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TWO AND TWO MAKE ONE: THE COLLAPSE OF THE STATE BANK OF SOUTH AUSTRALIA By Prof Greg McCarthy

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ABSTRACT

This paper is concerned with the construction of truth. The introduction gives the necessary background to the subsequent discussion of two publicly funded inquiries into the causes of the debt crises of the State Bank of South Australia (SBSA). The rest of the paper tells the story of these two inquiries using the metaphor of a circus, where the multiple reasons for the Bank's difficulties become reduced to a single truth; that of political failure. The article concludes with an epilogue saying that this truth has now displaced all others and has become metaphorically speaking a prologue for the privatisation and globalisation of the local economy.

Programs here, get your programs here!

Dramatis Personae

John Bannon, *Parsimonious Premier, 1982 to 1992, Treasurer 1982 to 1991, known as 'Honest John', resigned in 1992 drawing a parallel with King Leonadis, now a postgraduate student.*

Samuel Jacobs, *Colourful Royal Commissioner 1991-1993, Supreme Court Judge 1973-1990; member of the Adelaide Club (the bastion of a declining local establishment).*

KENNETH MacPHERSON, *'Bulldog' Bureaucrat, Auditor General 1990 onward; 1987-1990 chief investigator into the Bond Corporation for the National Companies and Securities Commission.*

KCs
Cathy Branson for the State Bank
Tim Anderson for the Managing Director
Michael Abbot for the Directors
Robert Lawson for the Opposition
John Doyle for the Crown
Alex Shand for the main auditors

The Advertiser, *predominant newspaper in South Australia owned by Rupert Murdoch a global magnate.*

Tim Marcus Clark, *El supremo Managing Director of the State Bank of South Australia, 1984-1990, 'head hunted' from Westpac, member of Melbourne Club, now living as a recluse in his Melbourne mansion.*

David Simmons, *Coy Chair of the Board of SBSA, laywer, director 133 South Australian companies, now overseas.*

John Mansfield, *The QC assisting the Royal Commission; became the Commissioner in 1992.*

Others, *Bankers, Lawyers, Politicians, Political advisors, Treasury Officials, Reserve Bank Officers, Financial Advisers and Public Servants.*

THE SCENE: *A small provincial city in Australia (but could be any provincial city in the world). In 1992 the corporate sector claimed it was starved of capital and missing out on opportunities. In response, the newly elected Bannon government joined two provincial public banks to form the State Bank of South Australia, in 1984, so that it could lend capital to the private sector. The Bank's assets rose from $3.1 billion in 1984 to $21 billion as of June 30, 1990, with two thirds of its business interstate and overseas. In late 1990 an independent evaluation of the Bank, instigated by the Board, revealed that it was in such a perilous condition that it required a taxpayer 'bail out' of the Bank. In turn this led to dual inquiries into the losses.*

On December 9, 1983, Treasurer Paul Keating began the process of deregulating the Australian financial system by floating the dollar. In the following year, the State Bank of South Australia (SBSA) was formed from the merger of two provincial public banks both of which had a long history of serving the local housing and rural markets.

The SBSA abandoned this past and sought, at a frenzied rate, corporate clients, interstate and overseas. The deregulation of the financial markets and the entry of fifteen foreign banks into Australia heightened competition for corporate business. At the same time high corporate profits, caused by the boom and the restraint on wages, made the corporations attractive clients for the banks. The demand for credit was running at record level and corporations were moving into the pursuit of assets which were rising faster than the rate of inflation. The winners in this strategy, the so called, entrepreneurs, were given the status of heroes in the media.

Without a history of such dealing, the SBSA was vulnerable in this new global, deregulated market. In its efforts to be a market player the Bank transformed its culture and based its lending strategy on shaving its margins below that of its competitors, who were (needless to say) playing the same game. By 1990 the SBSA had risen from obscurity to be the fifth largest bank in Australia. Even the share market crash of October 1987 did not stop the Bank (or for that matter the other major Australian banks) from its lending spree. The recession of late 1990, however, did. The Board of Directors then called in an external reviewer, who estimated that the SBSA's losses were of such a level (around $2 billion and rising) that the Bank had to be rescued. At the same time the Australian banks admitted that they were collectively carrying $7.9 billion dollars of bad and doubtful debts on their books, and as a combined group, wrote off $27 billion bad debts between 1988 and 1993 (Tingle 1994, 253). The taxpayer rescue of the SBSA and the subsequent public outcry prompted the Bannon government to appoint two inquiries.

The paper argues that these two investigations were constructed around the objective of discovering the reasons behind the Bank's troubles and in the process, this became reduced to but one truth, that of the supposed lack of control exercised over the Bank by Premier Bannon: two investigations, two findings, one truth. The arrival at this definitive truth was achieved principally through the unison between the public Royal Commission, conducting in an accusatorial fashion, where Premier Bannon had to prove his innocence, and Bannon's trial by the media. The reduction of the causes of the Bank's crises to that of personalities and ministerial politics left the deregulation of the Australian financial sector and the globalisation of the Australian economy as unquestioned truths as mere inevitable historical movements, separate from the SBSA's debt crisis.

The methodology employed in the paper to discuss this displacement is to use the metaphor of a circus. At a circus, the audience's expectation is not the uncovering of some finite truth but to be entertained. On leaving a good circus, an audience has the feeling that somehow they have both witnessed and entered into a ritualistic experience, of the jugglers, acrobats and clowns, as they make their respective enterences into the ring, and of the symbolic flirtation with danger, watching the 'dare devil' display. Likewise, the paper shows that the two Official reports had their own performances, symbolism, their (real) dangers and their symbolic rituals. The stark difference between these reports and a circus, however, is that truth is supposed to emerge from them not entertainment. The paper invites the reader to question this truth and to see the process as a tragic-comic where there is little space in the debate left to question the outcomes of the deregulation and globalisation of the Australian economy. Between these reports and a circus, however, is that truth.

ACT ONE

They're selling postcards of the hanging

They're painting the passports brown

The beauty parlour is full of sailors

The circus is in town

Here comes the blind commissioner

They've got-him in a trance

One hand is tied to the tight rope walker

the other is in his pants

And the riot squad they' re restless

they need some where to go

As lady and I look out tonight on Desolation Row

Bob Dylan

When Premier Bannon announced on February 10, 1991 that the taxpayers were bailing out the State Bank of South Australia (SBSA), to the amount of $970 million (rising to $3.1 billion) he also reported that, in accordance with the State Bank Act, the Auditor General was to investigate the reasons for the Bank's losses.

Such an inquiry was to be conducted in private, although its findings would be made public. The media, the Opposition and the Australian Democrats became restless and began to beat their respective drums for a public inquiry into the State Bank's debacle; threatening to put up their own tent obliging the government to participate or be ridiculed in their absence (Baker 1991; Elliott 1991). When the parliament met on Tuesday 12 February, Bannon was 'trapped' into calling a royal commission which he announced at a press conference called by the media (Bannon 1994; Jory 1991). Roll up, roll up, the circus is in town.

The Government appointed flamboyant, recently retired judge, Sam Jacobs as ring master and he, appropriately, had his tent erected outside the stock exchange building, in the heart of town. The season of performances was set to last just twelve months, but the deadline was repeatedly extended and lasted for thirty-one. The critical phase of the Commission was its second year, when it turned more blatantly from inquisitorial to accusatorial, and moved towards its star act, Premier John Bannon. The media began to build up the expectation that Bannon would, and in fact had to, prove his innocence or be condemned. Bannon weighed down by the Bank's losses and by the discipline of the Commission went through his routine without convincing either the Commission or the media that his act was one of high innocence. When the Royal Commissioner dismantled his tent, representation and reality had become one, the accused had been found guilty, as charged by the media, and politically paraded as some sort of freak that was best removed from the public eye.[1]

After the shock of such a show, the rest of the performances seemed an anti-climax, yet there were even greater horrors to be had for those few, those hardy few, who were prepared to stay around for the main event. The Auditor General revealed a grotesque inner world, where bankers believed the market was truth and played a game of dare to win, with public money, and lost (MacPherson 1993a, 1-20 to 1-24). The rules of the game were set by the host, Tim Marcus Clark, and the idea was to beat your opponent to the client and, at any price, make a deal. The game was licenced by the Federal and State Labor Governments, who fully supported this deregulated financial circus, and shared with the bankers the belief that the market contained an inner essence that was of benefit not just to the players but to the paying public and the nation. Even spectacular spills and self destruction by the fire-eating bankers did not deter the backers of this greatest show on earth. Rather, we now find it showing in all parts of the globe, where agents think there is a public prepared to pay the price of entry.

Having assisted Bannon into the vanishing box the media was not prepared to have him magically reappear at the end of the show. Instead they took the Auditor General's findings as a sideshow, reminded the audience not to forget what they had seen under the big top, in particular, that it was the Labor Government which was 'milking the Bank for political advantage and profit and ignoring mounting, incontrovertible, evidence of impending disaster that should have been obvious' (*Advertiser* l April 1993; see also Kenny 1993; Sykes 1994; Radbone 1995). When the Auditor General presented his second set of reports on Beneficial Finance and the External Auditors, showing that the fire-eaters were not just living dangerously but that they were recklessly endangering the public, while enriching themselves, the media took up the call for a refund and for the spectacle of these 'reckless' performers going to prison.

With Bannon banished and the Auditor General's tent taking over the limelight, Commissioner Jacobs stepped down and was replaced by the counsel assisting the Commission, John Mansfield. Mansfield's task was to bring the curtain down on the dual shows by incorporating the findings of the Auditor General's inquiry into the Royal Commission. The Report was made public on September 7, 1993, and in it, Commissioner Mansfield drew a careful distinction between performances which were, in legal terms, showing 'incompetence' and those acts which revealed such 'gross negligence' that it would be legally feasible to demand a refund (Mansfield 1993). Mansfield found that while Bannon had made mistakes in his actions there was no 'wilful neglect' on his part, and therefore he was not liable for the loss, however, he proposed that most of the directors and some of the managers should be investigated further, by two legal task forces, so that criminal or civil court prosecutions could be mounted with the aim of getting a modicum of the money back for the owners of the Bank.

The media, having joined in the clamour for the circus, then turned on it, saying it was an inappropriate conveyance for (political) justice. The media's concern, as articulated by the daily paper, was that the Arnold government might just dodge the electoral car, careering towards it, and therefore the Commission would have been a waste of money. The *Advertiser* editorialised that:

A phalanx of lawyers has been enriched, not much light has been shed, what remains is the prospect of a series of civil actions and the general caveat that there should be a lot more prudence. There were monumental blunders. There were extraordinary events and attitudes within the public accountable bank, exacerbated by gross political incompetence. It did not stop with the sacrificial lamb Mr Bannon has become. The Royal Commission ends with a whimper. In a sense that is appropriate as it was the wrong vehicle for the inquiry (*Advertiser* editorial, 7 Sept. 1993)

The *Advertiser* need not have feared that their desire for political justice would not be fulfilled, the Royal Commission gave the Leader of the Opposition, Dean Brown, a passport to an electoral landslide. In contrast, the judicial battle to obtain a refund has yet to make it to a public hearing. The new owners of the State Bank/Bank SA (Advance Bank) having in effect, taken over the bank before any of the old directors have faced a court room.

A Sideshow on the Road to Desolation Row

The only sound that's left,

after the ambulances go,

is Cinderella sweeping up

on Desolation row

The State Bank Royal Commission was regarded as the big top where the players in the State Bank saga could strut their stuff inside the discipline of a judicial discourse. The Auditor General's inquiry was, however, a grimmer affair, held behind closed doors, where the bankers and Directors were challenged by administrative and financial discourses and were shown up for their rank amateurism. The reportage on the Royal Commission was constructed along court room lines but underpinned by a conviction that Bannon had to prove why he was not guilty, as charged. The State Bank debacle, itself, let alone the Commission, had ended Bannon's career on the political stage, nothing was going to save him from slipping from prominence to obscurity (in reality, to the obscurity of a postgraduate student, sweeping the historical records on federation). Nevertheless, the fall of Bannon was vigorously sought by the media and became the symbol for the Bank's debt crisis. By usurping the Auditor General's report, the Royal Commissioner had reduced the lessons of the Bank's fall to the personality of the Premier and not to the globalisation of the Bank and the cultural transformation that had occurred within the Bank to make it a global market player.

The displacement of the Auditor General's report was achieved both by the Commissioner producing a stand-alone, first report, six months ahead of the Auditor General's report and by the represention of the Commission's first report as the truth on the Bank's fall. Equally, this displacement was facilitated by the legal delays to the Auditor General's inquiry, caused by MacPherson being led by the Directors and managers into a hall of mirrors, known as 'natural justice', from which he had to be rescued by the parliament (MacPherson 1993a, 1-13 to 1-18). The Commissioner's guilty verdict, relegated the Auditor General's findings to the dust bin of circus history and turned the dual investigation into one of entertainment, devoid of the class denouement, so evident in the Auditor General's findings. So let the circus begin.

A Circus in Four Unequal Parts: Part One

And the Good Samaritan is dressing

he's getting ready for the show

he's going to the carnival tonight

on Desolation row.

While the Auditor General's investigation became caught up in the hurdy-gurdy of the courts, the Royal Commission became the biggest show in town. The Commission's daily schedule slotted into the evening news bulletins and current affairs shows and gave the journalists ample time to construct a story for The *Advertiser* the next morning.[2] The Commission had all the trappings of a court room carnival with only the one mask, that of the personification of innocence, being worn (Bhaktin 1965; Kristeva 1986). Given how prominent a part the State Bank had played in Adelaide's business and legal life it was hard for the players not to be both actors in, and interested spectators of, the proceedings.

From its outset, however, this circus struggled for a purpose, principally because the Commission was playing a subordinate role to that of the Auditor General's investigation. The Auditor General was investigating what went wrong and why, while the Commission examined the public relationship between the Bank and the Government. The mutually compatible reports were to be interdependent and this can explain, in part, why the Commissioner decided to start his investigation from the bottom and move in a coronial fashion from the Bank's birth, in 1984 to its terminal illness in 1991. When the Commission began with the 'tent peggers', who put the merger together, and then moved to the backstage managers, the Commission could be seen as operating in a linear and logical manner; it could also be seen as merely meandered along, lost for a purpose, waiting for the Auditor General to give it a light to shine on the star performers. The assembled QCs, nevertheless, did not take the proceedings as a warmup for the main acts, instead they juggled points of law, tossing loaded barbs at one another and the witnesses.

Eventually, Commissioner Jacobs, as ring master, became tired of all this over acting and set rules for the legal players. When the witnesses did appear, senior counsel assisting the Commission, took them painstakingly through their prepared statements, seeking to conjure from the witness a legal refutation. He was then followed by the QCs representing the interested parties, whose cross examinations were notable for their one-dimensional performances. Under this adversarial discourse no one was going to make a confession, or rescue a stranger who had fallen by the financial wayside, as such actions would be like red meat to the waiting legal lions, hungry for a feed to match their fees.[3] As such, the Commission's circus was spectacularly dull. Not that the Commission was meant for public consumption, for a start there was limited room for the spectators of this show, and symbolically the seats for the public were placed behind those of the media. The public kept up with the Commission through the media and for the public the media's dramatisation/personalisation of this circus replaced the real thing and became the entertainment itself.

At midnight all the agents and the super human crew

come out and round up everyone that knows more than they do

and they bring them to the factory where the heart attack machine

is strapped across their shoulders and then the kerosene

is brought down from the castles by insurance men who go

to check to see that no one is escaping to Desolation Row

By the time the Auditor General's findings were due to be delivered to the Commission, the hearing had only heard from eleven witnesses, only one of whom Stephen Paddison, could be said to be a major player (and even then only as Clark's preferred successor). The witnesses gave the appearance of being burdened down by the discipline of the Commission. The proceedings appeared to have much motion but no momentum. How much the Commission had struggled for a sense of direction can be seen by the fact that a middle manager, Chris Guille, spent thirty one hours in the witness box trying to explain the intricacies of international exchange to an incredulous Commissioner and an ever dwindling public.[4] Then the unexpected happened, the Auditor General reported to the Attorney General that given the practical and legal difficulties he was facing he would not be able to report by September and needed an extension of time (Macpherson 1993b). An exercise he repeated in March the following year. The Commissioner then successfully applied to the Attorney General to have his terms of reference altered so that he could report separately from the Auditor General.

When the Commission recommenced in April 1992, following Commissioner Jacobs' coronary operation, it had a new and dangerous life. The safety net of the Auditor General's inquiry had been removed and any slip on the high wire of cross examination could now be fatal. Those appearing before the Commission knew the enhanced danger, as did the media - who also saw it as an opportunity to pour kerosene on to the fire burning under Premier Bannon. In other words, a cursory glance at the media would see that the focus of guilt had narrowed from that of blaming all the players to allowing Bannon to take the rap for the whole show. The reversal of proof so characteristic of royal commissions was now sutured into the media's reading of each piece of evidence in terms of whether it proved Bannon's guilt (*Advertiser* 11 February 1991; 14 May 1992; 30 May 1992; 4 July 1992; 21 August 1992).

The pressure on Bannon to prove his innocence intensified as the hearing moved towards the appearance of its star act. Bannon was preceded by Tim Marcus Clark and then the last Chair of the Board, David Simmons. Clark's plea was that, as a contracted employee, he relied on others and that, in any case, he operated democratically and not as an 'autocratic' (*Advertiser* 2 July 1992). His defence was that he delegated lending responsibility downward to the managers, supervisory power sideways to his Deputy, Mr Matthews, strategic direction upward to the Board, and accountability outward to the Premier. He pointed out the instances where Bannon had approached the Bank over interest rates prior to three elections, implying that this was the rule rather than the exception. Like witnesses before him, Clark retreated to the mantra of 'I can't recall' (made notorious by President Reagan before the Iran-Contragate hearings) when confronted by inquisitive or even innocuous cross-examination.

At the end of Clark's appearance before the Commission, even the media was surprised at how tame was the cross-examination of this witness by the legal lions (*Advertiser* 4 July 1992). The restraint by the QCs is understandable in terms of their realisation that if the star act was to take the blame for the failure of the whole show, their clients would be better off, and might even be able to get another gig. The Chair of the Board followed this logic to its extreme. David Simmons argued that the Bank was driven from outside by the Government. He claimed the capital funding of the Bank was at a rate disadvantageous to the Bank and to the benefit of the South Australian Financial Authority (SAFA). Consequently, as the Bank had to obtain expensive capital it had to take high risks so as to pay the interest on this capital and to meet the demands for profit from the Treasury. Needless to say, Simmons, was herein offering the Commissioner a motive to attribute to the Government so as to deflect fault away from himself and the Board. Jacobs leapt at this reasoning with alacrity.

Simmons' appearance under the spot light was accompanied by the revelation that he kept extensive diary accounts of his meetings, which were then requested and sanitised by the Commission. They were read by the media as incontestable/truthful accounts of his meetings with Clark and Bannon. The diaries were accompanied by shock horror revelations in the media. More pointedly expressed, the diaries were selectively used to show how Bannon was the voice of authority in the interchanges between Simmons, Clark and Bannon. They were also used to personalise the power brokers and to stress the point that Bannon had used his position of power to approach the Bank so as to hold down interest rates and how Clark went 'berserk' over such a request; showing the reader that the Managing Director was a volatile if not unstable individual (*Advertiser* 10 July 1992). When the media began to use the diaries, as a factual basis for making accusations against the Bank, their lawyers were kept very busy. The media then saw the diaries as perhaps only a certain construction of the truth, the truth as perceived from the point of view of the author.

The stage was now set for Bannon's star performance before the Commission. When Bannon took the stand for a marathon stint, the back stalls were full and there was even a queue to see him perform his escapology. The media coverage made it clear that it was Bannon who was on trial and it was up to him to prove his innocence. Bannon saw it differently, he performed as if the Commission was roped off from its representation: he reiterated his position that the Bank was 'at arm's length' from the Government, that he had 'confidence' in the Board which he 'felt had a degree of skill' and, 'business acumen' and that Clark 'always had an answer to any doubts'. In practice, he said, 'I saw the Bank running itself' (Bannon 1992). Bannon's nine day performance was restrained yet forthright in the defence of his position. That was the rub, the performance was not being judged as mere evidence but as the accused failing to blow away the cloud of guilt that hung over the stage. His act was covered in accusatorial smoke and weighed down by the discipline of the hearing and by his belief that the Commission was going to live up to a legal ideal of impartially evaluating the evidence.[5]

Everybody is shouting which side are you on

And Ezra Pound and T.S. Eliot fighting in the captain's tower

While calypso singers laugh at them and fishermen hold flowers

Between the windows of the sea where lovely mermaids flow

And nobody has to think too much about Desolation Row

The final act of the Royal Commission involved submissions from counsel representing the interested parties. Cathy Branson for the Bank blamed the Board. Michael Abbott for the Board, called her 'sanctimonious' and in the next breadth said the directors 'did all that could be expected of them'. He said the Board, however, was too reliant on the 'charismatic' but enigmatic Clark and blamed Bannon for not strengthening the Board and monitoring the Bank. Tim Anderson, for the Managing Director, said his client worked 'diligently and tirelessly' for the Bank but in hindsight his judgment was 'flawed'. Robert Lawson, for the leader of the Opposition, focused on Bannon saying that either his claim of 'hands off the Bank' was refuted by the evidence on his approaches to the Bank, over interest rates, or that 'he was so hands off in general' that this 'was beyond the spectrum of legitimate policy' as set out in the Act. Mr Doyle, for the Government, said the Bank was a commercial entity, 'autonomous' from the Government, and that, in contrast to what the Directors' claim, the Bank was not milked by the Government, instead, it received favourable treatment in terms of its capital and did not meet the accepted industry standard of a 15 per cent return on its capital to the owners.

While they were pulling down the scaffolding from the Commission and selling off the seats, the Auditor General's inquiry was still entrapped in a Supreme Court maze of mirrors, where lawyers, acting for a number of the Directors and senior bankers, continually challenged the procedures adopted by MacPherson. When he changed his procedures to meet their demands, they changed their demands for new procedures and demanded all the material he had used in reaching his interim findings. It seemed as if MacPherson would never escape from this distorted reflection of natural justice and in despair he cried out to the Attorney General for help.

In the meantime, Jacobs decided to publish his interim findings, accompanied by all the fanfare of a media lock up, live crosses to the 'jury room', where the journalist gave their verdict on the report, then to the parliament, for door stop interviews, and finally, the obligatory photograph of the Commissioner in front of transcripts of the hearings. The media heralded the Commissioner's verdict in a triumphant tone: guilty as charged, they cried. The *Advertiser* led its front page with the dramatic banner heading 'Judgement Day', followed by the sub-headline, ‘Labor in crisis’ and just in case the reader might miss the point, there was a front page editorial in black border, editorialising that: ‘The Arnold Government is morally obliged to resign on the strength of the alarming findings. Labor deserves, and can expect a savage repudiation at the next election’ (18 November, 1992). The paper then listed Jacobs’ damning criticisms of Bannon as the ‘facts’ supporting its opinion. Bannon, the journalists reported, was ‘dazzled by Clark’, had a ‘myopic’ vision of the Bank, failed to react to the ‘plethora of signs of impending doom’, had a ‘complacent acceptance of the Bank’s optimistic but rather glib assurances’, and he failed to change his hands off policy ‘almost to the bitter end’. These became the lines on the postcard announcing Bannon’s political hanging.

Ophelia she’s ‘neath the window, for her I feel so afraid

On her twenty second birthday she already is an old maid

To her death is quite romantic, she wears an iron vest,

Her profession’s her religion, her sin is her lifelessness.

Although her eyes are fixed upon Noah’s great rainbow

she spends her time peeking into Desolation Row

Commissioner Jacobs’ first report was written in the form of an authoritative author leading the reader to an incontrovertible conclusion. After the mandatory genuflection to the Governor, Jacobs begins his report by addressing the reader saying his tome is like a ‘whodunit’ where the prologue gives it all away (Jacobs 1992, 18). In the prologue Jacobs constructs his judgment around a legal proof (provided to him by Lawson) that: the Act gave the Premier the power to control the Bank, which despite his protestations to the contrary, Bannon must have known about because he was prepared to try and influence the Bank, while proclaiming in public that he was adhering to an ‘arm’s length’ approach. Jacobs says that ‘from the very beginning there was from time to time Government involvement and influence in the policy and decisions of the Bank’ (Jacobs 1992, 19). He added that, the Government ‘on some occasions sought to derive political advantage from such involvement’ (Jacobs 1992, 18). Equally, while Bannon had power to intervene, he did not ‘exercise’ this power ‘effectively’, rather he failed to strengthen the Board or to listen to the warning signs over the Managing Director.

Moreover, Bannon acquiesced in the Bank’s growth for the ‘parochial’ reason of promoting the Bank as the ‘flagship’ for the State. Critically, according to Jacobs, the Bank was driven to grow from outside by its capital needs being met by SAFA on terms ‘more advantageous to SAFA than the Bank’, and the interest paid on the capital ‘was instrumental in the development by the Bank of a profit enhancement culture without sufficient regard to, or compliance with, accepted criteria of performance, i.e. profitability’ (Jacobs 1992, 21). Additionally, the Treasurer always granted approval to any of the Bank’s acquisitions that were sought from him. From 1987 onward, Jacobs notes it should have been ‘apparent to the Board that the Bank might be facing serious financial difficulties in the immediate and foreseeable future’ but neither the ‘Board of the Bank nor Treasury took any effective steps to monitor or control the growth of the Bank’; instead the Treasurer negligently did not control the Bank’s growth or address the mismatch between its growth and profitability or even act on the advice of his Economic Adviser that the Bank needed to be investigated (Jacobs 1992, 22-23).

Jacobs’ ‘whodunit’ is constructed on the pillars of empiricism, legal positivism and modernism: Empiricism, in the form of chapters based on financial years, that lead the reader to the conclusion that the Bank’s irresponsible growth was tied incontrovertibly with Bannon’s failure to monitor or stop the Bank’s dangerous lending. Positivism in the form of setting up the narrative around legal truths, principally, in the construction of a series refutations of Bannon’s claim of a ‘hands off approach to the Bank and a formalistic reading of the Act, regarding its powers as implied duties on Bannon to monitor and control directly the Bank. The modernism is in the form of inner truths as conveyed to us (the reader, and the ‘reasonable man’ of legal discourse) by dramatic and historical example, where fallible authority figures bring themselves and their empires down. To adopt this form of argument, Jacobs metamorphoses from a higher to a lower form, from author to critic, in doing so, shows that one does not live without the other. He writes that Bannon was so ‘dazzled’ by Clark and the Bank’s apparent success that he could not see the danger signs. By 1988, Jacobs’ comments; ‘the evolving drama of the Bank’s affairs was approaching its climax. The scene had been set. The denouement would come later. In the meantime the Treasurer maintained the same dramatic personae, and adhered to the script which he had set, so that the march of folly continued inexorably’ (Jacobs 1992, 172; see also Tuchman 1984). Bannon, meets Macbeth, the Renaissance Popes, George III and Richard Nixon.

Just in case the reader missed the march of guilt, Jacob’s reiterates his verdict in the conclusion. He writes that, ‘it is impossible to ignore the criticism in the report of the role played by the then Treasurer, Mr Bannon, but it would be a fundamental error to assess that role without also examining the role of Under Treasurer and his officers, of SAFA, of the Board and Mr Clark, and of the Reserve Bank. None of these escape criticism, and sometimes severe criticism' (Jacobs 1992, 389). Then Jacobs puts in the legal rub, saying that Bannon claims that he was 'let down' by those he placed trust in, however, the 'compelling evidence' is that 'they were no longer deserving of such confidence' (Jacobs 1992, 389). Jacobs then dismisses the claims that the financial events of the 1980s or financial deregulation can be regarded as causes of the Bank's fall. Using the evidence of the 'independent' 'expert witness', Professor Tom Valentine, to bolster his argument, he argues that the economic events of the 1980s and financial deregulation was known to those in the industry and that it was not market failure but the fault of the Directors, the Board, the Treasury and especially the Treasurer for not heeding the market's warning signs (Jacobs 1992, 391-392).[6] as an aside Professor Valentine was paid by the SBSA to present evidence to the Commission).

To find Bannon guilty, however, Jacobs had to deal with the public's perception that Tim Marcus Clark, as Managing Director, might just have something to do with the Bank's collapse. Here Jacobs' legal reasoning is ingenious for he does two things, firstly, he suspends judgment on Clark and the Board to his second report which appeared at a critical distance from the interim report, and, secondly, he attributes to Clark an implied diminished responsibility. Following Clark's counsel Mr Anderson, the Commissioner depicts Clark as having a flawed personality, being someone who was overly committed to the Bank, 'his Bank', a man with 'enormous drive and entrepreneurial flair who, although personally ambitious was more ambitious for the Bank' (Jacobs 1992, 391). His commitment to the Bank and his aggressive drive and his 'blind optimist' was however, 'unrealistic', so unreal that it indicated that Clark was impetuous and that he had to be controlled. That is, here was a person clearly in need of (parental) guidance, which was not given by Bannon, rather Bannon was 'dazzled' by this (childlike) banker.

ACT TWO

In the five months between the first and second report Bannon resigned from the political stage. Jacobs then published his Second Report on the Board and the management of the Bank. The Report came out three weeks before that of the Auditor General's Report, stealing its limelight. In his Second Report, Jacobs lambasted the Board members for their incompetence and lack of prudence saying that collectively the Board seldom seemed able or willing to 'grasp the nettle or crack the whip' (Jacobs, 1993, 21). Jacobs then reminds the readers of his previous guilty verdict, saying, in effect, that it was the Government that appointed the Board, and that it was the Government who refused to strengthen it, and that the Board's reluctance to stand up to management or to the Managing Director was explicable in terms of Bannon's supposed 'enthusiastic public support' for Clark, and that it was an 'inescapable inference that the very close rapport and confidence that was known to exist between Mr Clark and Mr Bannon, and which Mr Bannon had publicly proclaimed, was a very strong influence on the Board in its conduct of the Bank's affairs' (Jacobs, 1993, 16-21). Similarly, the Commissioner castigates Clark for failing to discharge his duties and control management and the Bank's growth and then adds the mitigating factor that 'the Bank's expansion was uncritically approved by the Treasurer' (Jacobs 1993, 23).

The media did not miss the double-edged nature of Jacobs' Second Report. In particular, The *Advertiser* headed its frontpage with the bold claim, 'Criminal charges vow' and highlighted how the Board 'capitulated' to Clark and how Clark in turn was 'contemptuous of the Board' and how the management was 'gung ho' and 'reckless' (10 March, 1993, 1). Then in a front page article its political editor, Nick Cater stressed that if the Board was 'meekly compliant' it was 'the Government's responsibility to change it'. Again, taking his clue from the tenor of the Report, Cater draws the fishy analogy: 'Leaving the goldfish to baby sit the children does not remove the duty of parental responsibility' (Cater 1993). The editorial takes up this theme with vigour, if for no other reason that it was the week of the 1993 Federal election, saying that:

> Although Mr Jacobs identifies complacency and lack of professionalism by the Board, and a deliberate inclination by bank management to mislead the Government and Parliament, he makes it clear that Bannon and his Government were the direct beneficiaries of a mistaken and self interested reading of the State Bank Act which led to a hands off policy but a hands-out-for-the-profits mentality' (*Advertiser* 10 March 1993, 1).

The paper's attention then began to shift to the question as to whether criminal charges would be laid against those in the Bank, who so recklessly lent public money. This question had to wait, however, for the Auditor General's report which was made public on March 31, 1993.

ACT THREE

Einstein disguised as Robin Hood with his memoirs in a trunk *passed this way an hour ago with his friend a jealous monk*

Now he looked immaculately frightful as he bummed a cigarette

and he went off sniffing drain pipes and reciting the alphabet.

You would not think to look at him but he was famous long ago

for playing the electric violin on Desolation Row.

The Auditor General's first report, of twelve volumes, was based on two forms of causation, the first MacPherson calls, 'scientific', the second, he terms, legal in the sense of 'the real and effective cause of the losses', that is, 'who or what was really to blame for the losses?' (MacPherson 1993, 1- 19). He then concludes that in purely scientific terms financial deregulation and the economic events of the 1980s were contributory causes for the financial position of the Bank as at February 10, 1991. Nevertheless, for him, the real and effective causes of the Bank's losses, were to be found in the failure of the Bank and the Bank Group, in the face of changing economic times and deregulation to adopt 'sound policies and practices which were calculated to protect it from any reasonably foreseeable economic downturn' (MacPherson 1993, 1-20). MacPherson then sets out to show how the Bank grew so fast that it never put in place systems to protect itself, rather its growth was of a high risk kind - driven by its 'entrepreneurial', 'aggressive' and 'autocratic' Chief Executive Officer. He argues that Clark was able to globalise and recklessly expand the Bank's assets because there was nothing to stand in his way - deregulation opened up markets, there was no formal supervision by the Reserve Bank, even what there was (an informal arrangement) Clark 'chafed' at. Moreover, Clark dominated the Board who acquiesced in the demands of the managers to lend, so as to grow, and, finally, there was no share price to worry about.

According to MacPherson, Clark introduced a culture where the market was truth. The emphasis was on beating the opposition to a client and 'doing the deal and doing it quickly' (MacPherson 1993, 1-24). Then, in turn, inflating the profit margin on the deal, by up-front fees, so that each year the imperative was to do more deals, just to stand still - 'make a loan, book the profit, and make another loan. It was the excesses of the 1980s at its worst, conducted by a State Bank guaranteed by the people of South Australia' (MacPherson 1993, 1-24). In this process not just the culture of the Bank was transformed but also the direction of lending, which shifted from a Bank, serving the South Australia housing market and local producers, to one that was predominately a corporate bank, where two thirds of its assets were outside the State, with its assets growing by 572.7 per cent, between its rise in 1984 and its fall in 1991 (MacPherson 1993, 1- 23).

In other words, when the local parochial State Bank was pushed into the global financial market by its management and Board (with the support of the Government) it was sucked into the vortex of global corporate banking and swallowed whole. As Gordon Gekko puts it, 'capitalism at its finest'. It was also able to be devoured because Treasurer Keating had removed the regulations and because the Federal Labor government (uncritically) and the Bannon government (with criticisms) supported deregulation and the globalisation of the Australian economy. A globalisation, that was instituted without the realisation that there was no effective means of controlling the excesses of the market players. It was only after the speculative disasters of the 1980s which affected both public and private banks that the Reserve Bank's powers to monitor banking were enhanced.

In this deregulatory vacuum and with a blind faith in the market, Clark wrought his cultural revolution onto a Bank, which soon became so out of its depth, in interstate and international debt, that it literally never knew what its liabilities were at any one time. MacPherson is most damning of Clark, for his failure to take due care of the Bank's assets and liability management or to convey accurately to the Board the parlous condition of the Bank's supervisory systems, saying of Clark that he 'failed to adequately or properly supervise, direct and control the operations, affairs and transactions of the Bank, and that he failed to provide the Board with information that was timely, reliable and adequate' (MacPherson 1993, 1- 26).

For MacPherson, the 'tragedy' was that the Board 'did not call a halt to the growth that it did not understand'. Adding that, a 'reasonably prudent Board - whatever its skills - would have done much more than the Board did'. Adding that a little bit of 'commonsense' would not have gone astray on the Board. 'To be blunt', MacPherson writes, 'there is nothing esoteric about asking questions, seeking information, demanding explanations and extracting further details. There is nothing unduly burdensome in expecting each director, to the best of his or her ability, to insist on understanding what was laid before them, even at the risk of becoming unpopular. Both the law, and a basic sense of duty and responsibility, demand it' (MacPherson 1993, 1-25).

It is clear from the above that MacPherson's list of causes for the Bank's disastrous losses and his apportioning of the blame are in clear contradiction with that of Jacobs. For the Commissioner, it was Bannon that drove the Bank's unrestrained growth, for MacPherson it was Clark, in particular, and his management team and the Board, in general, that were at fault. For Jacobs, the motive for Bannon's actions (or lack of them) was primarily financial and this rested on the claim that the capital provided by SAFA and the demands for profit by the Government pushed the Bank to adopt a high risk strategy. MacPherson places the causes of the Bank's disastrous growth within the Bank and dismisses the Directors' claims that it was the Government that drove the Bank's growth. His method in doing so, was to have the claims, of Simmons and the other Directors, evaluated by both the State Treasury and by an independent financial firm (BT Finance) and from these investigations he concluded that there 'is no substance to their submission' (MacPherson 1983, 1-39). MacPherson in refuting Jacobs' implied motivation, confirms Doyle's submission to the Commission that not only did the Bank obtain its capital at better than market rates but that the Bank never achieved an acceptable return on that capital. On this matter, MacPherson agrees with Clark, that the claim of Simmons and the other Directors' was a 'furphy' (MacPherson 1993, 1-40).

The media not only did not point out the contradictions between the two reports but relegated MacPherson's report to secondary importance, as a sideshow to Jacobs' big top truth. When the Auditor General's findings were released they were overshadowed by the (beat up) coverage of a gun siege/terror at a local high school. The *Advertiser* led its coverage with MacPherson's recommendations for further legal investigations into the possibility of prosecutions being launched against Clark and the Directors (1 April 1993). Nick Cater again reiterated his position (and that of the paper) that the Royal Commission's first report was the truth on what went wrong and that it was the tactic of the Arnold government to 'shift the blame' away from Bannon and the Labor government. The editorial reaffirmed its political view, that the readers should remember 'what the Bannon government was doing' while all this mismanagement was going on: 'Mr Jacobs tells us that it was milking the Bank for political advantage and profit and ignoring, mounting, incontrovertible, evidence of impeding disaster that should have been obvious' (*Advertiser* 1 April 1993).

ACT FOUR

The displacement of the Auditor General's findings had one more act to be played out. The Auditor General's second series of reports (six public and one confidential volumes) targeted Beneficial Finance and the External Auditors for damning criticisms. He pointed out that Beneficial Finance represented only 13 per cent of the Bank Group's assets but represented around 43 per cent of the Group's total loan losses (Macpherson 1993, 27-13). As for the External Auditors, MacPherson found that there were many instances where the respective auditing of the Bank (by KPMG Peat Marwick) and Beneficial Finance (by Price Waterhouse) was, in terms of industry standards, both 'inappropriate and inadequate'. He recommended that further legal investigations be carried out to ascertain whether the auditors were financially liable for their mistakes. The *Advertiser* clung desperately to its political line that: 'The Auditor General's condemnation of managers of millions of dollars who 'speculated widely' is an appalling indictment of a Government which should have acted. A Government which did nothing until it was far too late. It's time for that Government to go' (1 July 1993).

It was left to John Mansfield to bring the two inquiries together in the final Royal Commission report. In doing so, Mansfield, focused on the legal basis for mounting prosecutions against members of the Board and some of the managers, whose decisions could provide the basis for either civil or criminal prosecutions so as to get some of the money back. The *Advertiser* headed its coverage of the Final Report with the front page editorial saying: 'Bannon cleared of wilful neglect: Clark should be prosecuted' and went on to say 'at the end of the huge expense and distraction of the Royal Commission and parallel Auditor General's inquiry, South Australia has not been provided with an anatomy of what went wrong, who did it, why, when, where and for how much. It has been on the receiving end of millions of words of legalistic argument leading inevitably to legalistic conclusions (6 September 1993).

It was only when the Arnold Government was run over at the election that the The *Advertiser* could turn its attention to the pursuit of Tim Marcus Clark and the litigation against the other Directors. At the same time, the paper gave its full support to the Brown government's drive to globalise the State's economy, through the sale of its public assets to overseas interests. The lessons of the cultural transformation and globalisation of a public institution, the SBSA, as outlined in the Auditor General's inquiry, are conjured away, to reappear in the form of the lessons of a 'bad apple' premier and the need to sell off public assets. In this feat of illusion, the extensive literature on the dangers of financial deregulation take flight like pigeons, escaping from under a magician's cape (see Cerny 1994; Strange 1986; Bath 1991; Armstrong and Gross 1995). The finding of Bannon's guilt has now become a block to analysing the class narratives of the Bank's fall or of using these narratives to serve the future. The personalising of the Bank's demise, legitimises the sale of the Bank and other public assets at an intensified rate, while, simultaneously, conjuring away criticism of the globalisation of the local economy.[7]

Epilogue as Prologue

Right now I can't read too good

Don't send me no more letters

not unless you mail them from Desolation Row

In conclusion, Jacobs' prologue became Bannon's epitaph, and my epilogue becomes a prologue for the globalisation of the State's economy. Equally, by now you might just be wondering what Desolation Row has got to do with the Royal Commission into the State Bank and the Auditor General's reports into its demise; perhaps you might be thinking that this was an indulgent way of hankering back to the sixties, to a less problematic time or maybe to a more meaningful time.[8] But it is really a way of asking a question about the present and the future, which is: what if the contemporary globalisation of the Australian economy and its finances is a path to Desolation Row (and that all the financial sector can do is to play the violin for overseas restructuring)? If that is the case, then the State Bank stands as a symbol for global restructuring and the demise of public banking in Australian and not a passport to a modernised economy based on building beauty parlours for passing financial sailors.

The two reports, to a greater and a lesser extent, discuss the Bank's debt crisis in legal and personal/political terms, thereby allowing the economy and the market to remain as implied truths and leaving the present to be lived as if the past has no lessons to tell the public about the instability of the global capitalist economy. The structural logic of the financial market, to conquer and destroy, is matched by the cultural logic of representing this as progress and the problems of the 1980s in South Australia as but a personal fall from the highwire of political life. The class narratives of the past, that can reflect on the future, become unfashionable to contemplate and we are condemned to a perpetual present, accepting the market as truth, the private as perfection, the public as illusion and public banking as perversion. Two and two make one.

***

Footnotes

[1] On representation and reality see Baudrillard 1988; Rojek and Turner 1988; Fowler, 1991; Altheide and Postman, 1985.

[2] For debates on the production of 'news' see McNair 1993; N Postman and S. Powers 1992; Hartlet 1982; Snow 1983; Hall 1980.

[3] On legal discourse see Turkel 1990; Sackett 1993.

[4] On exchange as hyperreality see Baudrillard 1993; Grace 1991.

[5] On 'legalism' see Douzinas et al 1991; Burton and Carlen 1979; Brumer 1992.

[6] As an aside Professor Valentine was paid by the SBSA to present evidence to the Commission.

[7] On official inquiries as legitimising techniques see Burton and Carlen 1979; Wynne 1982; Sheriff 1983; Ashfonh 1990.

[8] On cultural periodisation see Jameson 1988; and 1991.

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