

EDITORIAL

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The practices and values of work in the 21st century have changed dramatically. Longstanding developments towards commercialisation and globalisation continue to progress, while new developments have gained pace, such as the growth of sophisticated technological solutions to human problems.¹ Each of these developments brings benefits. However, the broader tendency, particularly within the business sphere, has been to prioritise efficiency and profit, often at the cost of values that are more difficult to express in quantifiable terms: integrity, moral responsibility and trust.² This tendency and the risks associated with it have been exposed in a series of large-scale scandals over the last decade. The Global Financial Crisis,³ the manipulation of the London Interbank Offered Rate⁴ and, in Australia, the conduct of the major banks,⁵ are just a few examples of how regulation has failed to prevent misconduct driven by a profit-seeking culture. Within this climate of regulatory instability, the beliefs, practices and structures of professionalism may provide a framework for reform.⁶

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1 See Richard Susskind and Daniel Susskind, *The Future of the Professions: How Technology Will Transform the Work of Human Experts* (Oxford University Press, 2015).

2 In philosophy, the prioritisation of quantifiable over qualitative values has long been at the heart of critiques of modern Western society: see, eg, René Guénon, *The Reign of Quantity and The Signs of the Times* (Lord Northbourne trans, Sophia Perennis, 4th revised ed, 2001) [trans of: *Le Regne de la Quantite et les Signes des Temps*, first published 1945].

3 Grant Kirkpatrick, 'Corporate Governance Lessons from the Financial Crisis' [2009] (1) *OECD Journal: Financial Market Trends* 61.

4 David Hou and David Skeie, 'LIBOR: Origins, Economics, Crisis, Scandal and Reform' (Staff Reports No 667, Federal Reserve Bank of New York, March 2014).

5 For example, the ComInsure scandal exposed in early 2016, where it was revealed that the Commonwealth Bank's insurance arm had been manipulating data and medical opinions to avoid expensive payouts for legitimate life and health insurance claims: Australian Broadcasting Corporation, 'Money For Nothing', *Four Corners*, 8 March 2016 (Adele Ferguson) <<http://www.abc.net.au/4corners/stories/2016/03/07/4417757.htm#transcript>>. Inquiry into the major banks and their culture by the Australian Securities and Investments Commission has been ongoing: see, eg, Adele Ferguson, 'A Few Bad Apples? It's a Dodgy Advisor Orchard', *The Sydney Morning Herald* (online), 18 March 2017 <<http://www.smh.com.au/business/banking-and-finance/a-few-bad-apples-its-a-dodgy-adviser-orchard-20170317-gv0htc.html>>.

6 See, eg, Bert van de Ven, 'Banking after the Crisis: An Understanding of Banking as a Professional Practice' (2011) 18 *Ethical Perspectives* 541; Joint Parliamentary Commission on Banking Standards, *Changing Banking for Good: Report of the Parliamentary Commission on Banking Standards – Volume II*, House of Lords Paper No 27-II, House of Commons Paper No 175-II, Session 2013–14 (2013) 166.

Professionalism is difficult to define with precision.⁷ It suffices to note here that professions – and the legal profession is one example – are traditionally understood to be trustworthy. Through various mechanisms, professions cultivate not only high levels of technical competence,⁸ but also a culture of public service that goes ‘beyond the confines of private interest and gain’.⁹ As a consequence, society and government afford the professions a high degree of control over their work and how it is performed, as well as the discipline of their members.¹⁰ It is not clear, however, whether the logic of professionalism holds true in the contemporary climate set out above.¹¹ Today, lawyers and many other professionals operate within the commercial sphere, and commentators observe that their practices have directly resulted in, or contributed to, misconduct.¹² With this as its background, the thematic component of Issue 40(1) broadly seeks to address two questions. The first is whether professionalism is compatible with contemporary ideals and, if it is, what forms and structures will empower professions to uphold their integrity. The second is whether and how professionalism may be extended to other occupations, in particular to financial institutions, as a means of improving conduct and restoring trust.

The articles in the thematic touch on both questions from a range of perspectives. They include: an assessment of how the nature of professionalism has changed with the rise of professional service firms and new organisational structures; an analysis of the ethics of professionals employed in an organisational setting; a review essay which considers the recent book *The Future of the Professions*¹³ in discussing the implications of technology for expert work; a model of an ethics regime that facilitates moral action by professionals and targeted reform by regulators; an analysis of professional indemnity insurance and its regulatory effects; an assessment of national exams as tools for improving standards; and, bringing these ideas together, an exploration of whether and how professionalism could reform the banking sector. The arguments these articles put forward are relevant not just to the legal profession, but across all occupations and how their conduct should be regulated in the future.

7 See John Flood, ‘Foreword: Professions as Contingent Structures in a Perilous World’ (2017) *University of New South Wales Law Journal* 211, 212–13. Law, medicine, architecture and accounting are just some examples of occupational groups generally accepted to be ‘professions’.

8 Talcott Parsons, ‘The Professions and Social Structure’ (1939) 17 *Social Forces* 457, 460.

9 James Allsop, ‘Professionalism and Commercialism: Conflict or Harmony in Modern Legal Practice?’ (2010) 84 *Australian Law Journal* 765, 767–9, citing R Pound, *The Lawyer from Antiquity to Modern Times* (West Publishing, 1953) 5.

10 See generally Keith M MacDonald, *The Sociology of the Professions* (Sage, 1995).

11 David M Brock, Hüseyin Leblebici and Daniel Muzio, ‘Understanding Professionals and their Workplaces: The Mission of the *Journal of Professions and Organization*’ (2014) 1 *Journal of Professions and Organization* 1, 5–6.

12 John C Coffee, Jr, ‘Understanding Enron: It’s about the Gatekeepers, Stupid’ (2002) 57 *The Business Lawyer* 1403; John C Coffee Jr, *Gatekeepers: The Professions and Corporate Governance* (Oxford University Press, 2006). On the critique that professions exploit their special status for economic and social benefit, see generally Magali Sarfatti Larson, *The Rise of Professionalism: A Sociological Analysis* (University of California Press, 1979).

13 Susskind and Susskind, above n 1.

The seven articles in the general component of this Issue uphold the *Journal's* tradition of publishing quality legal scholarship that is both original and current. They analyse diverse areas of the law, including: the liabilities involved when a fiduciary diverts gains to companies; regulations concerning access to, and sharing of, deep sea genetic resources; wartime sexual violence and its prosecution in International Criminal Law; the interrelation of military and civilian inquiries; the use of facial recognition technology and its privacy implications; family law as an alternative system for the protection of Indigenous children; and vocationalism and professionalism as approaches to legal education. Each article is a strong and unique addition to its field.

I thank all the authors for the insightful contributions they have made to academic literature. It is the high quality of their work that makes the publication of this journal a worthwhile endeavour and it has been a privilege to work with them. I am grateful to the authors of the Thematic component, who conceived and developed its topic as part of their own ongoing research project. I am particularly grateful to Dimity Kingsford Smith for helping me frame the initial proposal to the Editorial Board, and for her organisation and communication throughout the publication process.

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