller 2011b; Dobos et al. 2011; Miller 2015), especially when the market-based economic and political power of global banks and other ‘too big to fail’ financial institutions (SIFIs or systemically important financial institutions) is taken into account (Miller 2014c). After all, it is a truism that power tends to corrupt. Indeed, the failure to revoke the licenses of banks, such as HSBC, convicted of criminal negligence and the paucity of criminal convictions of senior bank staff in the wake of numerous bank corruption scandals serves to underline this point.<sup>2</sup>

Moreover, recent and ongoing revelations of financial benchmark rigging (Wheatley 2012; Miller 2013; Miller 2014a), fraud, false accounting (e.g., revealed by whistle-blower Eric Ben Artzi, risk officer at Deutsche Bank), imprudent ‘bad loans’ (notably in Italy very recently (Thomas 2016)) and the critical role of banks in the use of offshore accounts for tax evasion and money laundering (see, for example, revelations coming from the very recent Mossack Fonseca scandal (Obermayer and Obermaier 2016)) indicate that these kinds of problems in the sector are far from over and, at the very least, indicate the continuing presence of banking cultures that facilitate rather than combat institutional corruption. Here it is useful to remind ourselves of the extent of these problems that have been identified in the recent past. The practices in question have included: (i) reckless and predatory lending by banks; (ii) the selling of toxic financial products, notably non-transparent packaged bundles of mortgages (including sub-prime mortgages) assessed by ratings agencies as high quality because the investment banks that packaged them had good risk assessment processes, securitized and sold by banks to pension funds; (iii) off-balance-sheet trading, e.g., in sub-prime mortgage securities, to inflate profits and give a misleading picture of financial health; (iv) massive frauds, e.g., Bernie Madoff’s ponzi scheme; (v) money laundering, (e.g., HSBC in relation to Mexican-based drug cartels); (vi) sanction busting, e.g., BNP Paribas in relation to the genocidal and terrorist supporting Sudanese government; (vii) banks facilitating tax evasion through offshore accounts (e.g., UBS); (viii) rogue traders who have continued to wreak havoc (e.g., the so-called ‘London Whale’ at JP Morgan Chase); (ix) financial benchmark manipulation, e.g., of LIBOR (a globally important benchmark on which trillions of dollars of financial transactions are based), by many, if not most, of the leading global banks; (x) fraud consisting of misleading institutional investors in relation to the existence of predatory (competitively advantaged) high frequency traders in bank-operated ‘dark pools’ (unregulated markets), e.g., Barclays (Soros 2009; Dobos et al. 2011; Treanor and Rushe 2012; Wheatley 2012; Lewis 2014; Miller 2011b; Miller 2013; Miller 2014a; Miller 2014b).

To reiterate: Recent revelations demonstrate that the problem of corrupt, unethical and imprudent practices in the global banking sector have not been adequately addressed. Moreover, it seems that large-scale corporate collapses and corruption scandals in the global financial sector in general, and the global banking sector in particular, are a recurring phenomenon (Sykes 1984; Krugman 2009; Miller 1997a; Miller 2007c). Given that this recurring phenomenon—taken in conjunction with global financial interdependence and the continued

existence of SIFIs—is an ongoing threat to the stability of the global financial system and, therefore, to the productive sector and given, also, that it has already been massively harmful in its economic and social impact on mortgage holders, shareholders, investors, employees, retirees, and so on it goes without saying that there is a continuing need to address it. Here, as elsewhere, the problem is most acute in relation to the most economically vulnerable sections of society; indeed, a major consequence of the GFC has been a rise in economic inequality, notably income inequality (Dabla-Norris et al. 2015). In short, widespread institutional corruption in finance ultimately begets profound economic injustice (Dobos et al. 2011).

In this paper my purpose is threefold: (1) Provide an analysis of *institutional corruption* so as to enable institutional corruption within the global banking sector (a) to be viewed in relation to economic injustice, and (b) to be demarcated from the unfortunate consequences arising from *unavoidably* risky, *legitimate* market-based activity, poor judgment, ill-informed policy-making and the like; (2) Argue for and elaborate an understanding of and, therefore, a potentially effective response to, institutional corruption in the global banking sector that is holistic in character in that it focuses on institutional *purpose*, industry structure and banking culture rather than simply structure or culture, as is the tendency—albeit I obviously cannot resolve all the questions of the institutional purposes of banks in this paper; (3) Argue for and elaborate an account of the moral responsibility for the existence of corruption and, relatedly, economic injustice in the global banking sector and for combating it in terms of a specific notion of collective moral responsibility that does not allow individual human actors to evade responsibility—specifically, the novel notion I refer to as *meta-collective responsibility*. Here I note that the notion of collective moral responsibility and of meta-collective responsibility are relational individualist notions; they attach to individual human beings, albeit interdependently. Accordingly, I eschew notions of responsibility that attach to collective entities per se, including those of Peter French (1979), Margaret Gilbert (1992), and Christian List and Philip Pettit (2011). (For criticisms of these theorists see Miller and Makela 2005, Miller 2007a and Miller 2016.) Therefore, the highly problematic issue of the putative relationship (e.g., supervenience) between the moral responsibility of banks per se and the moral responsibility of bank managers and employees simply does not arise on my account. I hold that moral responsibility only attaches to individual human beings, albeit in many cases jointly (see below). This I take to be a theoretical advantage of my account of collective moral responsibility (Miller

2001a; Miller 2001b; Miller 2001c; Miller 2006; Miller 2010b; Miller 2010c; Miller 2016).

Here some preliminary accounts of some of the less familiar or potentially confusing key concepts in use here might be in order; namely, those of meta-collective responsibility, institutions and institutional corruption.

Collective responsibility (in my favored sense) is the responsibility that a set of individuals, such as the members of an organization, might jointly and directly have for some outcome of their actions, e.g., ongoing excessive risk-taking by the members of the management team of a bank might lead to the collapse of their bank. By contrast, *meta*-collective responsibility is the responsibility that one group of individuals, (e.g., the members of the management team of a bank), might jointly have for the actions of a second group of individuals over which the first group has authority (e.g., a group of traders in the bank engaging in corrupt cooperative activity, such as benchmark manipulation). Accordingly, whereas the second group of individuals are jointly and *directly* responsible for their actions, nevertheless, the first group of individuals are jointly and *indirectly* (via their positions of authority) responsible for these actions of the second group. Naturally, meta-collective responsibility has an individual analogue (meta-individual responsibility), namely, in the case where a single individual person, A, has authority with respect to the actions of a second single individual, B. Importantly, both individual and collective (i.e., joint individual) responsibility—and, therefore, meta-individual and meta-collective responsibility—are to be distinguished from the responsibility that some theorists (see above) claim attaches to collective entities (such as banks) *per se*. As already noted, this latter notion of responsibility is not at issue in this paper.

Roughly speaking, the notion of an institution in play here that that of an organisation or system of organisations (Miller 2010c). An organisation consists of an embodied (occupied by human persons) structure of differentiated roles. These roles are defined in terms of tasks, and rules regulating the performance of those tasks. Moreover, there is a degree of interdependence among these roles, such that the performance of the constitutive tasks of one role cannot be undertaken, or cannot be undertaken except with great difficulty, unless the tasks constitutive of some other role or roles in the structure have been undertaken or are being undertaken. Further, these roles are often related to one another hierarchically, and hence involve different levels of status and degrees of authority. On the teleological account favoured here, these roles are related to one another in part in virtue of their contribution to the *end(s)* of the institution; and the realisation of these ends normally involves interaction among the institutional actors in

question and external non-institutional actors. The constitutive roles of an institution and their relations to one another can be referred to as the *structure* of the institution. Moreover, institutions in this sense are dynamic, evolving entities; as such, they have a history, the diachronic structure of a narrative and (usually) a partially open-ended future. Aside from the formal and usually explicitly stated, or defined, tasks and rules, there is an important implicit and informal dimension of an institution roughly describable as institutional *culture*. This notion comprises the informal attitudes, values, norms, and the ethos or “spirit” which pervades an institution (Miller 1997b; Miller 2007b). Clearly, a powerful and pervasive institutional culture can significantly impact on institutional structure and purpose. This is perhaps especially so in the case of discretionary organisational rules and other discretionary elements of organisational structure, such as organisational bonus arrangements that existed prior to the recent regulation capping bonuses. Thus highly competitive, profit driven cultures gave rise to extraordinarily generous organisational bonus systems (Elaurant 2008).

Elsewhere (Miller et al. 2005; Miller 2005; Miller 2017) I have developed what I refer to as the Causal Theory of Institutional Corruption according to which an action is one of institutional corruption only if it is an action of a kind that tends to undermine an institutional purpose, process or person (qua institutional role occupant). Thus bribing police officers or judges tends to undermine the administration of justice. Moreover, on the causal account institutional corruption always an institutional role occupant who uses, indeed abuses, their position in order to perform the act of corruption in question. Further on this account a condition of institutional corruption exists only relative to an uncorrupted condition of a morally legitimate institution. The notion of a morally legitimate institution is itself dependent on the normative theory of that institution; the theory that provides the *raison d’etre* or fundamental purpose(s) of the institution. Indeed, it is a moral requirement of especially the leaders, regulators etc. of an institution that they pursue these institutional purposes. I discuss these matters in more detail below.

## **1. Institutional Corruption**

As just mentioned, elsewhere I have developed my causal account of the notion of institutional corruption (but see also Thompson 1995). In this section I simply summarize that analysis and indicate its applicability to corruption in the global banking sector by use of examples. As with corruption in general, institutional corruption is both a moral notion and a causal or quasi-causal notion. That it is a moral and not merely a legal notion is evident from the fact that corruption



can exist in the absence of laws proscribing it. For example, until very recently it was not unlawful to knowingly make false LIBOR submissions for financial gain (Wheatley 2012). Nevertheless, manipulation of financial benchmarks is a paradigm of corrupt activity and is now a crime. Corruption is a causal notion since an action is corrupt only if it corrupts something or someone. Thus an action, e.g., manipulation of foreign exchange rates for financial gain, is an action of institutional corruption by virtue of having a *corrupting effect* on an institutional process or purpose, e.g., undermining the process of determining median foreign exchange rates. Accordingly, it is possible that some actions that are not morally wrong in themselves (i.e., considered independently of their consequences), nevertheless, have damaging institutional consequences and, therefore, constitute acts of corruption and are morally wrong *all things considered*. Arguably, insider trading is an instance of this. Further, if an action has a corrupting effect on an institution, undermining institutional processes or purposes, then typically—but not necessarily—it has a corrupting effect also on persons qua role occupants in the affected institutions, e.g., on traders who persistently engage in this practice.

Acts of institutional corruption are performed by institutional role occupants acting in their capacity as role occupants; that is, the institutional role occupants in question use their position to perform acts of corruption. Accordingly, institutional corruption necessarily involves abuse of office. However, abuses of office should not be confused with abuses of authority; the latter are merely a species of the former. Some institutional actors occupy positions of authority over lower-echelon institutional actors or over ordinary citizens and are, therefore, entitled to issue commands or directives to lower-echelon actors or citizens who are in turn obliged to comply; that is, there is a relationship of institutional authority. Naturally, institutional actors possessed of such authority can abuse it, e.g., an employer who demands sexual favours from his employees. However, any institutional actor, including lower echelon employees such as bank-tellers or call-centre operators who accept bribes in return for disclosing confidential information, can abuse their office in the sense that they can use the *opportunities* afforded by the institutional *rights* constitutive of their institutional role to breach their institutional *duties* in the service of (typically) individual or collective self-interest and at the expense of legitimate institutional purposes. However, in doing so such lower echelon employees do not abuse their authority in the required sense since they are not possessed of authority in this sense.

While there can be single, one-off acts of institutional corruption, an act which is an act of institutional corruption is *an act of a kind which tends* to undermine institutional processes or purposes.<sup>3</sup> Thus, bribery, abuse of authority, nepotism and so on are quintessentially forms of institutional corruption because they have an especially strong tendency to undermine institutional processes and purposes. Of course it does not follow from this that *all* acts of, for example, bribery *in fact* undermine institutional processes or purposes. Doubtless, some few do not. Yet there is a strong *tendency* for acts of bribery to undermine institutional processes or purposes. Again, nepotism in certain contexts may not undermine institutional processes or purposes but clearly in many it does. Accordingly, the concept of institutional corruption can be defined in part in terms of a causal role and, therefore, the property of being corrupt supervenes (so to speak) on logically prior action types, notably acts of bribery, nepotism, abuse of authority and the like. This is why attempts to define the notion of institutional corruption in terms of one or more species of moral/legal offence, e.g., bribery, breach of a fiduciary duty, are ultimately unsatisfactory. Corruption is a causal concept whereas breach of fiduciary duty, for example, is not. Conceivably, a single instance of breach of fiduciary duty (or, for that matter as we saw above, a single instance of bribery) might not undermine an institutional process or purpose. Moreover, whether or not such breaches tend to undermine institutional processes or purposes is a matter of contingent (causal) fact and not of logical necessity. Therefore, it cannot be *definitive* of an action being a breach of fiduciary duty (or of bribery, abuse of authority etc.) that it is an act of corruption; so breaches of fiduciary duty (or of bribery, abuse of authority etc.) are not species of corruption *by definition* and, therefore, it is not trivially true that such breaches are acts of corruption. Rather if breaches of fiduciary duty are also acts of corruption then they are so by virtue of their effects; they tend to undermine institutional processes or purposes. Accordingly, if breaches of duty do in fact tend to undermine institutional processes or purposes then not only are they acts of corruption, but their property of being corrupt supervenes (causally) on those properties definitive of them as breaches of fiduciary duty, e.g., supervenes on the trust element definitive of a fiduciary relationship.

In this regard, note that an infringement of a specific law or institutional rule does not in and of itself constitute an act of institutional corruption. In order to do so, any such infringement needs to tend to have an institutional *effect*, e.g., to defeat the institutional purpose of the rule, to subvert the institutional process governed by the rule, or to contribute to the despoiling of the moral character of a role occupant *qua role occupant*. In short, we need to distinguish



between the offence considered in itself and the institutional effect that committing that offence tends to have. Considered in itself the offence of, say, lying is an infringement of a law, rule, and/or a moral principle. However, the offence is only an act of institutional corruption if it tends to have some effect, e.g., it is performed in a courtroom setting and thereby subverts the judicial process.

A further point to be made here is that an act that has a corrupting effect might not be a moral offence considered in itself. For example, the provision of information by a corporate officer to an investor that will enable the investor to buy shares cheaply before they rise in value might not be a moral offence per se; in general, providing information is an innocuous activity. However, in this corporate setting it might constitute insider trading, and such acts might tend to do institutional damage; as such, it may well be an act of corruption. Again, the lobbying of legislators by bankers in relation to financial regulation might not be a moral or legal offence per se. But if this lobbying is intended to defeat much needed reform of the banking sector and succeeds, not on its merits, but because of the political power of Wall Street bankers (e.g., by virtue of their very large financial contributions to the election campaigns of legislators) then it may well constitute corruption of the democratic legislative process (Thompson 1995).

An action is corrupt only if the person who performs it either intends or foresees the harm that it will cause—or, at the very least, could and should have foreseen it. (Here I am assuming that the person who performs the corrupt action could have done otherwise; the act of corruption, and hence the institutional harm or damage it caused, was avoidable.) Let us say that this further necessary condition expresses *the moral responsibility of corruptors*.<sup>4</sup> In this respect institutional corruption is different from institutional *corrosion*. For example, the latter may consist in institutional damage caused by underfunding, yet in a period of economic decline the underfunding in question might be unavoidable. But if an outcome is unavoidable then presumably even those who causally contributed to the outcome are not morally responsible for it; for they could not have done otherwise than cause it. Here it is important to stress that the moral responsibility can be, and typically is in the case of institutional corruption, *collective moral responsibility*. As I have argued elsewhere, collective moral responsibility is in essence a species of individual responsibility, namely, joint moral responsibility (Miller 2006). As such, it is potentially applicable to widespread corrupt practices and to the design, establishment and maintenance of institutional structures (or the absence thereof) which facilitate corruption, e.g., the institutional arrangement under which ratings agencies rate the financial

products of the investment banks which in turn fund these ratings agencies. I return to the notion of collective responsibility below.

Contrary to popular definitions, institutional corruption is the abuse of authority for private gain. See, e.g., Nye 1967 and Transparency International: “Corruption is the abuse of trusted power for private gain. This is the working definition of Transparency International” (Transparency International 2011). Above we distinguished abuse of authority from abuse of office and argued that the latter but not the former is necessary for institutional corruption. Moreover, even if institutional corruption involves the abuse of *public* office, is not necessarily pursued for private gain. Consider so-called noble cause corruption engaged in by police officers who fabricate evidence in order to secure the conviction of hardened criminals. Additionally, defining institutional corruption purely in terms of public offices, e.g., elected officials and their appointees, or even more broadly in terms of publically funded institutional roles, is unduly restrictive and ultimately self-defeating in practical terms. In contemporary settings public offices, publically funded institutions and market-based institutions are inextricably intertwined in a complex and interdependent manner. This renders any attempt to demarcate between institutional sectors which are such that in one sector (public offices, the publically funded sector?) the processes and purposes can be corrupted, but in the other they cannot, quite fanciful.<sup>5</sup> This is, of course, not to deny that there are not important differences and that these differences have implications for institutional corruption.

Further, even acts of political corruption might be actions performed by persons who do not hold public office. Here we need to invoke a distinction between persons who hold a public office and persons who have an institutional role. Citizens are not necessarily holders of public offices, but they do have institutional roles qua citizens, e.g., as voters. Consider the case of a citizen and voter who holds no public office but who, nevertheless, breaks into his local electoral office and falsifies the electoral role in order to assist his favored candidate to get elected. This is an act of corruption; specifically, it is corruption of the electoral process. Accordingly, I conclude that acts of institutional corruption necessarily involve a corruptor who performs the corrupt action *qua occupant of an institutional role* and/or someone who is corrupted *qua occupant of an institutional role*.

This enables us to distinguish not only acts of corruption from acts of corrosion, but also from moral offences that undermine institutional processes and purposes but are, nevertheless, not acts of corruption. The latter are not acts of corruption because no person in their capacity as institutional role occupant

either performs an act of corruption or suffers a diminution in their character. There are many legal and moral offences in this latter category (Miller and Gordon 2014). Consider individuals not employed by, or otherwise institutionally connected to, a large corporation who steal from or defraud the corporation. These offences may undermine the institutional processes and purposes of the corporation, but given the noninvolvement of any officer, manager or employee of the corporation, these acts are not acts of corruption.

According to my account, an act of institutional corruption brings about, or contributes to bringing about, a corrupt condition of some institution. As noted above, considered in itself the act in question might be unlawful or it might be immoral (or both); bribery is a case in point. However, again as noted above, an act of corruption might not be unlawful considered in itself, (e.g., until recently LIBOR manipulation was not unlawful); and might not even be a moral offence, considered independently of its corrupting effects, (e.g., insider trading (see above)). However, there are further complications here. Consider the practice of providing large bonuses to bankers. This practice is not unlawful and seems morally innocuous; indeed, it may well be beneficial in terms of incentivizing bankers to improve their performance considered only in terms of share-holder value. However, arguably, it has induced over time a hyper-competitive cultural environment in which bankers take undue risks with other people's money. If so, is this effect such that the practice of providing large bonuses is a form of corruption? If we assume that the widespread practice of bonuses has contributed to the undermining of the institutional role of the banker as a fiduciary then the practice is certainly *corrosive* of this institutional role and, therefore, of the institution. But is it corruption? In the light of the discussion above, we can now see that it may well be a form of corruption, *if* the individuals concerned—those who offer and/or receive the bonuses—know, or should have known, that the practice is having this corrosive effect. (And surely in recent times in many instances they should have known this.) A further point here pertains to the nature of the corruption in question, supposing it exists. It may well be that a banker is a person of upright moral character, generally speaking, e.g., a good spouse, parent, friend, colleague etc. However, if this banker is, as a consequence of the bonus system, not adequately discharging her fiduciary duties then likely over time there will be a diminution in her constitutive virtues *qua banker*, i.e., in her moral character *qua banker*.

Importantly, a condition of corruption exists only relative to an uncorrupted condition, which is the condition of being a morally legitimate institution or sub-element thereof. The notion of a morally legitimate institution is itself

dependent on the normative theory of that institution; the theory that provides the *raison d'être* or fundamental purpose(s) of the institution.<sup>6</sup> Aside from specific institutional processes and purposes, such sub-elements also include institutional roles and the morally worthy character traits that are associated with the proper acting out of these institutional roles.

Consider the uncorrupted judicial process. It consists of the presentation of objective evidence that has been gathered lawfully, of testimony in court being presented truthfully, of the rights of the accused being respected, and so on. This otherwise morally legitimate judicial process may be corrupted, if one or more of its constitutive actions are not performed in accordance with the process as it ought to be. Thus to present fabricated evidence, to lie under oath, and so on, are all corrupt actions. In relation to moral character, consider an honest accountant who begins to 'doctor the books' under the twin pressures of a corrupt senior management and a desire to maintain a lifestyle that is only possible if he is funded by the very high salary he receives for doctoring the books. By engaging in such a practice he risks the erosion of his moral character; he is undermining his disposition to act honestly.

Finally, I note that the notion of an institutional purpose here used is to be understood as a collective end which is also a collective good. A collective *good* is something worth having, objectively speaking; something that *ought* to be produced, maintained, and/or consumed. A collective end is an individual end shared by multiple human agents engaged in joint activity. Moreover, the actions of agents pursuing a collective end are interdependent, as are the individual ends constitutive of the collective end. Further, the collective ends of institutional actors in organizational settings are typically the ends of *multi-layered structures of joint action* (Miller 1992; Miller 2001c; Miller 2010c; Miller 2016). Thus the collective end of managers and employees in a firm might be to produce some product, P. However, this ultimate collective end might itself rely on the realization of subsidiary collective ends (and the subsidiary joint actions which realize these collective ends), such as the design of P, the production of components of P, and soon.

It is important to realize that institutional actors, including market actors, have collective ends, (e.g., to jointly produce P) which motivate in their own right (e.g., by virtue of P being believed to be worthy of production), notwithstanding the existence of individual self-interested ends which may provide an even stronger motivation for each to do his or her part, (e.g., the desire for a living wage or, for that matter, a large bonus). As Aristotle noted, something which is a means to an end can also be an end in itself. So a collective end, CE,

(an end in-itself, let us assume) can also be a means to an individual end, IE, (also an end-in-itself but a more strongly motivating one, let us assume). Indeed, in the case of market actors it may well be that while the individual rewards on offer, e.g., wages or bonuses, are necessary and sufficient for the performance by these actors of their organizational tasks or roles, nevertheless, they pursue the collective ends of the organization as ends-in-themselves. If so, then the following counterfactual would be supported: if market actor, A, had the option of (1) being paid a given amount of money to perform task, x, and thereby causally contribute to collective end, CI, or (2) being paid the same amount to perform x but *not* causally contribute to CI, then he would consistently choose (1).

In light of the above discussion of the concept of institutional corruption, the following summary definitional account of institutional corruption is available:

An act x (whether a single or joint action) performed by an agent A (or set of agents)<sup>7</sup> is an act of institutional corruption if and only if:

- (1) x has an effect, or is an instance of a kind of act that has a tendency to have an effect, of undermining, or contributing to the undermining of, some institutional process and/or purpose of some institution, I, and/or has an effect, or is an instance of a kind of act that has a tendency to have an effect, of contributing to the despoiling of the moral character of some role occupant(s) of I, agent(s) B, qua role occupant(s) of I;
- (2) At least one of (a) or (b) is true:
  - (a) A is a role occupant(s) of I, and in performing x, A intended or foresaw the untoward effects in question, or A should have foreseen these effects;
  - (b) There is a role occupant(s) of I, agent B (or set of agents, B1, B2, B3 etc.), and B (or B1 etc.) could have avoided the untoward effects, if B (B1 etc.) had chosen to do so.<sup>8</sup>

Note that some cases of corruption involve a joint action performed by a set of institutional actors who are corruptors and some joint acts of corruption involve an institutional actor and a non-institutional actor (e.g., a citizen [the briber] who bribes an official [the bribe]). Note also that (2)(a) tells us that A is a corruptor and is, therefore, either (straightforwardly) morally responsible for the corrupt action, or A is not morally responsible for A's corrupt character and the corrupt action is an expression of A's corrupt character.

According to the above account, an act of institutional corruption brings about, or contributes to bringing about, a corrupt condition of some institution. But, to reiterate, this condition of corruption exists only relative to an uncorrupted



condition, which is the condition of being a *morally legitimate* institution or sub-element thereof. Aside from specific institutional processes and purposes, such sub-elements also include institutional roles and the morally worthy character traits that are associated with the proper acting out of these institutional roles.

## **2. Institutional Purpose and Banking**

It is one of the principal tasks of those who regulate the market system, principally legislators and regulators, to ensure that the ultimate institutional purposes of banks are in fact achieved. As stated above, the notion of institutional purpose in play here is normative: the purposes that banks *ought to have*. However, if one looks, for example, at the objectives of many regulators one typically finds only limited aims, e.g., to reduce crime and protect consumers, and procedural concerns, e.g., to promote competition and efficiency. There is little or no reference to the ultimate ends of markets in general, or of the banking sector, in particular. There are, of course, a number of normative ‘theories’ on offer that are relevant at this point. In relation to markets in general there is the appeal to the workings of the so-called ‘invisible’ hand; each market actor pursues their rational economic self-interest and, by means of the ‘invisible’ hand, the common good is maximised. There are also normative theories of the corporation, such as the Shareholder Value Theory (SVT) and Corporate Responsibility (CSR) theories (Friedman 1970).<sup>9</sup> SVT holds that the ultimate institutional purpose of corporations is to maximise profits and, thereby, maximise shareholder value. Since global banks are typically corporations then their ultimate purpose must also, presumably, be to maximise profits and shareholder value. CSR theories canvass a wider range of ‘stakeholders,’ such as employees, customers, the community and emphasise the so-called triple bottom line, Profit, People and Planet. For reasons that will become apparent I find neither of these normative theories of the corporation compelling. Moreover, the idea of the ‘invisible’ hand mechanism while important needs, in my view, to be put on a narrower and more sound footing than a general appeal to maximising utility, optimising welfare or the like. Accordingly, I have proffered a normative teleological theory which is applicable to both corporations as institutions and, more generally, to the market mechanism.

As mentioned above, on this teleological account (Miller 2001c; Miller 2010c), both organizations and markets are essentially complex structures of joint action and, as such, have collective ends which are also collective goods. Financial institutions, such as banks, are no different from any other social institution in this respect; that is, there is a need to identify collective ends which



are collective goods and, as such, provide the *raison d'être* for their existence. However, evidently in the case of the banking sector in particular, the prior fundamental ethical question as to the ultimate institutional purposes (collective goods) of this sector remains unanswered or is, at least, contested. Yet without an answer to this question governments, regulators and policy makers cannot give appropriate rational direction to the banking sector.

On the teleological account of the market mechanism there is an outcome which ought to be aimed at, if not necessarily by all market actors, certainly by legislators, regulators and, I suggest, responsible representatives and members of the industry. The latter are well-aware of the market as a whole and the need to regulate and, if necessary, redesign and restructure it to achieve desirable outcomes.<sup>10</sup> To this extent the 'invisible' hand is to an important extent visible. Moreover, normatively speaking, this outcome is, to reiterate, a collective end which is also a collective good. Further it is an end which is realised by the market as whole and not simply by a single market actor. Let us postulate that the collective end in question is an adequate and sustainable supply of some good or service. Moreover, the good or service in question should be of reasonable quality and available at a reasonable price.

If this is correct then there are a number of questions to be addressed in relation to any given market, including financial markets. First, is the product or service actually a good, normatively speaking; is it worthy of production? Presumably, as is the case with unsafe foodstuffs, 'innovative' financial products which are, nevertheless, unsafe ought not to be produced. Second, is the good or service offered at a reasonable price? The oligopolies in banking in the UK, EU, Australia, and elsewhere are problematic in this regard. Third, is the supply sustainable? Short-termism driven by the desire to maximise profits as reflected in quarterly returns is a problem in terms of this yardstick (see Kay 2013). Fourth, is the quantum of the good or service in question adequate? Here we can distinguish between different segments of a consumer or client group; specifically, we can distinguish between higher income earners, middle earners and low income earners. The housing market, for example, would be inadequate if it only provided a stock of expensive mansions affordable by high income earners; likewise a housing mortgage market which did not cater for low income earners.

Moreover, on this normative teleological account, financial rewards, such as wages, executive remuneration and dividends are proximate, not ultimate, purposes; they are part of the reward system and, as such, the means to an end. The end in question on this account is, of course, the provision of an adequate

and sustainable supply of some good or service (of reasonable quality and at a reasonable price). This reveals the fundamental defect in SVT; it confuses (part of) the means (shareholder value) with the end (an adequate and sustainable quantum etc.) The teleological account also displays the defect in CSR theories; the latter cast the net too wide and lose sight of the main game in any given industry: the product or service jointly produced.

Let me now turn to the matter of the institutional purposes of banking. I do so from the standpoint that the ultimate institutional purpose of the banking and finance sector is to provide for the needs of the non-financial productive sector and, ultimately, the aggregate rights-based needs of human beings (as opposed to, say, corporations) (Miller 2010c). Normatively speaking, banking and finance are a derivative second order form of economic activity. In short, Wall St exists or, at least, ought to exist, to provide for the needs of Main Street. Thus the institutional purpose of capital markets is to provide an adequate quantum of capital at a reasonable interest rate (directly or indirectly) for the productive sector. Again, the institutional purpose of derivatives markets (e.g., swaps, options, futures) is to mitigate risk (provide financial insurance); often, admittedly, for actors in the financial sector but only for them because financial stability is a necessary condition for the productive sector to function effectively.<sup>11</sup>

On this normative teleological account it is of the first importance to identify the specific institutional purpose or purposes of the banking sector. However, I cannot here provide a complete account of all the legitimate institutional purposes of banks; that would require a full-blown normative theory of banking. Nevertheless, I can identify relatively uncontroversial core institutional purposes of banks. I take it that core institutional purposes of the banking sector are the provision of the following (see Kay 2010):

- (i) secure locations for depositors to deposit and withdraw their funds;
- (ii) a payment system;
- (iii) an adequate supply of reasonably priced loans of reasonable quality (i.e., based on safe assets) for home owners and for small and medium sized businesses (SMBs or SMEs).

In providing a payment system and loans to small and medium sized business that produce tangible goods, (e.g., food and shelter), and services, (e.g., education and health), banks obviously serve the ‘real economy.’ However, I also note that banks in providing mortgages serve the ‘real economy’ since these loans enable less wealthy members of a society to own and occupy a dwelling rather

than paying rent to do so. This affords them a high level of security in relation to their dwelling and also reduces their costs (relative to rented accommodation).

As indicated above, in putting forward these core institutional purposes of banks I am not excluding other purposes. Obviously, banks can serve the legitimate, indeed, important purpose of, for example, providing loans for large companies and large infrastructure projects. Moreover, as I have just mentioned, investment banks have as one of their legitimate purposes to provide a form of insurance by way of derivatives. Rather the point is that these above-mentioned three core purposes of banks at least are demonstrably legitimate ones in that they manifestly serve the real economy. Other purposes would need to be looked at on a case by case basis. Moreover, in the light of the experience of the GFC, the pursuit of some of these putative other purposes, (e.g., those of a speculative character), can undermine the three core purposes. Let us refer to a bank exclusively serving these three core institutional purposes as a narrow bank. Arguably only narrow banks (in this sense) ought to be deposit-taking institutions with depositors' funds guaranteed. Further, since narrow banks would not be allowed to engage in large scale speculative activity depositors' funds would be relatively secure. In short, narrow banks would be segregated from other financial institutions engaged in large scale risky activity (such as the global investment banks implicated in the GFC) and these latter institutions would be prohibited from engaging in deposit-taking (backed by guarantees).

John Kay refers to institutions which have at least the first two of these purposes as narrow banks. However, I will continue use the term "narrow bank" to refer to an institution which has all three purposes, but not the other purposes characteristic of, for example, investment banks engaged in large-scale risky financial activity. According to Kay in recent times "retail savings institutions metamorphosed from the purpose of meeting routine financing needs of everyday banking into function that were treated as profit centers in their own right" (Kay 2010: 224). Kay goes on to argue that such banks should be regarded as utilities. Currently existing retail/investment banking conglomerates should be split into utilities and market-based investment only institutions. Moreover, narrow banks, and only narrow banks, should be deposit-taking institutions with depositor's funds guaranteed.

Viewed from this perspective an important question arises in relation to speculative trading, e.g., speculative trading on currencies, commodities, and derivatives. Arguably, speculative trading is for the most part a market-based method of redistributing funds from one party to another. Moreover, large-scale speculative trading can create bubbles which burst and lead to stock market

crashes, banking collapses, unemployment, shortages and/or overpriced goods and services, and so on. Perhaps, therefore, speculative trading ought to be curbed, e.g., by placing limits on speculative positions in commodity markets. At any rate, the point to be made here is that high risk activities, such as speculative trading, are highly problematic for deposit-taking institutions. Hence, the soundness of Kay's recommendation that such activities not be allowed in narrow banks.

Radical free market enthusiasts (so-called market fundamentalists (see Soros 2009)) might object to the normative teleological account in general, and my comments about speculative trading in particular, that institutional purposes ought to be subservient to or, indeed, ought to be merely an expression of, the freely made choices of market actors. For reasons of space I cannot here do justice to this argument (or set of arguments). However, a few brief comments are in order. Even if this belief in free markets is accepted for the purposes of argument, the objection to speculative trading in so far it undermines financial stability and significantly contributes to severe economic downturns remains. As J. S. Mill and others of a liberal persuasion stress, it is good to exercise one's freedom of choice, but bad to cause harm to others in doing so. Moreover, banks are not private sector firms in the sense required by the premise of this fundamentalist argument. Firstly, banks are dependent on governments to an extent and in a manner that other market actors are not. For example, governments (implicitly, if not explicitly) guarantee the deposits of (at least) systemically important banks; moreover, governments have established central banks to function as lenders of last resort to banks. It is fanciful to think that the retail banking sector, in particular, could operate without these safeguards provided by governments. Secondly, many banks, especially in the global banking sector, are corporations and, as such, the institutional creations of governments; they are not the pre-existing market actors of the ideology of market fundamentalism. Governments have granted special *privileges* to corporations (notably, the limited liability of shareholders) for a reason. This reason is, I suggest, that corporations will have the general institutional purpose of serving the community at large.

### **3. Institutional Structure and Culture in the Global Banking Sector**

Thus far I have provided an analysis of institutional corruption and offered a general normative account of institutional purpose for market-based industries in terms of the provision of a sustainable supply of an adequate quantum of a good or service at a reasonable price. Moreover, I have identified a number of the

institutional purposes of banks without, however, offering a complete normative theory. Here it is important to keep in mind that on my analysis institutional corruption consists in large part in culpably undermining legitimate institutional purposes and culpably undermining legitimate institutional processes that serve those purposes. I now turn to the issues of structure and culture within the global banking sector. These issues are important since, firstly, structure and culture ought to serve institutional purposes and, secondly, structure and culture ought to counteract rather than facilitate institutional corruption.

On the normative teleological theory of institutions, the structures and cultures of organizations and systems of organizations, including the global banking sector, ought to be determined by institutional purposes (understood as collective ends which are collective goods); institutional purpose ought to give direction to institutional structure and culture. Let us first consider institutional structure in the global banking sector.

An important macro-institutional feature of the global banking sector is the phenomenon of global financial institutions that are ‘too big to fail.’<sup>12</sup> Thus there were a number of bailouts of major banks and other financial institutions following the decision in 2008 to allow Lehman Brothers to fail; a decision which is thought to have virtually brought the international financial system to its knees. Importantly, for our concerns here, the phenomenon of banks that are ‘too big to fail’ has morphed into the phenomenon of banks that are ‘too big to regulate.’ For example, there is the recent money-laundering case of the multinational bank, HSBC mentioned above (Treanor and Rushe 2012). HSBC received a US\$1.9 billion fine for failing to have in place effective anti-money laundering measures and for failing to conduct due diligence on some of its account holders. Criminal negligence notwithstanding, HSBC retained its license to operate having in effect been deemed by the regulators, ‘too big to fail.’ However, the inference that is being drawn from HSBC’s retention of its license in these circumstances is that it is, in effect, too big to regulate.

According to the Financial Stability Board, there are twenty-nine systemically important financial institutions (SIFIs) (Financial Stability Board 2011), in effect, twenty-nine institutions that are too big to fail and, therefore, too big to regulate or, at least, to regulate effectively. Evidently, corruption, instability and other harms arising from commercial competition between the investment arms of banks in a market context in which there is an overriding imperative to maximize profit and in which many of these banks are ‘too big to fail’ looks to be too great to be overcome, other than by substantial institutional redesigning and restructuring. This would involve splitting the investment from the retail arm of



banks to form two separate institutions, as recommended by Kay<sup>13</sup>—or, at the very least, iron-clad segregation within one institution, if that is possible—and ‘downsizing’ banks ‘too big to fail’ and, therefore, ‘too big to regulate.’ A market in which an individual market actor cannot fail is a contradiction in terms and is, in any case, intolerable in the global banking sector, given what is at stake, namely, global financial stability.

A second macro-structural feature of the global banking sector pertains to the legislators and regulators. National governments and regulators have an ambiguous role in relation to global financial and banking markets. For national governments and their regulators are to some extent partisan, and (understandably) seek to look after the interests of their own banking sector (e.g., the ‘City’ in the case of UK regulators). This is especially the case if, as in the case of the UK, the finance and banking sector is of major importance to the economy as a whole. Moreover, in the absence of a uniform set of global regulations and a single global regulator with real authority, regulators operating at a national level can be played off against one another by multi-national corporations.

These structural features, (taken in conjunction with the related cultural and ideological described above, and other features mentioned below), are conducive to the corruption of institutional purpose if for no other reason than the tendency of power to corrupt and, in the case of the global banks, to become the self-serving, self-enriching organizations focused on short term goals (to summarize the above-described features), rather than ones pursuing the long term interests of the productive sector, so-called ‘Main Street,’ in particular.

Evidently, there is a need to redesign the global regulatory structure to deal with this problem. John Eatwell has suggested that a World Financial Authority should be established on the grounds that the “domain of the regulator should be the same as the domain of the market that is regulated (Eatwell 2000). This is surely correct, at least in theory. However, it faces prodigious practical difficulties, such as from nation-states unwilling to cede authority to such a body. Eatwell, however, has argued that it is possible to establish such a body, given the degree of mutual self-interest in play.

In addition to these and related macro-structural issues there are micro-structural ones, such as the corruption of financial benchmarks and excessive executive compensation. Presumably, the micro-institutional response to benchmark corruption needs to consist in such institutional redesigns as an independent administrator of the benchmark, an appropriate governance structure for the administrator, a reliable methodology for calculating the benchmark rates, and stringent oversight and disciplinary powers in relation to would-be manipulators.



Executives receive huge remuneration packages consisting in large part of bonuses. However, empirical studies have consistently demonstrated that there is no significant correlation between large executive remuneration packages and executive performance as measured in terms of medium to long term profitability and/or share price (the favoured, if flawed, measure of performance) (Elaurant 2008). The micro-structural response to this problem might consist, at least in part, in the enforced removal of bonuses or at least an enforced cap on bonuses, e.g., the 2015 European Banking Authority enforced guidelines of an imposed ratio of bonus payment to fixed salary of a maximum of two to one. While structural reform is of great importance it is not the whole of the story; culture is also critical. Currently, the large global banks in question are market actors primarily driven by the profit motive. Contrary to current ideology, this is not inevitable. At any rate, in this current environment the pervasive culture in these organizations—for example, among traders remunerated in large part on the basis of bonuses—tends to be reflective of this and tends also not to be sufficiently responsive to relevant ethical principles. So there is an issue of institutional culture change, albeit one that would depend in large part on macro-structural changes.

Whether or not the members of some organization internalize the *desirable* ends and principles of an organization—as opposed to undesirable ones—is in part a matter of institutional culture (Alexandra and Miller 1996). Institutional culture is in turn dependent on the extent to which the collective moral responsibility to achieve desirable ends, and eschew corrupt practices, is embedded in the organization by way of explicit institutional mechanisms (e.g., formal continuing education programs in professional ethics, whistle-blower protection schemes, remuneration systems that do not encourage excessive risk taking (Alexandra and Miller 2010; Miller 2010a; Miller 2011a) and implicit practices (e.g., managers who acknowledge their mistakes, employees who are unafraid to voice their concerns). Accordingly, there are various measures that could be looked at in relation to institutional culture change at the organizational level (as well as, as already stressed, at the macro-institutional level).

The notion of a narrow bank (whether that of John Kay, so some other one) is important at this point. For in such banks internalization of the virtues of prudence, risk aversion, etc. and their associated organizational culture, is entirely possible. These virtues and this culture could be further induced by a process of professionalization of the occupation of banker, including introduction and/or strengthening of fiduciary duties. By contrast, any attempt to cause traders and others engaged in speculative activities to internalize these ‘virtues’ is likely to

fail; the nature of speculative activity militates against being risk averse, prudent and so on. This occupational impediment to the professionalization process is a further consideration in favour of narrow banks.

#### **4. Global Banks, Economic Justice and Meta-Collective Moral Responsibility**

In section 1 of this paper, I provided an analysis of institutional corruption, and in section 2, I discussed the institutional purposes of banking. In section 3, I argued that many of the current structural and cultural features of the global banking sector did not facilitate the institutional purposes of banks but rather were conducive to institutional corruption. In this fourth and final section I turn to the question of the ascription of moral responsibility, both for institutional corruption in the global banking sector and for the economic injustice that is one of the main consequences of this institutional corruption. I begin with some clarifying remarks concerning the notion of economic injustice that I have in mind.

Justice is an important aspect of many, if not all, social institutions. Market economies, salary and wage structures, tax systems, judicial systems, prisons, and so on are all in part to be evaluated in terms of their compliance with principles of justice (Rawls 1974; Campbell 2010; Miller 2010c).

Here it is useful, if controversial (Miller and Blackler 2000; Miller 2010c), to distinguish the concept of justice from, on the one hand, the related concept of a right—especially a human right—and from goods, such as well-being and utility, on the other hand. Self-evidently, well-being is not the same thing as justice. However, there is a tendency to conflate justice and rights. Nevertheless, the concepts are distinct; or at least justice in a narrow relational sense should be distinguished from the concept of a right. Genocide, for example, is a violation of human rights—specifically, the right to life—but it is not necessarily, or at least principally, an act of injustice in the narrow relational sense. A person's rights can be violated, irrespective of whether or not another—or indeed everyone else—has suffered a rights violation. However, injustice in the relational sense entails an unfairness as between persons or groups; injustice in this sense consists in the fact that someone has suffered or benefited but others have not (and there is no adequate justification for this state of affairs). Although the concept of a right and the concept of justice (in this sense) are distinct, violations of rights are typically acts of injustice and vice versa.)

Moreover, the concept of justice is itself multi-dimensional. Penal justice (sometimes referred to as retributive justice), for example, concerns the punishment of offenders for their legal and/or moral offences, and is to be distinguished

from distributive justice. Thus it is a principle of penal justice, but not distributive justice, that the guilty be punished and the innocent go free.

Distributive justice is essentially a relational phenomenon to do with the comparative distribution of benefits and burdens as between individuals or groups, including the distribution of rights and duties but not restricted to the distribution of rights and duties, e.g., the injustice of excluding blacks from voting in elections to determine the national government in apartheid South Africa or of lower wages being paid to women than those paid to men for the same work. (These are also instances of rights violations.)

Economic justice, including distributive economic justice, is an important aspect of most, if not all, social institutions, be they market-based or not. Banking is no exception. Moreover here, as elsewhere, the distinction between rights violations and injustice is germane. For instance, in a modern economy those without access to banking may well be suffering a violation of their rights, whereas those paid unreasonably high banking fees might be merely suffering an injustice (in my narrow sense). Some of these issues of economic justice are intra-organizational. For example, a bank in which the CEO's salary (plus bonuses) is 10,000 times the wage of the bank-tellers is *prima facie* unjust in respect of its system of rewards. Others are inter-organizational, e.g., a financial market in which high frequency traders have an unfair competitive advantage (Lewis 2014). Still others pertain to access (albeit, as noted above, many of these might be better described as being human or institutional rights violations than issues of economic justice). For example, communities without access to appropriate banking facilities suffer an injustice, as do SMEs deprived of the provision of affordable credit because of an avoidable economic downturn caused (say) by over-leveraged banks creating and on-selling toxic mortgage backed securities.

Moreover, arguably some institutions, such as governments, have as one of their defining collective ends to ensure conformity to principles of economic justice in the wider society, such as equality of economic opportunity. However, economic justice does not appear to be a *defining* feature, collective end or otherwise, of *all* social institutions. Specifically, it does not appear to be a defining feature of banks *per se*. Nevertheless, certain practices pursued in the global banking sector and, certain forms of institutional corruption, in particular, raise important questions of economic justice, not least (as already mentioned) because of the massive economic harm such corruption can do to depositors, shareholders, SMEs and, for that matter, whole communities affected by banker-induced financial meltdowns.

It might be argued that the harms caused are not injustices but rather the unintended and unforeseeable consequences of numerous, inter-connected, individual human financial actions. Doubtless, the causal chains and webs that directly and indirectly resulted in the harm emanating from the GFC and SDC involved millions of economic actors and billions of financial transactions. Moreover, many of these actors did not, and perhaps could not, see the meltdown coming. Nevertheless, many key economic actors, senior figures in the banking industry among them, did in fact see it coming or, at the very least, should have. Accordingly, there is the possibility, at least in principle, of ascribing some degree of collective moral responsibility for some substantial portion of the harm done. In some cases, it is possible to track the actual harm culpably done to some group by members of a particular financial organization. For example, a federal court in Australia has recently rejected an appeal from a financial organization which sold so-called toxic financial products to various local councils in Australia that it is not liable to pay compensation. In other cases, while the harm done is too diffuse to be accurately quantified, or even for the victims to be completely and correctly specified, nevertheless, the organizational sources of much of the harm and, therefore, the relevant individual members of these organizations, can be identified with reasonably certainty, e.g., the global investment banks and the members of their management teams in the case of the toxic financial products.

As already noted, the notion of collective moral responsibility that I have in mind is that of joint (individual) moral responsibility. Roughly speaking, in the cases that interest us here individuals A, B and C are jointly morally responsible for some adverse outcome of their joint action, X, if that outcome was reasonably foreseeable by A, B and C. Collective moral responsibility in this sense can be attached, for example, to the individual members of the board of a bank responsible for authorizing the design, production and sale of toxic mortgage backed securities. If so then the way is clear not only to ascribe: (i) collective responsibility for their high risk, if not corrupt, activities, but also; (ii) collective responsibility for some of the economic harm resulting from these activities and, additionally; (iii) collective responsibility for economic injustice, given that many of those harmed suffered an injustice in being harmed since they were themselves in no way culpable (albeit, in many cases, they were culpable to some extent, e.g., some mortgage holders). Notwithstanding these three points ((i)–(iii)), much of the harm caused by culpable actions may not be harm for which anyone is culpably responsible. For the purposes of argument, let us assume that the massive and ongoing harm involved in the GFC and the SDC can

be causally distributed without substantial residue to the numerous *culpable* individuals who in one way or another, directly or indirectly, causally contributed to it; the individuals in question being culpable for performing some corrupt, unethical or imprudent action which caused at least some degree of financial harm to someone. It would not follow from this that each individual is fully *morally* responsible for the quantum of harm which they (directly and indirectly) caused. Nor would it follow that these individuals are fully, albeit collectively (i.e., jointly), morally responsible for the harm that they in aggregate (directly or indirectly) caused.<sup>14</sup> Apart from any other consideration, it would be well-nigh impossible for most, if not all, such individuals to foresee all and the extent of the direct and indirect harms likely to flow from their (admittedly, culpable) actions. This is, of course, not to say that we cannot ascribe some degree of (individual and collective) moral responsibility for a substantial portion of the harm which their culpable actions caused.

In some cases the practices in question, such as financial benchmark manipulation, are agreed on all hands to be paradigmatic instances of corruption; they are certainly instances of institutional corruption by the lights of the account of that concept provided above. However, on this account of corruption, even high risk practices not normally thought of as corrupt may well turn out to be instances of institutional corruption if: (i) they causally contributed to the undermining of institutional processes or purposes and; (ii) it was reasonably foreseeable that they would do so. Arguably, this was in fact the case with the toxic financial products unleashed by bankers on the financial system of which they are a key institutional component.

In the context of hierarchical organizations, and systems of organizations in which some organizations (e.g., governments or regulatory authorities) are responsible for regulating other organizations, there is the phenomenon I refer to as *meta-collective* moral responsibility. As is the case with moral responsibility, more generally, meta-collective moral responsibility pertains to both actions and omissions, admits of degrees and often tracks institutional responsibility. As is the case with collective responsibility, more generally, meta-collective moral responsibility can be distributed such that: (i) each agent causally contributing to some adverse outcome only has *partial* moral responsibility for that outcome or, alternatively; (ii) each contributing agent has *full* moral responsibility for it. Moreover, I am assuming that all the institutional actors involved are in control of their own actions in the sense that they deliberately perform these actions and could have done otherwise, notwithstanding that they might simply be complying with laws or regulations to which sanctions for non-compliance are attached



or that they might be subordinates who have been instructed by their superiors to perform these actions and might not have performed these actions if they had not been so instructed. Further, the actions which these subordinates have been instructed to perform might only have been specified in a general sense by their superiors, e.g., an instruction to increase mortgage loans by 5% in the next three month period.

The members of some group (e.g., the members of the board of a bank), A, B and C have meta-collective moral responsibility for some harm if they stand in a relation of authority to the members of some other group, D1–100, (e.g., bank traders) and A, B, and C are collectively (jointly) responsible for instructing D1–D100 to engage in some activity, x, which reasonably foreseeably (if undertaken by all or most members of D1–100) will cause the harm in question. Again, A, B and C have meta-collective moral responsibility for some harm caused by D1–100 x-ing, if A, B and C stand in a relation of authority to D1–100, it is reasonably foreseeable by A, B and C that x-ing will cause the harm, and A, B and C are collectively (jointly) responsible for failing to instruct D1–D100 *not* to engage in x-ing or for failing to otherwise bring it about that D1–100 do not x (consistent with D1–100 being in control of their x-ing in the above-specified sense). Assuming that the harm in question is economic and that those harmed were not in any way culpable in respect of it, then A, B and C may well be meta-collectively morally responsible for economic injustice.

Naturally, individual traders will be individually responsible for specific harms traceable to them which they could reasonably foreseeably have avoided and should have avoided, e.g., financial harm done to a retiree consequent upon a specific act of LIBOR interest rate benchmark manipulation which caused the amount to be paid to the retiree on maturity of their investment to be less than it otherwise would have been. Moreover, in so far as the members of groups of traders from different banks collude with one another in such corrupt activity then they are collectively (jointly) morally responsible for the harm done. Further, those with meta-collective responsibility for some adverse outcome, (e.g., the managers of a group of traders) might be jointly morally responsible with those who directly caused that outcome, (e.g., the members of the group of traders in question). If so, then we have a case of meta-collective moral responsibility in a somewhat different sense.

Some final points pertain to the strength, scope and content of meta-collective moral responsibility. First, other things being equal, meta-collective moral responsibility is a weaker notion than collective moral responsibility, since it is only indirectly connected (via other agents) to the harm done. Moreover,



meta-collective moral responsibility can become attenuated in institutional settings in which the lines of authority are necessarily weak due, for example, to the very large numbers of subordinates within an organisation or industry or the lack of a well-resourced enforcement capacity or both (as is the case with many regulatory authorities in relation to financial institutions and their members). Second, the meta-collective moral responsibility of bank managers, or at least of the members of their industry bodies, (e.g., the members of the British Bankers Association), may well be jointly held with the members of (say) regulatory bodies, if what was required to prevent D1–N (the traders in the whole banking sector) from x-ing included (foreseeably) more stringent accountability mechanisms or the operation thereof. Likewise the scope and content of the meta-collective moral responsibility in question might include the individual legislators who failed to introduce adequate regulations and/or structural reform. Third, although—as we have just seen—any individual member of D1–N, say, D1, is individually morally responsible for the corrupt action which D1 performed and for any harm traceable to that action and foreseeable by D1, perhaps D1 bears little or no or, at least, substantially diminished moral responsibility (individually or jointly with others) for the massive institutional harm and consequent economic injustice that the actions of D1–N (taken in aggregate) caused. For, unlike their senior managers, regulators, legislators and so on, individual employees, especially in the lower echelons, might not reasonably be expected to foresee the nature and extent of such institutional harm and its economic consequences.<sup>15</sup>

## 5. Conclusion

In this paper I have provided an analysis of institutional corruption and distinguished it from institutional corrosion; individual human actors are morally responsible for corruption but not necessarily for corrosion. I have also offered a general normative account of institutional purpose for market-based industries in terms of the provision of a sustainable supply of an adequate quantum of a good or service at a reasonable price. Moreover, I have identified a number of the institutional purposes of banks without, however, offering a complete normative theory. I have argued that many of the current structural and cultural features of the global banking sector do not facilitate the institutional purposes of banks but rather are conducive to institutional corruption. Finally, I have provided a notion of meta-collective responsibility that enables the ascription of moral responsibility to individual human actors both for institutional corruption

in the global banking sector and for the economic injustice that is one of the main consequences of this institutional corruption.

### Notes

1. For useful introduction to the ethics of banking and finance, see Boatright 2008 and Hendry 2013.
2. See, for example, US Attorney General Eric Holder's answers to the Senate Judiciary Committee as reported in the *New York Times* story 'Realities Behind Prosecuting Big Banks,' page B1, 12 March 2013.
3. It possible for an process or purpose to be inherently corrupt, as opposed to being an otherwise legitimate process or purpose which is corrupted; the process of bribing someone is a case in point. Moreover, such as process could be a matter of organizational policy, e.g., multinationals bribing officials in authoritarian regimes in China, Africa and elsewhere.
4. Obviously, an adequate definition of moral responsibility would need to take into account a host of complications that I cannot address here, e.g., a person might not be morally responsible if under hypnosis they knowingly perform a corrupt action.
5. Attempts to restrict the notion of institutional corruption to a specific form of moral/legal offence, e.g., bribery, breach of a fiduciary duty, are, therefore, inconsistent with any attempt to restrict institutional corruption on some private/public sector basis. For inevitably such offences take place in both sectors.
6. The collective good(s) in question also have to be accepted as such by relevant parties in order for the institution in question to be legitimate.
7. I am, of course, assuming that the action is intentionally performed, the intention is under the agent's control and that the agent could have done otherwise.
8. Regarding the definition, note that agent B could in fact be agent A. Regarding clause (1), note that agent A is not necessarily morally responsible for the untoward effect that his or her action  $x$  produces. Recall also that we are assuming some acceptable definition of moral responsibility without having provided and defended a detailed account.
9. For criticisms, albeit different from the ones I make here, see Stout 2012. Importantly, Stout argues that there is no legal obligation on the part of CEO's and other managers to maximise shareholder value; this is a myth. For an elaboration and criticisms (again, different from the ones I make here) of these various theories, including CSR theories, see Audi 2008.

10. There is, of course, often disagreement in relation to specific regulatory and other proposals and disagreement also about the outcomes that the ‘invisible’ hand mechanism ought to be achieving.

11. It is an empirical question as to whether or not they actually achieve this purpose. Clearly so-called toxic financial products did the reverse. See

12. See, for example, US Attorney General Eric Holder’s answers to the Senate Judiciary Committee as reported in Sorkin 2013.

13. Perhaps in accordance with the so-called Volcker Rule originally within the Dodd-Frank Wall Street Reform and Consumer Protection Act but subsequently watered down.

14. Collectivists, of course, would ascribe moral responsibility to the set of individuals per se. I reject collectivism but, in any case, my point might still hold for them, depending on the form of collectivism they espouse. That is, the set of individuals per se might not be fully morally responsible for the harm that it causes.

15. This would not exclude individual traders whose individual actions single-handedly cause massive harm, e.g., Nick Leeson, who brought down Barings Bank.

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