

Wallace R. Baker

CHEATING

**THE ORIGIN, NATURE, IMPORTANCE
AND IMPROVEMENT
OF BUSINESS AND OTHER ETHICS**

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March 2017

reason for the rule or the law. This does not protect investors, employees or third parties. Ethics, honesty and transparency are necessary to insure shareholders and third parties are fairly informed about the financial situation of a company. Ethical action needs to be based on general principles as well as on specific detailed rules which can often be avoided by a subterfuge, thus vitiating the protection of the public.

Ethical rules are transmitted in many forms, all of which hopefully improve conduct. Repetition of these rules and practicing good conduct is often the best way to do it – by example. If good examples are followed there is no need for sanctions.

8. ARE SOME BUSINESSES UNETHICAL BY NATURE?

Excessive Love of Money is Unethical

If "the love of money is the root of all evil¹³⁷", then, since the primary objective of business is to make money, are all businesses unethical? Or does the love of money only become sinful if it is excessive and leads to improper conduct relating to others? In Annex II, see excerpts from a book with a description of the sin of avarice or greed prepared for Catholic clergymen in the 18th century. It is the unrestrained love of material riches, according to this text, that leads to wrong doing. Misleading others in order to enrich oneself is what often happened in the 2008 sub-prime mortgage scandal.

Big Money Big Hero in American Culture

In theory, the best business man is the one who makes the most money and thus should become the hero figure in

¹³⁷ "For the love of money is the root of all evil, and in their eagerness to get rich, some men wander away from the faith and pierced themselves in the heart with many a pang " in I Timothy VI, 10. *The Complete Bible, An American Translation*. The New Testament translated by Edgar J. Goodspeed. 1939. The University of Chicago Press.

business. Enron was listed by Fortunes as the most innovative company for a number of years. There lies the conflict inherent in business and ethics. Being primarily concerned with short term profit often leads to less ethical behavior if it pays in the short term.

Internet Crimes

New unethical conduct has crept into the use of the Internet through identity theft, which facilitates defrauding others, stealing bank account numbers and wrongful withdrawals. It appears that hackers who are part of an illicit business network sell this confidential data to legitimate business. New communication inventions lead to new businesses as well as illegal businesses. This can occur by hackers opening up the secrets in one's computer or securing private information from service providers or other third parties.

Moral Markets: The Critical Role of Values in the Economy¹³⁸

This 2008 book uses a multi-disciplinary analysis by more than twenty-five neuroscientists, social scientists, biologists, primatologists, anthropologists management professors, computation scientists and information business writers, philosophers, neuro economists and scholars specializing in law. The authors examine the question whether “modern economic life is driven by relentless competition and unbridled selfishness.”

Its conclusion is “that modern market exchange works only because most people most of the time act virtuously” [...] “competition and greed are certainly part of the economics but this book also “shows how the rules of market exchange have evolved to promote moral behavior and how exchange itself may make us the more virtuous.”

¹³⁸ This is the title of a book edited by Paul J. Zak, published in 2008 by Princeton University Press in the U.S. and U.K.

According to Matt Ridley, the author of “*The Origins of Virtues*” “Most people are fundamentally honest, trustworthy, and fair. Why? Because they have a capacity for empathy and trust that is just as innate as their capacity for selfishness. It evolved in order to enable people to capture social benefits through exchange. Markets not only need that instinct; they also nurture it. This simple and beautiful idea has been disinterred by the authors of this book from beneath the cynical sophistries of the twentieth century.”

Michael Shermer, publisher of *Skeptic*, columnist for *Scientific American*, and author of *The Mind of the Market* writes as follows: “Before he became famous as the father of free-market capitalism through *The Wealth of Nations*, Adam Smith wrote the *Theory of Moral Sentiments*, a long-forgotten and still little-known treatise about the role of values and virtues in economic and social life. At last, science has caught up with Smith, and now Paul Zak has gathered leading scholars and scientists in a definitive volume on why markets are moral. This paradigm-shifting book is required reading not only for economists, but for all behavioral scientists.”

The last three quoted passages are found on the back cover of this book.

A sample of chapter headings of the different authors in this interesting book are:

“Part I: The Stories Markets Tell, Free Enterprise, Sympathy and Virtue;

Part II: Non Human Origins of Values, The Case of Primate Cooperation;

Part III: The Evolution of Values and Society, Building Trust by Wasting Time;

Part IV: Values and the Law Taking Consciousness Seriously, Trustworthiness and Contract, The Vital Roles of Norms, Values, Mechanism Design and Fairness;

Part V: Values and the Economy, Values and Value: Moral Economics, Building a Market: From Personal to Impersonal Exchange, Corporate Honesty and Business Education: A Behavioral Model, What's Business For?"

The final chapter in this book written by Charles Hardy, a business writer concludes that capitalism may not be contaminated by a few rotten apples because the market "would eventually sort out the good from the bad."

Others are not so sure since markets depend on truth and trust. However truth is concealed and trust eroded when "the game becomes unreliable and no one will want to play. Markets will empty then and prices collapse as ordinary people will put their money into their houses maybe or under their beds. The great virtue of capitalism is that it provides a way for savings of society to be transformed into creation of wealth will have been eroded and we shall all be poorer. Either that or we shall have increasingly to rely on government for the creation of our wealth, something that they have always been conspicuously bad at doing."

Companies have often exaggerated their profits in recent scandals.

"Trust, too, is a fragile thing. Like a pane of glass, once shattered it can never be quite the same" [...] Too many it has recently seemed that corporate executives were no longer running their companies for the benefits of their shareholders and employees, but for their personal ambitious and financial gains.

"A Gallup poll early in 2002 found that only 18% of Americans thought that corporations looked after their shareholders a great deal and 90% felt that those running the corporations could not be trusted to look after the interest of their employees, 43%, in fact, believed that senior executives were only in it for themselves. In Britain in another poll the result was 95%.

Success for corporate executives is usually measured in shareholder value or share prices which can be manipulated or improved in many ways not always in the long term best interest of the company, i.e. for example cutting or postponing expenditures that are “geared to the future rather than to the present.” Under-valued stock options allow executives to steal from their companies and shareholders as stock options deliver an estimated 60% of executive remuneration. Executives are reported to earn more than four hundred times of their lowest paid worker... This “only fuels the latent distrust.”

A good business is a human community not just property or a profit making machine. The difference is subtle but very important to a capitalist system and its survival. One other way to describe this is as a balance or maintaining an equilibrium between the various elements in a business: management, shareholders, the community, the environment, sustainability and the benefit or advantage each derives in the business – a human community.

The next to the last chapter has been co-authored by Herbert Gintis who has a Phd in economics but whose interest is in human behavior “absent from the traditional economic model”. This is referred to as behavioral economics. Rakesh Khurana, his co-author is in the Department of Organizational Behavior at the Harvard Business School. This chapter has as its title “Corporate Honesty and Business Education: A Behavioral Model”.

The authors first note that neoclassical economics “employs an incorrect Homo Economics model of human behavior that treats managers as selfish maximizers of personal wealth and power”. Business misconduct in recent years may not have resulted from neoclassical economic theory “but business education is deeply complicit, because it has failed to provide a consistent and accurate alternative to the Homo Economics model” which ignores the “personal rewards and social responsibilities such as

honesty and integrity, for their own sake, instead of material gain associated with managing a modern enterprise.”

The addition of courses on business ethics “cannot compensate for the generality, incorrect and misleading characterization of human motivation.”

This book - *Moral Markets: The Critical Role of Values in the Economy* - is an outstanding study in part since it is counter intuitive since many think that markets tend to be destructive of values. See the paragraphs that follow for examples of this opinion.

Free Markets Corrupt?

Does the free market corrode character? Or is it the corrupt human nature that corrupts business and politics? This question has been debated in the John Templeton Foundation's study of big questions. The Foundation writes about itself: "The John Templeton Foundation serves as a philanthropic catalyst for research on what scientists and philosophers call the Big Questions. We support work at the world's top universities in such fields as theoretical physics, cosmology, evolutionary biology, cognitive science, and social science relating to love, forgiveness, creativity, purpose, and the nature and origin of religious belief. We encourage informed, open-minded dialogue between scientists and theologians as they apply themselves to the most profound issues in their particular disciplines. And we seek to stimulate new thinking about wealth creation in the developing world, character education in schools and universities, and programs for cultivating the talents of gifted children."

Do Free Markets Corrupt? Opinions Differ but Philosopher Michael Walzer Thinks They Do

Opinions on this question vary among the thirteen international trade experts, politicians, philosophers and

economists consulted by the John Templeton Foundation¹³⁹. Michael Walzer, a leading philosopher, writes that "Competition in the market puts people under great pressure to break the ordinary rules of decent conduct and then to produce good reasons for doing so. It is these rationalizations –the endless self-deception necessary to meet the bottom line and still feel okay about it– that corrode moral character. But this isn't in itself an argument against the free market. Think about the ways that democratic politics also corrodes moral character. Competition for political power puts people under great pressure –to shout lies at public meetings, to make promises they can't keep, to take money from shady characters, to compromise principles that shouldn't be compromised. All this has to be defended somehow, and moral character doesn't survive the defense –at least, it doesn't survive intact. But these obvious flaws don't constitute an argument against democracy."

Why Free Markets Make Fools of Us¹⁴⁰

Most economists have assumed in the past that humans are primarily rational, but recent behavioral studies cast doubt on this assumption and indicate large numbers of people that are often overconfident and often deal poorly with risk. They neglect the long term in favor of the short term (present bias). In addition, they hate losses more than they favor gains. Inequality has not been a priority for economists to study except for Piketty's recent book and a few others, even though it is now growing rapidly and becoming important for politicians on the left in the U.S.

¹³⁹ The John Templeton Foundation. Autumn 2008. *Does the Free Market Corrode Moral Character?* Online at <http://www.templeton.org/market> (viewed 30 Dec. 2008).

¹⁴⁰ This title is taken from Cass R. Sunstein's review of the book « Phishing for Phools : The Economics of Manipulation and Deception » by George A. Akerlof and Robert J. Shiller, Princeton University Press (2015). This section is a summary of some of the ideas in Sunstein's review in the October 25, 2015 New York Review of Literature.

Most economists put a high priority on consumer sovereignty on the theory that consumers know their own values and feel their needs. Conservatives believe the government has no right to intervene except where harm is done to third parties by consumer sovereignty.

In the past many scholars have dealt with this problem of Business Ethics in a free market – whether free markets corrupt ethics or not. The opinion of the two economists cited above now questions the conclusions of previous scholars in suggesting that free markets are dominated by unethical behavior of sellers and source suppliers in a so-called free market.

Thus different opinions are expressed. A leading philosopher Michael Walzer claimed free markets were corrupt. Amarta Sen in contrast to Milton Friedman writes that he believes that, although self interest provides effective motivation for business men to produce a well functioning economy, it needs public goods shared with the public. He believes a free market system needs a significant amount of ethics to function well.

In 2008, experts in many disciplines did research resulting in a 2008 book “Moral Markets”.¹⁴¹ The conclusion in this book is “that modern market exchange works only because most people most of the time act virtuously”. This conclusion implies that there are all kinds of different factual situations where facts vary, making the general situation in any market a complex set of variables that probably changes in different times.

Thus sellers and the service businesses knowingly take advantage of human psychology, weaknesses and defects to gain more profit. This is unethical and dishonest.

¹⁴¹ This book was edited by Paul J. Zak and published by the Princeton University Press.

They understand “our propensity to make choices in accordance to multiple cognitive and psychological biases”.¹⁴²

Another author blames the growing inequality on market power which is caused by political power.¹⁴³

God vs Mammon?

On the other hand, wealth is useful and necessary to perform God's work. But in the Sermon on the Mount it is stated that one cannot serve God and Mammon¹⁴⁴, which implies an "either or" situation –ethics or the pursuit of money. They are incompatible according to this aphorism. But see "Render unto Caesar what is Caesar's and unto God what is God's", Mark 12:17. This last quote, according to some, is the basis for secularism and the separation of religion from worldly materialistic activities but it does not necessarily lead to the conclusion that anything goes in business or government regardless of ethics.

Rich Churches

In this regard, it is interesting to note that some churches have accumulated immense fortunes. In the United States a number of large Evangelical and other churches are managed like commercial businesses.

¹⁴² See The London School of Economics and Political Science review at <http://blogs.lse.ac.uk/lsereviewofbooks/2015/11/13/book-review-phishing-for-phools-the-economics-of-manipulation-and-deception-by-george-a-akerlof-and-robert-j-shiller/>

¹⁴³ Reich, Robert B., *Saving Capitalism: For the Many, Not the Few*, Knopf Doubleday, September 29, 2015, reviewed by Paul Krugman in *The New York Book Review of Books* of December 17, 2015-January 13, 2016, pages 16 and 20.

¹⁴⁴ "No slave can belong to two masters, for he will either hate one and love the other, or stand by one and make light of the other. You cannot serve God and money." in Matthew, VI, 24. *The Complete Bible, An American Translation*. The New Testament translated by Edgar J. Goodspeed. 1939. The University of Chicago Press.

Can Business and Ethics Co-exist?

A U.S. author has written an article with the title: "Balancing Act –Can Business and Ethics Really Coexist?"¹⁴⁵ Ethics usually concerns relations of mutual concern in society between all individuals and the need to limit one's self-interest when it goes against the general interest. Thus in our competitive system there is an immediate tension between ethics and business. The ideal of being a good citizen often is limited or replaced by the ideal of becoming a winner in the race for wealth, power or election. See Amartya Sen's point of view on page 246.

Adam Smith thought Selfish Businessmen were in the Public Interest

Commerce and industry can be an activity in the interest of all parties and society. If a company sells a useful product at a reasonable price, it renders a service to the buyer. At a macro level, commerce and industry generally raise the level of wealth and alleviate poverty, as Adam Smith noted, despite the fact that individual businesses pursue their own selfish interests, they do good by increasing the general wealth. Does this theory hold true only if competition keeps prices reasonable? Is it necessary that competing businesses are small or medium size rather than huge businesses with enormous market power so there is more of an oligarchy than a competitive market?

In private business, there is also an inherent risk of conflict between the seller or supplier of services and the client. To the extent the former abuses his power the client suffers. Human nature being what it is, selfishness is a most powerful motivation often prevailing over ethical conduct. Competition, where it exists, is supposed to moderate excessive pricing and control greed, but when all

¹⁴⁵ Goldman, Robin. 2002. *Balancing Act – Can Business and Ethics Really Coexist?* In the Magazine of Golden Gate University.

competitors abuse customers as seemed to happen in the run up to the 2008 financial crisis, there is a problem.

Adam Smith's theory was that all the selfish business people actually worked in the general interest but now it seems less likely that they are serving the general interest since the tremendous growth in numbers and funds going to lobbyists indicates each company is pursuing its own private interests. And there is no invisible hand to defend the public interest.

It also seems unlikely that the sum of the private interests equals or yields the general interest of society.

The most important reason for unethical conduct is to make more money when more money can be made by unethical business practices especially when competition is severe.

Institutional Corruption - Monied Special Interests, Lobbyists and Members of Congress

Lawrence Lessig in *Republic, Lost*¹⁴⁶ gives details on the ways that lobbyists in exchange for large fees secure more benefit for their monied special interests clients by helping congress enact laws (not easy), change laws, block proposed laws or secure subsidies for their clients or take other measures giving competitive advantages to special interests. This special interest money is often essential to elect or reelect members of Congress.

This system works because lobbyists have or develop more technical expertise in drafting legislation since the lobbyists are often experienced former members of Congress or their staff. Congressmen need to spend so much of their time seeking campaign contributions in order to get elected they have little time to work on legislation.

¹⁴⁶ Lessig, Lawrence 2011 *Republic, Lost* – How Money Corrupts Congress – and a Plan to Stop it. 12 Twelve, Hachette Book Group NY Boston.
Also see This week TED.com Saturday April 6 2013 – Lawrence Lessig: We the People and the Republic we must reclaim.

Companies pay high fees to lobbyists because they get their moneys' worth.

The author cites situations where the private interests and their lobbyists have succeeded in stopping proposed legislation which seems to be in the public interest but contrary to the special interest of the lobbyist's clients. Blocking legislation is easier than getting legislation voted.

This book describes possible strategies for correcting the situation by empowering the people who can't afford to pay lobbyists. Members of Congress should be open and influenced by average citizens. Each citizen is supposed to be equal and have one vote but money changes this. Money power needs to be reduced through finance campaign reform insuring that campaign contributions are more or less equal. For this reason lobbyists should be eliminated in order to stop this institutional corruption of Congress. The author believes one or more constitutional amendments will be necessary after a constitutional convention to propose the necessary changes in the constitution – a procedure never followed to date except for the original constitutional convention.

The book starts with the proposition that there is only one issue in this country "Campaign Finance Reform". Since this issue is obscure to most of us, the author writes to explain to the vast majority that doesn't understand and how it is related to lobbying and the role of money in our present political system which causes institutional corruption of Congress.

As the title implies our ideal democracy to the extent we had it is gone and we will not get it back except through a major popular movement of non partisan outraged citizens turning against the present system. This will mean an enormous amount of work by all citizens especially ordinary people who will need to be specially educated as to what action is necessary to save or reconstitute our republic so it is again a republic of responsible people interested in the

public interest rather than people pushing private interests because they have big money.

The author is aware that securing a constitutional amendment will be most difficult since many special interest groups will oppose it.

Unfortunately, the result of the 2016 election did not focus on this problem so it will most probably not be addressed in the near future. Money is power.

Money Owns Political Parties

Another author has done a remarkable analysis of politics and economic history to show how money interests own political parties. Rodolfo Lazo de la Vega¹⁴⁷ summarized his review of this book as follows:

"The central foundational principle of the capitalist nation-state is that it is a reflection of its economic constituencies".

This author's theory is in a capitalist state those elites who own the means of production form political parties who are investors who join together to chose candidates who reflect their values and who use politics to design and manage a political economic model. The author claims that where both political parties have an interest in the same objectives, important issues of public interest do not get on the same agenda.

He claims the "growth, development and fall of major industries correspond to the growth development and fate of their political parties".

He compares the situations draw from history of Federalist vs Jeffersonian, Jacksonian, Civil War system, the 1896 system and the New Deal.

¹⁴⁷ This review is from: Golden Rule: The Investment Theory of Party Competition and the Logic of Money-Driven Political Systems (American Politics and Political Economy Series) (Paperback)

Business needs Ethics – Most of the Time

The business community probably would be less efficient, unpredictable or chaotic if it were completely immoral. Businessmen usually recognize the moral value of promise-keeping (or the self interest?) because it facilitates planning ahead, making contracts and commercial activity which increases wealth by encouraging cooperation. However, those who study law and economics point out that, in some situations, it may be better, economically and practically, and smarter to refuse to keep one's promises, renounce the contract and pay damages. In such case self interest has changed and the morality, if any, of keeping a promise tends to dissipate.

Forget Ethics and Make a Killing

Some individuals and businesses will be tempted to act unethically, particularly in the short run, where there is a one-shot opportunity, to "make a killing." In such case, the unethical individual or company profits while other individuals, companies, societies or future generations may lose. In such an instance, short-term private interests are favored over long-term public interests or over competitors if it is a zero sum game. Greed and the lack of ethics in business can help to undermine the free enterprise system, leading to manias, crises and crashes in one country or internationally. See Kindleberger cited on page 15. Unlimited and unfair competition, dishonesty and violence can poison the environment which makes doing business more difficult since in such case the emphasis shifts from producing wealth to safeguarding what one has. Efforts to increase production are replaced by efforts to protect assets.

Jeffrey Skilling – A Top Business School Student goes to Jail

The former president of Enron, Jeffrey Skilling, when he was a top student at the Harvard Business School, was

questioned by his professor what "[he] would do if [his] company were producing a product that might cause harm, or even death, to customers that used it". According to his professor [...]. Jeffrey Skilling replied "I'd keep making and selling the product. My job as a business man is to be a profit-center and to maximize return to shareholders. It is the government's job to step in if a product is dangerous" For the courts this principle was insufficient to keep Jeffrey Skilling out of jail. For the story of the Enron debacle, see the Fusaro Miller book ¹⁴⁸.

Tobacco Company Lies Taking Advantage of a Killing Addiction

In 1950 two doctors in the U.K. had proved the link between smoking and lung cancer, heart disease and many other diseases. But the publication of their paper was greeted with "apathy, disbelief and scientific condemnation and irritated the U.K. government which got 14% of its revenue from taxes on tobacco. Over the years Dr. Doll's and Dr. Hill'¹⁴⁹s studies proved smoking kills as Ian Macleod told a press conference in 1954. In fact, half of the smokers died. "Given the decline of smoking in western countries he (Dr. Doll) must have saved millions of lives. Even so, cigarettes killed about 100 million people in the last century. This century says Keating given the world wide spread of smoking, they could kill nearer to one billion."

According to Pfizer's advertisement for Chanfrax, a product to help people stop smoking, "smoking is the leading cause of preventable disease and premature death in the United States with more than 348,000 deaths annually

¹⁴⁸ Fusaro, Peter and Miller, Ross M. 2002. *What Went Wrong at ENRON. Everyone's Guide to the Largest Bankruptcy in U.S. History*. John Wiley & Sons, Inc., Hoboken, New Jersey.

¹⁴⁹ The above quotes are taken from an article by Simon Kuper "The Man Who Kicked Our Butts" Life and Arts page 2, Financial Times Weekend, October 27/28 2012, drawn from a recent biography Smoking Kills: The revolutionary life of Sir Richard Doll, by Conrad Keating, Signal Books, Oxford, U.K. 2012.

attributable to smoking."¹⁵⁰ There has been proof that smoking causes cancer for many smokers. There are about 5 million killed each year in the world¹⁵¹. These facts show that, in such case, profit wins over ethics. The pressure groups working in favor of the tobacco industry are powerful. A recent study at the Harvard School of Public Health indicates that tobacco companies have increased nicotine by 11% in their products over a seven year period¹⁵². This tends to reinforce the addictive qualities of this already highly addictive drug. The moral and ethical issue is complicated by the argument that everyone is free not to smoke. However, advertisements for cigarettes did not usually warn how lethal it is when it becomes a habit for many people. Young people are particularly vulnerable since they see many movies in which actors smoke – this is a form of insidious advertising by tobacco companies so young people think it is smart and "cool". In France, such a practice was prohibited in 1991 by law.

Unethical Business Methods – Archer Daniels Midlands

There are also examples of companies whose products are not directly harmful to people but whose business methods are illegal and unethical because it forces customers to pay higher prices than if the market for them was competitive. A leading example in 1996 was revealed by a whistle blower who worked undercover for the FBI. His company and several top executives, including himself, were imprisoned for price fixing on an international scale and the company was fined 100 million dollars. This company was Archer Daniels Midlands, a 13-billion dollar grain company which produced Lysine citric acid, high fructose corn syrup, food and animal feed supplements used

¹⁵⁰ The New York Times. 29 May 2008. Page A9.

¹⁵¹ Fédération française de cardiologie. No date. *Tabac : laisser votre cœur respirer*. In brochure "Repères", p. 1.

¹⁵² Harvard School of Public Health Press Release, <http://www.hsph.harvard.edu/press/releases/press01182007.html> (viewed 26 March 2007).

in thousands of products. It was the largest company in its field¹⁵³.

Pfizer's Health Care Fraud

In a health care fraud case in 2009 relating to the pain killer Bextra, now withdrawn from the market, and other products, Pfizer, a major pharmaceutical company, settled for \$2.3 billion in what was the fourth settlement over illegal marketing activities since 2002¹⁵⁴.

Siemens Bribes

A number of Siemens subsidiaries were also found guilty of bribing government officials in some Latin American countries. Such conduct violated the United States Law on Foreign Corrupt Practices which resulted in huge fines.

Crisis in French Business Ethics – A French View

Octave G linier became disillusioned with business ethics in France in the 1990's which he thought was getting worse. In addition he wrote that the public considered business a somewhat corrupt activity. After consulting twenty five leading French business and ten international groups like IBM and Procter & Gamble to find out what was going on in companies in fact, he wrote a book on business ethics.¹⁵⁵

¹⁵³ Eichenwald, Kurt. 15 January 1997. *Archer Daniels Informer Admits Recent Deception*. The New York Times.

15 October 1996. *ADM: Who's Next?* Online News Hour, transcript of a discussion between Charlayne Hunter-Gault, interviewing host, Joel Klein, Assistant Attorney General, Nancy Millman, journalist with the Chicago Tribune, and Harvey Goldschmid, of Columbia Law School. See http://www.pbs.org/newshour/bb/business/october96/adm_10-15.html (last viewed 19 Oct. 2009).

¹⁵⁴ Rubin, Rita. 3 September 2009. *Pfizer Fined \$2.3B for Illegal Marketing*. USA Today, Money Section B.

Harris, Gardiner. 2 September 2009. *Pfizer Pays \$2.3 Billion to Settle Marketing Case*. The New York Times.

¹⁵⁵ G linier, Octave. 1991. *L'Ethique des affaires. Halte   la d rive !* (Business Ethics. Stop the Growing Lack of Ethics!). Editions du Seuil, Paris.

He believed and wrote in his book that long term strategy and long term profit was the right answer. He did not deny that ethics could cost money in the short term but argued that long term growth and profit depended on an intelligent business strategy that included high ethical values. He underlines the central role of "confiance" (trust) because without it one can perhaps make money in the short term but not over the medium or long term. The added value for a business arising from trust and its clients and the public confidence is an important element in producing profit in the medium and long term.

Mr. G linier's ideas seem logical and solid in an economy that is not moving too fast or is too subject to short term goals set by the financial world and where there are rapid changes in management. But one is faced with the question as to whether or not in our present business climate G linier's old fashioned virtues can still be a successful business strategy under present business conditions.

Mr. G linier wrote a section in his book, in which he analyses the background and reasons for the crisis in business ethics in France, in which he briefly covers his definition of ethics which he writes ethics is the "face objective de la morale, l' thique n'est pas autre chose qu'une r flexion sur la conduite responsable de sa vie dans le sens qu'on a choisi; et l' thique des affaires n'est qu'un cas complexe de cette d marche".

A translation of this is: ethics is "the objective face of morality, ethics is not anything else but thinking about responsible conduct of one's life that one has chosen; and business ethics is only a complex case in this effort".

Then he quotes Bernard de la Rochefoucauld who describes Aristotle's view as follows:

Octave Gelinier was a civil engineer, a product of the elite Ecole des Mines. He secured degrees in physics, chemistry, biology, economics and law.

"Pour Aristote, l'éthique est fondée sur la finalité de l'action humaine.

Elle permet le choix en fonction d'un but qui est mon bien ; car je suis capable d'opérations volontaires en vue du Bonheur. C'est l'éthique de la responsabilité, qui implique le respect des autres et la coopération... De là naît la notion de bien commun.

L'éthique de la responsabilité, avec la finalité du bien commun, est à la base du management des entreprises modernes." (Revue de l'Institut La Boétie. Novembre 1989)."

A translation of this is:

"For Aristotle, ethics is based on the purpose of human action. It permits the choice as a function of the result which is good because one is free to choose what results in happiness. It's the ethics of responsibility which implies respecting others and cooperation. From this comes the common good. Responsible ethics with the objective of the common good is the basis of modern business."

The author completes his definition by quoting the Petit Larousse dictionary:

"Ethique : doctrine du Bonheur des hommes et des moyens d'accès à cette fin. Ensemble particulier de règles de conduite (déontologie)."

"Ethics: the doctrine of happiness of men and the means of access to this objective. Ethics are the special rules of conduct (deontology)."

He formulates this equation: ethics = performance + deontology and explains it's the art of being successful in the long term which supposes a part of the good for the ethical person but only if he respects others.

Mr. Gélinier then presents how ethics change with time. They are different in the tribes and ancient cities, in different religions and for philosophers. Then there are

ethics of universal reason the enlightenment (Locke and Hume) which replaced tradition by reason and Kant contributed his idea of a categorical imperative of universal value. He also noted the utilitarian's and Rawls theory of justice. He then goes on to describe the break up of personal and civic ethics in France and Dr. Spock's advice to relax discipline at home and in school. Next he moves on to ethics of merchants and capitalists in the middle ages and bourgeois ethics, and puritan sects which Calvin converted to a religion of accomplishment, rejecting laziness, rest, luxury, refusing to accept privileges from the State. With this ethic, he writes, they couldn't fail. He also notes that liberalism can be either legitimate rationalism or savage capitalism, mentioning Adam Smith and a social economic system with the rough edges of capitalism smoothed out by regulation, and finally our present mixed system.

He also passes in review ethics and law, personal interest and power. He writes law is rigid and is often the law of the strongest. Some believe that ethics and personal interest never go together. Those who exercise power to make decisions and act often abuse their power.

He notes elements that caused the breakup of traditional ethics in France i.e. by globalization (internationalizing business), invasion of the American Ethics and the Way of Life centered on work, Japanese efficiency in making better products, deregulation, privatization, and the arrival of new subjects for ethics i.e., environment, racial discrimination and animal rights.

To shield and protect a business now ethics officers are appointed and Codes of ethics are adopted. According to him, political life lacks ethics since there is less separation between politicians and government administrations and funding of political parties in a legitimate way has not been worked out.

Government is now more decentralized in France, so the larger quantity of civil servants is necessarily of lower

quality. In addition, there are big changes in French government structures which sow confusion.

Mr. G linier is not the only one who believes ethical conduct of business has gotten worse. More recently in his New York Times column of 11 September 2010, Thomas Friedman sees the same deterioration happening in the U.S. and he notes in a Newsweek list of 100 best countries in the world the U.S. ranks number 11. He writes "we had a values breakdown – a national epidemic of get rich-quickism and something – for-nothingism. [...] Right now the Hindus (in India) and Confucians (in China) have more Protestant Ethics than we do and as long as that is the case we will be number 11."¹⁵⁶

Security Fraud – Insider Trading

In addition to these above types of unethical conduct, there are unethical violations of security laws such as insider's trading where corporate insiders use inside information unavailable to the public to profit from a rise or lowering in the stock prices when the inside information becomes public.

Competent prosecutors in New York and in other cities periodically get jail sentences against violators. Time Magazine of February 13, 2012, pages 14-19 tell the latest chapter in this story as follows:

Rudolph W. Giuliani in the 1980's, in the junk bond and crash of 1987 put Michael Milken, Ivan Boesky and Robert Freeman of Goldman Sachs in jail. In 2000 there was another wave of prosecutors when Enron CEO Jeff Skilling

¹⁵⁶ In a private e-mail Fil Juntereal wrote(June 2010) "There is something that Friedman wrote that makes me recall why we had a pretty wholesome Philippine society during the previous Commonwealth period. Parents of my generation learned from their American teachers what the Protestant work ethic was all about and applied it diligently to their occupation and family life. Somehow, that "ethic" evaporated after the war." Chaos and cruelty of World War II in the Philippines was apparently destructive of ethical values there too.

went to jail. Now Preet Bharara is sending inside trader violators to prison – Raj Rajaratnam for 11 years and Rajat Gupta, the most prestigious ex McKinsey head was recently convicted. In June 2012 can one conclude where financial business is concerned temptation to cheat periodically becomes too great? Or is there a general feeling that everybody is doing it? If the traders in the world are unethical they infect and corrupt societies and people lose confidence in their leaders, corporations and governments. This seems to happen in a free enterprise society and it happened in the Russian communist system which was probably worse. Therefore, perhaps one can conclude the worst corrupters are human beings and not the economic system in place.

When there is this kind of conduct, the confidence in financial markets then evaporates resulting in economic crises. The dark side of human nature comes out.

Slave Trade and Wars

The slave trade is now considered unethical business in most cultures. However, prior to the 19th century it was widely practiced when prisoners of war taken in African or other wars became slaves. War was profitable for the victorious chief of a tribe, king or head of a nation-state because it added territory, riches, prestige and people to his or her patrimony. Bad ethics of leaders who mobilized weapons and armies have caused enormous damage: an estimated 40 to 60 million people were killed in the last century. War, except in self defense, is generally considered a criminal activity and an unethical "business." With the recent increase in terrorism, preemptive war has become more acceptable to some who think it is the only practical way to preclude mass destruction by terrorists or a rogue state which could strike without warning. Although the former large scale commercial trade of slaves with Africa is finished, many, usually women, are held in human bondage as servants and prostitutes in many parts of the world.

The list of businesses which are by nature considered unethical under national laws also include: (i) trade in the production and sale of illegal drugs, (ii) businesses, even if legitimate, if operated by organized criminals who use criminal methods, (iii) organizing prostitution in some societies is considered unethical but usually tolerated.

Other businesses which recently have been considered unethical include those where labor standards in manufacturing operations outside the continental United States resemble slave conditions.

But is child labor always bad if it alleviates poverty and starvation?

Some also include the arms and the tobacco industry. The gradations in ethical standards depend on the culture of the community concerned and scientific knowledge relating to effects of products on people and the environment. The manufacture of asbestos has recently led to consideration of criminal action against a leading industrialist¹⁵⁷. As globalization (rapid and increased communication, and trade and commerce) speeds up, clashes of ethical standards and cultures increase and could be a factor in increasing terrorism. A certain homogenization or uniformity of basic ethical principles in our increasingly global community might reduce conflicts, violence and terrorism. More tolerance and cooperation among religions would be very important.

Most businesses, especially those whose shares are offered to the public, are subject to enormous short-term pressure to meet their earnings targets. Failure to do so means their shareholders will sell and stock prices fall, adversely affecting the company, its executives with stock

¹⁵⁷ Bank, David. 9 Dec. 2002. *Swiss Business Titan, Environmental Activist Faces his Family's Past*. The Wall Street Journal. Very slow recognition of the dangers of exposure to asbestos by workers has led to astronomical claims against manufacturers and installers of asbestos products. As a result of this environmental and health hazards, there were many bankruptcies and the industry is now nearly dead. Profits spoke louder than ethics for many years.

options and other shareholders. Recently this problem has led many companies to be less honest and to include more creative accounting in their books so that forecasted earnings appeared to have been reached. However, once the accounting irregularities are discovered, stock prices drop dramatically.

Micro Lending

Micro lending is a business which has a high ethical content because it has a more obvious social function: financing usually the poor women who are often more reliable than men and it has helped to alleviate poverty. Small loans are usually made to a group which tends to encourage repayment probably through peer pressure (solidarity lending methodology).

Grameen Bank

This possibility of social business to pursue specific social goals, not only to earn profit, has been suggested by Muhammad Yunus in his books *Banker to the Poor, Micro Lending and the battle against poverty* and *Creating a World Without Poverty –Social Business and the Future Capitalism*¹⁵⁸. These books are based upon his experience with the Grameen Bank.

Although nature seldom if ever produces equal human beings, most of us feel there is something wrong about great extremes of wealth and poverty. Muhammad Yunus lent \$27.66 to forty-two people before he started his microlending business and saw this helped them break the cycle of poverty for good.

According to his first book, the Grameen Bank he founded has provided small loans totaling six billion dollars to seven million families. According to *Bankers to the Poor*

¹⁵⁸ Yunus, Muhammad. 1999, *Banker to the Poor, Micro Lending and the battle against poverty* and 2007, *Creating a World Without Poverty –Social Business and the Future Capitalism*. Public Affairs, Perseus Books Group.

there are more than 250 institutions operating in nearly 100 countries with micro-credit programs.

The Nobel Prize award in 2006 to him and his Grameen Bank undoubtedly increased his pride in his achievements.

Micro Lender Critics

Critics wrote an article in the Asia News on June 3, 2012, claiming that micro credit is driving people to suicide in India. Excerpts from his publication include such comments as "micro financing has turned into a system of brutal exploitation where agents push debtors to take their own lives in order collect insurance money to pay off their debts. In six weeks, 45 confirmed cases of suicide have been attributed to this reason".

The article continues by alleging the system is cruel "worse than Nazism [...], based on the sole criteria of profit" with no interest in improving social conditions".

Because micro loans are easy to get, they are often used for consumption expenditures, weddings, parties, medical expenses, to repay previous loans and other expenses but not business investments, where "muscle men" from "upper-castes" Hindus started working for collection commissions up to 20% pushing some borrowers into a vicious cycle of debts and pushing them over the edge to suicide.

So whether micro loans are good or bad depends on the context, who manages the business, their honesty, and whether or not they represent social reforms rather than just profit at any price.

Other critics say micro credit lenders "need to prove they are more successful than welfare style programs lifting people permanently out of poverty. Like any other development strategy micro-lending ... is a complicated endeavor that requires localized understanding the particular

economic, cultural and social factors affecting entrepreneurial success".¹⁵⁹

Another study reaches the conclusion that micro lending is more beneficial to borrowers living above the poverty line than those living below it.¹⁶⁰

On November 13, 2005, the Boston Globe published an article, *The Pitfalls of micro-lending*, by Rashmi Dyal-Chand, indicating that Tufts University received \$100 million dollars to fund micro lending initiatives. Jude Fernando and Philip Nichols "have acknowledged, even the most successful microfinance programs are unable to sustain themselves without additional aid".

This article also points out that micro lending rarely attains self sufficiency and micro lender Accion International has shown that those programs that work best "generally invest enormous resources in training and support services".

There is a very upbeat enthusiastic practical book published in 2004 about how to do micro credit the right way encouraging business people to get involved to get rid of poverty. It is written by a business man and philanthropist Phil Smith and Eric Thurman, a leading expert in international philanthropy. The title of this book is *A Billion Bootstraps* published by McGraw Hill, NY NY.

BRAC – A remarkable micro lender and development NGO

There is a most remarkable but less well know micro lender than the Grameen Bank, a group referred to as BRAC that started four years earlier in 1972 by another Bangladeshi, Sir Fazle Hazan Abed knighted by Queen Elizabeth in 2010. BRAC's full name was the "Bangladesh

¹⁵⁹ *The Pitfalls of Micro lending*

(http://www.boston.com/news/globe/editortial_opinion/oped/articles/2005/11/13/the_pitfalls_of_micro lending)

¹⁶⁰ *Micro finance misses the Mark*

(http://www.ssireview.org/articles/entry/microfinance_misses_the_mark)

Rural Advancement Committee", a small relief and rehabilitation project which helped returning war refugees by building fourteen thousands homes and several hundred boats for fishermen in 9 months. After 1972 it turned toward long term development needs and "empowerment of the poor and landless, particularly women and children". In 1974 it started its micro lending program.

It entered into the printing business and a retail handcrafts operation to keep financing its development activities. It educated 12 million mothers in home health care and child infant mortality dropped from 285 to 75 per thousand. In 1986, BRAC began four other major activities: institution building in education and training, credit operations and income and employment generation. In 2002 it launched a program for the ultra-poor i.e. those too poor to get micro finance. The same year BRAC brought relief and rehabilitation programs into Afghanistan.

By June of 2008 BRAC established schools enrolling nearly 3 million children, of which 65% were girls, and 964 libraries. It provides health care services which reaches 31 million people.

Social development is another of BRAC's objectives to avoid exploitation of women. It attempted to eradicate dowry, rape, acid throwing, polygamy, violence and oral divorce, which are common in rural Bangladesh.

It is working to expand computer use all over Bangladesh in e-huts.

BRAC is active abroad not only in Afghanistan, but also in Sri Lanka, Pakistan, Tanzania, Uganda, Southern Soudan, Liberia, Sierra Leone, Haiti.

BRAC has 4 million borrowers. It is remarkable because its businesses have profits that finance about 80% of the financial needs of its development projects.

It has revenue of more than two times the Grameen Bank i.e. more than \$480 million; this allows the remarkable number of activities described above.¹⁶¹

Ashoka

Another organization, Ashoka, encourages social entrepreneurs (changemakers) in the areas of civic engagement, economic development, environment, health, human rights and learning/education. Since 1981, Ashoka has identified more than 2000 social entrepreneurs and financed them for three years so they can accelerate the changes they have initiated in the world. Although the priority of Ashoka is social progress, not profit making, its activities can inspire for profit enterprises and provide ideas which result in cooperation. Victoria Hale, a pharmaceutical and biotechnology scientists who worked with the Food and Drug Administration, created the first not-for-profit pharmaceutical company, One World Health, in the United States. Her company took promising new medicines abandoned or not developed by the for-profit companies to their full market potential to cure neglected infectious diseases at a fraction of the usual cost. Her company builds innovative partnerships with big pharmaceutical companies¹⁶².

These "change makers" encourage civic engagement, economic development, improving the environment and public health. Such social innovators are Ashoka Fellows who work in the area of human rights, learning and education. For a report on this work, see *Ashoka 2006 Summary of Results, an overview of Ashoka's work and*

¹⁶¹ For more details see BRAC (NGO) from Wikipedia, the free encyclopedia and BRAC in Business. Fazle Hasan Abed has built one of the world's most commercially-minded and successful NGOs. Feb. 18, 2010, The Economist available in Google under the title *Face Value: BRAC in business*

¹⁶² Victoria Hale was elected to the Ashoka Fellowship in 2006. See her profile on <http://www.ashoka.org/fellow/3915> (viewed 11 December 2008). Also see selections from Leading Social Entrepreneur Ashoka Innovations for the public (2010) with preface *Your role in launching on Everyone a Changemaker World* by Bill Drayton.

achievements from 2006 at http://www.ashoka.org/files/2006_Summary_of_Results.pdf (viewed 11 December 2008).

The for-profit sector, unions and governments need to change to survive. Some of Ashoka's accomplishments are an example for the for-profit sector in making the important changes it needs to make it more ethical, sustainable and to help it survive.

Because change is always possible and humans can improve, there is hope for the future if there is change for the good and the people are able to find leaders who will lead them toward improvement rather than in wrong directions as they have so often done in the past. This is another way to say change is necessary in human nature.

Private Public Partnerships – UNESCO–L'Oréal

A number of for profit corporations have successfully entered into agreements with public entities to advance the public interest to combine private interest and public interest. L'Oréal, the world's leading cosmetic company, works with UNESCO, encouraging young talented women scientists by awarding scholarships. While advancing UNESCO's interests in education and improving women's place in society, it also serves its own interests by improving its image, promoting its products indirectly and developing outstanding young scientists for possible recruitment¹⁶³.

Compare Sports to Business

It is interesting to compare sporting events and businesses because the competitive spirit and rapid action are important to both activities. Beating competitors in sporting events is the primary goal but winners make losers

¹⁶³ For a study of examples, possibilities and problems of public-private partnerships, see Baker, Wallace, *Private Sector Partnerships*, 2003, UNESCO, http://portal.unesco.org/es/file_download.php/75569611041450d701df5adbb949aca6Baker+Report.pdf (viewed 26 March 2007)

unhappy. Competition in this respect does not seem to be "ethical" by defeating an opponent. Ethics in sports are respected by competitors to the extent they limit their chances of winning by not cheating or violating the rules of fair competition or taking illegal drugs to enhance performance. Sports have often been corrupted by gambling and big money which puts enormous pressure on athletes to win at any price or reach the result gamblers prefer.

Government Corruption Stifles Business

Business investments in a country which is unethical, corrupt, undemocratic with a centrally controlled government will tend to make all businesses done in that country unethical and corrupt. The United States is one country that has punished its businesses for participating in corrupt practices abroad. This problem is a major reason for lack of development and poverty in many less developed countries. Corruption weakens economic performance. The World Bank has recently announced a broad strategy to try and stop such practices.

Korten's Corporations Ruling the World

In his chapter 20 "Agenda for Change", David C. Korten, in *When Corporations Rule the World* first published in 1995, cites Herman Daly and John Cole Jr. to the effect that "[a] political community cannot be healthy if it cannot exercise a significant measure of control over its economic life." Korten continues this theme by writing "few rights are more fundamental than the right of people to create caring sustainable communities and to control their own resources, economies and means of livelihood" and to choose their own cultural values. A globalized economy of large corporations, according to him, denies these rights. People, not corporations who have acquired in the United States constitutional rights, should make these most important choices. Korten then goes on to explain how the people should reclaim their political and economic spaces.

The next Part VI of this book entitled "From Corporate Rule to Civil Society" starts with a chapter entitled "Making Money Growing Power". If Korten is right that democracy is diminished by the operations of short term profit objectives of large global corporations and this activity is not balanced by benefits to the people, the system of replacing people's power and wealth by large corporations power and wealth is negative and not ethical. But this trend is very difficult to reverse¹⁶⁴.

Bakan Thinks Corporations are Evil

The recent book, *The Corporation –The Pathological Pursuit of Profit and Power* by Joel Bakan¹⁶⁵, has been reviewed by Alan Dershowitz who writes that Bakan shows the corporation to be a "monster that can swallow civilizations –greedy, exploitive, and unstoppable." Bakan begins by explaining it is an institution that operates in its own self interest regardless of "the often harmful consequences [...] to others", "a pathological institution, a dangerous possessor of great power it wields over people and societies.

Bakan describes how General Motors used a cost-benefit calculation that favored company profits over human lives by building a car with a gas tank behind the rear axle rather than in front of it. He implies that the company had knowledge that this structure would result in more explosions occurring in accidents costing more human lives than if the tank had been installed in front of the rear axle at greater cost to General Motors.

¹⁶⁴ Korten, David C. 2001 (second edition). *When Corporations Rule the World*. Kumarian Press Inc., Bloomfield, Connecticut, and Berrett Koehler Publishers Inc., San Francisco, California.

¹⁶⁵ Bakan, Joel. 2004. *The Corporation –The Pathological Pursuit of Profit and Power*. Free Press, A Division of Simon & Schuster Ines, 1230 Avenue of the Americas, New York, NY 10020, USA. Joel Bakan was a former Rhodes Scholar, now a Professor of Law at the University of British Columbia and co-creator of the film *The Corporation*.

Bakan notes that corporations increasingly dictate to their supposed overseers in governments as the world's dominant economic institutions and they have occupied "central domains of society embedded within the public sphere." In short, they govern our lives. They decide what we eat, what we see, what we wear, where we work and what we do. "We are inescapably surrounded by their culture, iconography and ideology. Like the Church and the monarch in other times, they posture as infallible and omnipotent, glorifying themselves in imposing buildings and elaborate displays. Its dramatic rise to dominance is one of the remarkable events of modern history [...]." Their doctrine to justify this domination is let the free market decide all economic and societal questions and they do what they can to influence what the market decides regardless of the social consequences in many cases.

It is worth noting that almost no corporation is democratic but usually has a chief executive with almost unlimited powers often given to the chief executive by his board of directors which he chooses. He is, in many large companies, paid like a king.

In his Chapter 6 about remedies for curbing the dominant institution, he reminds the reader that the great empires, the Church, the monarchy, the Communist Party of Eastern Europe were all overthrown, diminished or absorbed into new order. He doubts if the corporation will be the first dominant institution to defy history, especially since we now see that it cannot solve, but sometimes worsens, the world's problems of poverty, war, environmental destruction and ill health and stability of financial markets.

He doubts that voluntary corporate social responsibility will provide the necessary control over corporate activity through a market mechanism, i.e. consumers will choose to buy a "good" company's products if everything else is equal. But many consumers will often buy the least expensive

product even if the company is not considered "good" socially. Wal-Mart, the largest retailer and a very successful company, is well known for paying low wages and minimum social benefits in order to keep its prices low, which is an advantage for the poor.

The author notes that "corporations cannot exist without the State nor can markets." They are a creation of the government and the corporation must be "measured against the standard applicable to all government policies: does it serve the public interest?" Governments do have the power to discipline wayward corporations if public opinion becomes irresistible. An example is what the government did to Enron.

In the United States, since a corporation is a creature of the State in which it has been incorporated, its charter can be revoked –a death sentence which seldom happens, except for non-payment of its State's taxes. Execution of such a death sentence is highly theoretical in case of a big company with its creditors, employees and other third parties who depend upon it.

Since abolishing the corporation is unrealistic, the author believes the only way to change the corporation into a non-psychopathic entity is to improve the regulatory system, strengthen political democracy, create a robust public sphere and change international neoliberalism into a system where human values have priority over profit.

After the author's vivid description of how bad corporations can act, his conclusions, although probably well founded, do not leave the reader with much hope that the situation will change soon in absence of an economic or other disaster sufficient to mobilize public opinion, the voters, legislators and the governments to enact effective regulation of business.

Inside Job

A 2010 documentary, *Inside Job*, directed by Charles Ferguson, a former teacher at MIT, reports on the unethical if not criminal activity and practices of the financial, banking and other sectors in the United States and elsewhere.

It reached a climax in 2008 with the bankruptcy of Lehman Brothers triggering the worst depression since 1929. The title of this film reflects Ferguson's belief that the financial community including banks could and did become thieves and stole their depositors' and clients' money and caused incredible losses of jobs and assets facilitated by deregulation which was part of an ideology of most of the business community, i.e. the ideology that business could regulate itself and be more efficient was prevalent in leaders like Alan Greenspan and most others.

Mr. Ferguson's thesis is that the financial sector went wild and that Wall Street culture was excessively addicted to speculation, like its people were often addicted to cocaine and prostitution. One madam, a manager of a large ring of prostitutes stated that she had 10 000 clients in New York, from major banks and financial institutions who paid for these activities with their corporate funds as business expenses. A psychiatrist noted that concentration on money lighted up the same part of the brain on brain scans as drug consumption. Money was also addictive.

A particularly troubling aspect of the situation portrayed in the film was the process of deregulation started 30 years ago with the Reagan administration, who thought government was the problem and not the solution. This ideology continued through the presidencies of Clinton and Bush. The financial sector enlisted leading academics and economists from Columbia and Harvard paying them big fees to give academic and intellectual credibility to this ideology that the economy does better with self-regulation,

not government regulation. The astounding amount of money spent in lobbying influenced congress, politicians and the public before the crash. The film showed the U.S. government was captured by Goldman Sachs' former employees who occupied top positions in the government and elsewhere.

Financial executives before the crash earned huge remuneration like Mr. Fuld the President of Lehman Brothers who made 75 million dollars a year.

The film also explains why the reform efforts have been minimal. The financial sector appears to prefer lucrative unethical conduct despite its disastrous effects on the economy, the people and even on their own companies.

President Barack Obama terminated his top financial economist who participated in the deregulation which helped precipitate the disaster. The financial community has fought tooth and nail against reforms and more regulation by expending billions of dollars on lobbying. As a result many of reforms have been weakened or not enacted into law.

If there is to be improvement, some will need to come from the reforms put in place, but over the long term, clients, banks and the financial industry will need to be more careful to protect their own long term interests. But as in the past, if and when things get back to normal, future generations will probably forget any lessons learned and another different kind of financial abuses will creep into business and cause a new financial crisis.

The message of the film is doubly impressive because it begins with Iceland's sad story in going from happy prosperous economy to pauperization of its banks and economy. A few large fortunes were made on borrowed money for a while, then unemployment and economic disaster came quickly. The business community sowed the seeds of its own destruction in excessively spending

borrowed money i.e. other people's money, providing some short term wealth but jeopardizing business stability. In Iceland the Prime Minister was subjected to criminal prosecution for his responsibility in not preventing the economic crisis. In the U.S. apparently no politician was held responsible for creating a dangerous situation. However some litigation has started for failure to meet underwriting standards when packaging home loans (see p. 259 Prosecuting Politicians and Underwriters, etc...).

In 2013 and 2014 settlements for fraud with Bank of America, J.P. Morgan Chase and City Bank totaled \$63.65 billion for selling toxic mortgages.

See rt.com/business/181724-bank_of_america-17-billion (consulted September 2, 2014).

In order to evaluate the merits of this film one needs to remember that it is a film made to make money and to do so it helps to have a good story with some villains. Although classified as a documentary this doesn't mean it is all true since opinions in it are expressed throughout. Nevertheless, it is clearly a gripping story of recent history and a tragedy of ideology, and greed resulting in great material damage and human suffering. Inside Job allocates blame clearly on Wall Street and its culture.

Some observers believe what happened is a natural consequence of the free enterprise system and the rapid invention of new financial products having unforeseen consequences. But there is little agreement as to how to fix the system except to avoid all excesses and be more reasonable and be less greedy for money and more focused on building strong businesses over the long term that run less risk for more modest profits.

Mr. Fuld, the chief executive of Lehman Brothers had many jet airplanes and helicopters. He had the nickname of Gorilla because of his competitiveness, belligerence and unrepentance. Mr. Fuld between 1993 – 2007 was paid ½

billion dollars in remuneration. His company lost billions by excessive leveraging borrowing and selling risky products.

There are of course different stories and analyses of what the causes of the financial crisis were by both Republicans and Democrats, greedy people in the financial community, borrowers, speculators, academics who for better fees confirmed the ideology in question. Regulators remained passive and government encouraged conduct that led to disaster. There were a few economists, writers and others who warned of the approaching disaster but these warnings were ignored by regulators, businessmen and the public.

Kazakh view of Wall Street

In January 2010, a high Kazakh official was reported to have said in a Wikileaks reported communication: "The capitalism – you call it market economy – means lots of money. If executives of Goldman Sachs can earn 50 million dollars a year and then manage the U.S. economy in Washington, what is the difference with what we do, they ask¹⁶⁶ .

Chicago Economics Professor Raghuran Rajan's Views

Raghuram Rajan, a professor at the University of Chicago Business School and former Chief Economist at the International Monetary Fund wrote "We are all to blame for the crash (...) the circle of blame goes wider than greedy bankers and negligent regulators (...) it includes you and me and the politicians we elected (...) almost all culprits acted in good faith (...) and even rationally given the circumstances. If this were not the case, avoiding the next crisis would be much easier. We could thump the villains and move on. If only it were so simple".

¹⁶⁶ Le monde.fr lettre titres (version HTML) on behalf of Le Monde.fr info-html@listes.lemonde.fr: *Dictators and Mafias in Central Asia*, 12/12/10. The diplomatic "memos" of Department of State preparing a vitriolic (sulfuric acid) report on former soviet republics.

Some at the University of Chicago have asked how much the widely shared free enterprise views like those of Milton Freedman of the University of Chicago were a contributing cause to the crisis.

The comment of Clive Cook in a review¹⁶⁷ of Mr. Rajan's book from which the above quotes are taken, was that he was one of the few who sounded the alarm before 2007.

Risk in Bankers Blind Faith in Wishful Thinking – Gillian Tett¹⁶⁸

Gillian Tett is an experienced Financial Times journalist who has carefully studied the 2007-2008 financial crisis including subprime mortgages issued in the run-up to this crisis.

She asked herself were the people drafting these mortgages “completely delusional”? Or just cynical and greedy? Or did they believe the sales pitches they were delivering to these customers?

In her research she saw a study by three U.S. economists from Princeton and Michigan. The conclusion of this study was that those bankers doing the securitization actually believed “their own hype (...), bought large quantities of housing stock at the worst possible moment (...) and failed to sell in time to avoid large losses.”

Gillian Tett concludes that they were not “crazy or evil (...) but plagued by tunnel vision or group think”.

This research cast doubt on the idea that risky behavior can be curbed by “demanding that bankers have “skin in the game”, i.e., be sure they invest in the products they are selling.

¹⁶⁷ Financial Times, June 2010, 2010, page 10

¹⁶⁸ Quotations in this section are from Tett, Gillian 2013, *The Blind Faith in Wishful Thinking* Financial Times March 23/24 2013 p. 6.

In addition, there is nothing rational about the approach of such bankers but they have “cognitive biases”.

Such behavior bears some similarities with behavior of cows when being herded and especially with stories of lemmings, a type of rodent in northern regions of Europe who are alleged to follow their leader (or public opinion) to their death by running off cliffs or swimming too long and drowning in too large bodies of water from exhaustion. In fact sometimes due to eccentric reproduction cycles there are mass migrations of lemmings when populations increase excessively.

However, this reminds us once again that humans are animals with many of the same characteristics and animal instincts that help explain with hindsight "unreasonable" human behavior.

Does SAC, The Most Profitable Hedge Fund, rely on Insider Trades to Deliver Huge Profits?¹⁶⁹

Mr. Michael Steinberg in March 2013 become the eighth employee arrested working for SAC, the 15 billion dollar hedge fund – headed by Steven Cohen, with offices in Stamford Connecticut "with over a 1000 staff and 150 separate investment teams". SAC settled other insider trader claims' in March of 2013. Some investors "indicated they would withdraw \$1.7 billion from the firm". Civil charges were also brought by the SEC which implicated another portfolio manager Gabriel Plotkin. Mr. Cohen the boss has had publicity recently relating to his purchase of a 155 million dollar Picasso painting. In 2012 two other portfolio managers in the firm were tried. They identified Mr. Steinberg as an unidentified co-conspirator. An investigation into this company's activities was in its sixth year probably because its investment record is "considered

¹⁶⁹ This paragraph is based on "SAC veteran to face criminal charges – Returns Keep Prosecutors Circling – News Analysis – After Eight Arrests Dan McCrum and Kara Scannell ask: What kind of a company is SAC? Quotes are from this article "Financial Times Weekend March 30-31 pages 1 and 9.

by some to be too good to be true". SAC has earned 25 percent more on the average (each year) since 1996 after fees according to investors. This is "even all the more remarkable because SAC's fees are unusually large". SAC fees are 3% for the annual management fee compared to the usual 1.6% and 50% of investment profits compared to the usual 18%. "This performance is routinely ascribed to Mr. Cohen's particular genius as the greatest trader of his generation."

Sheelah Kolhatkar in "The Dangling Man – On the trail of SAC Capital's Steven Cohen" in Bloomberg Business Week notes that "hedge fund traders used expert net works to connect them with employees at companies who could provide insight about their industries for fees that might run into from thousands to hundreds of thousands of dollars" quoting Richard Choo-Beng Lee a former hedge fund manager now cooperating law enforcement authorities.

Mr. Cohen's lawyer argues although he has not been charged by authorities with any wrong doing he "is caught in the cross fire of aggressive investigations of others" and SAC says he "is a man of integrity".

Mr. Cohen has a close knit group of four sector heads "trusted with the most buying power" of about 1.5 billion of buying power each. He is the boss.

As a result of so many of his employees convictions for insider trading his company has been brought to a standstill and invests only his own money which is still in the billions of dollars.

This reminds one of Mr. Madoff's reputations to always have high returns for his investors. But in his case there was no serious investigation by the SEC or other authorities or prosecutors who should have investigated his "genius".

Cassidy's Article – What Good is Wall Street?

John Cassidy¹⁷⁰ in the New Yorker notes that the financial industry has since the 1980's moved away from traditional banking activities more closely linked to the real economy accepting cash and savings for deposit and relending to individuals and businesses, and helping finance business through raising capital from public subscription of shares (IPOs). Banks have helped companies grow big by lending to them after initial investments financed by angels and venture capitalists.

The traditional banking business is now a much smaller portion of their revenues and profit. They are buying and selling stocks and bonds (securities trading) with their own capital, depositors' money or borrowed money.

According to Cassidy, for example this activity accounted for 36% of Morgan Stanley's revenues in New York and a much higher percentage of its profits. Between July and September 2010, Goldman Sachs trading activity was 63% of its revenue, and corporate finance just 13%. The Citibank also has very substantial revenue and large profits from trading activities. This seems to have worked out well for most financial institutions except where "rogue" traders take on too large risks (bets) and lose huge sums sometimes destroying their bank, as was the case with Barings on 1995. More recently the Société Générale made a huge loss in France through a rogue trader who received a long prison sentence, later reduced. The top executives remained wealthy.

Trading activity is unrelated to the real economy. It is making bets on the market. How can so much revenue and profit come from this activity? Can it be because of the expertise or inside knowledge of these investors? Goldman Sachs sold securities to clients after helping another client to

¹⁷⁰ Cassidy John, 2010, November 29, *What good is Wall Street ?*, The New Yorker, NY NY page 49-57.

develop a system to profit from a fall in the price of the same investment.

Lehman Brothers bankruptcy triggered a worldwide recession. J.P. Morgan disclosed a six billion dollar loss in the spring of 2012.

Trading by financial institutions and other high risks but often lucrative investments (subprime mortgages) threaten financial stability of investment banks and other financial institutions and the entire financial system.

Lord Adair Turner, the chairman of the UK's top financial watchdog has characterized much of what happens on Wall Street as a "Socially useless activity".

Since 1980 the number of people employed in the U.S. in finance broadly defined has shot up from 5 million to more than 7.5 million. It has gone down significantly after the 2007-2008 crises.

After the carnage, they were receiving huge bonuses again because the financial businesses could afford it despite the fact they were not lending as much as the U.S. government wished to finance the real economy, which restrains economic growth. The employees who lost jobs, savings, houses and retirement pay and the tax payers were and are stuck with the costs.

The resulting losses are unequally and unethically ultimately borne by those who lose jobs and houses, other assets and by the tax payers. Wealthy financiers usually survive such crisis comfortably but often unethically.

Greed, Mistakes and Ignorance of Wealthy Financiers and Politicians

We have seen in the previous sections that the history, nature and purpose of the corporation is to go for the money and is not designed to reach social objectives for the benefit of society although by providing jobs, money to employees and suppliers business also works in the public interest.

However, things go wrong where business leaders' primary or overriding objective is to increase their personal wealth and the policies they follow lead to financial crisis like in 2007.

The story of Sanford I Weill, the former chairman of Citigroup is perhaps the best example of someone who made himself an enormous fortune at the expense of financial and job losses of thousands of other people after he had opportunely retired with his fortune. His timing was perfect. His policy of acquisitions to build a huge conglomerate financial behemoth which included a large insurance company allowed him to pay himself very large salaries and secure other financial advantages. This happened because it was possible for him to argue his policies were good for the business of the bank he directed – it grew very large. But was his primary motivation that of a pirate capturing personal wealth or did he really believe what he did was in the interest of his employees, shareholders, stakeholders and society as a whole? Citibank during this run up in size violated U.S. law by acquiring an insurance company and Jack Grubman, an employee, had a serious conflict of interest scandal. After accumulating a fortune and after the crash he now admits that giant banks should be broken up – it was all a big mistake¹⁷¹.

In Mr Ferguson's view as argued in his documentary Inside Job, Mr Weill and much of Wall Street activity preceding and during the crisis should have been considered criminal activity resulting in prison for those responsible.

But his former employee James Dimon who became head of JP Morgan Chase, who is still in place even though his bank had a multibillion dollar loss is sticking to Mr. Weill "mistaken policies" and still earning very substantial remuneration although he recently reduced it

¹⁷¹ Eisinger, Jesse, August 2 2012, As Banking Titans Reflect on Errors, Few Pay Any Price. Citigroup served as a harbinger of banking rot to come, page 5B The New York Time Business Thursday August 2, 2012.

voluntarily in light of heavy criticism. This bank continued to grow taking over other financial institutions in financial trouble during the crisis with the help of the U.S. government which had the effect of further concentrating and increasing the size of the financial sector excessively. The large financial institutions like JP Morgan Chase, Goldman Sachs and other similar financial power houses to great extent own the United States and its people. See Lawrence Lessig's description of institutional corruption in "Republic, Lost" supra.

There were political policy mistakes which also contributed to causing a crisis. During the Clinton administration policies were put in place to facilitate relatively poor peoples' ability to purchase a home. This government policy to help the poor encouraged giving subprime mortgages to people who were not credit worthy. When easy credit stopped their mortgages without fixed interest rates had interest rates which skyrocketed. Their mortgages became unaffordable and large numbers of foreclosures resulted in making the crisis even worse i.e., negative leveraging.

As Raghuram Rajan, wrote above, there is plenty of blame for many others including the borrowers who were not credit worthy for accepting risky loans. But probably more blame should be placed on those pushing the mortgages on non credit worthy borrowers since they were credit professionals and knew or should have known these mortgages were risky. But they were motivated to push these mortgages because they were paid to do so and when they were packaged and resold the mortgage lender retained no risk of nonpayment. They received the "cooperation" of the credit rating agencies who gave these securities top ratings. They also were not held responsible for this improper conduct apparently on the theory it is only their "opinion". There was an obvious conflict of interest: they were paid by those packaging the securities and in a way

acted fraudulently towards those relying on the ratings which with hind sight seems incredible. However many ratings were based on a mathematical theory at the time accepted by many especially those who profited immensely from this activity.

More recently there was fraudulent or unethical conduct by Barclays relating to the LIBOR interest rate scandal, HSBC's involvement in money laundering and other bad news.

Professor Gar Alpervitz thinks that due to the size of the five biggest banks with combined assets equal to more than half of the nation's economy there is no way to regulate them; they are too big and breaking them up would not last so the best practical solution is to nationalize them. In his article he notes that bigness and competition could be mutually exclusive and quoting a Chicago School economist, Henry C. Simon's view expressed in 1934 "the corporation is simply running away with our economic (and political system [...] Every industry should be either effectively competitive or socialized [...] The state should face the necessity of actually taking over, owning, and managing directly industries in which it is impossible to maintain effectively competitive conditions". Nationalization unfortunately also carries with it the risk of incompetent or dishonest government employed executives. So one may reach the conclusion that nothing works.

For the moment the U.S. is still trying to reform and regulate the financial sector, so if nationalization is the right answer it will need to wait until public opinion and politicians support such action which might only occur after another more serious financial meltdown¹⁷².

¹⁷² Alpervitz, Gar, July 22 2012, Wall Street Is Too Big to Regulate Op. Ed Contributor – The New York Times. See also Allison, Herbert M. May 17, 2011 The Megabank Mess who claims that investing in Mega Banks could be riskier – not less because they are addicted to risk and have "deep seated conflicts of interest", A Kindle Single.

One is tempted to comment that when a community gets in the grips of speculation many actors are mobilized to play their respective roles and no one wants to be the first to break the fever and send the economy into a crisis. As Mr. Prince of Citibank commented that until the music stops everybody keeps dancing (and speculating) so as not to fall behind the others in earning money.

Thus there seems to be a fatal flaw in the liberal free enterprise system which has brought us great wealth but with periodic booms and busts. So far we have not discovered a better system in our imperfect world where greed nearly always overpowers ethics at some point as a stronger motivation most in human beings.

The Business of War – Is it ever Ethical? Preventive War?

At the macro level states, empires and nation states have for most of history acted like criminals and sought richness by conquest which has been a successful business strategy for the most powerful states when they are winners and tragedies in almost all cases. Some rulers even if successful for a period have problems when their empires became too big to handle or their rulers excessive ambitions or incompetence led to defeat. Examples are Alexander the Great, Napoleon and Hitler. Here ethics did not exist because attacking and killing others to gain wealth and land is against the most universal of all ethics principles – do unto others as you would have them do with you and "Thou shalt not kill".

Self-defense is considered a legitimate reason for killing but this becomes difficult when one strikes first on the theory that the enemy will strike later when ready.

A most sensitive question on this issue, which recently arose in the United States relating to its attack on Iraq, is whether preventive war is ethical and under what circumstances. Should it have required a declaration of war by the U.S. Congress, a democratically elected body, or

does the president of the nation have a discretionary unilateral right to make this decision¹⁷³.

President Bush's attack on Iraq was based on mistaken judgment as to Iraq's nuclear and weapons of mass destruction capability and upon the assumption that even if true a preventive war was the right answer. But in the case of Hitler, failure to guess right as to his intentions was nearly fatal to the allies who should have prepared and tried to stop Hitler earlier.¹⁷⁴

Israel faces a similar difficult problem with the development of nuclear weapon by Iran who announced its intention to remove Israel from the map. Général Henri Paris, a distinguished military counselor of French Ministers of Defense, geostrategist, author of books on war, and former commander of the 2nd Armored Division, has concluded from his knowledge of the history of warfare that there is no stopping the proliferation of new weapons. If this truth is taken into account it may be prudent to plan for a balancing of nuclear weapons by the countries securing nuclear weapons, which is probably a better solution than provoking a preventive war.

Most countries except Costa Rica maintain armed forces.

The armed forces are an ethical institution to be encouraged for the purpose of defending each country from an unprovoked attack by an aggressor. Violation of one of the Ten Commandments by organized killing by such armed forces for self-defense can nevertheless be ethical, under those circumstances even if killing others is per se unethical. It is enforcing justice and as we have seen enforcing justice is an ethical activity. It is unfortunately the imperfections in

¹⁷³ Montagnes, Mercedes; Bateman, Kristin. March 22, 2007. *Barron, Feldman Debate War Powers*. The Harvard Record, Vol. 124, No. 9.

¹⁷⁴ Christopher, Paul. 1994. *The Ethics of War & Peace: An Introduction to Legal Moral Issues*. 2nd Edition, Prentice Hall, New Jersey.

See also Général Henri Paris. 2010. *Ces Guerres qui viennent* ("The wars that are coming"), Le Fantascopie Editions, Paris, and his previous books on war.

humanity that lead us into situations where killing is necessary.

A military person also should be ready to sacrifice her or his life in the profession which has high ethical values. Therefore military ethic is special if not unique – it deals with killing or being killed.

The French Minister of Defense in a publication about ethics in the French Navy growing out of a conference on Naval Military Ethics raises various important questions present in this subject for those entering a profession involving reciprocal killings.

The armed forces usually include in their numbers different religious leaders representing the different religions.

Although high technology and sophisticated weapons often means killing occurs at great distances the moral and ethical questions remain present.

In the introduction to this volume a well known philosopher Michel Serres answers questions including one about the difference between ethics and morality. He explains morality comes from the Latin language while ethics is of Greek origin and although meanings were identical long ago ethics has acquired a meaning more associated with deontology of different types of activities¹⁷⁵.

The Business of War turned out to be expensive for the Nazis responsible for the war. The Nuremberg trials held between 20 November 1945 and October 1949 condemned many Nazi leaders to death by hanging. Numbers of others committed suicide before they were executed.

In this case the lack of ethics was enforced ex post-facto which some claimed made these trials illegal. In normal criminal procedure a law which exists must be

¹⁷⁵ Bulletin d'Etudes de la Marine (Study Bulletin of the Navy) n° 43, September 2008, l'Ethique du Marin Militaire (Ethics of the Military Navy), page 1-150 with different articles written by officers and others in the French Navy.

violated to support prosecution of a crime from a legal point of view. To define a crime after it has been committed is not considered legal and can be arbitrary. It can also be considered unethical. Here the terrible enormity of the conduct of killing million of Jews and enemy soldiers was too much. In most countries murder is a criminal act. However in Germany at the time it was considered permissible by the Government and a positive government policy. In addition this aggressive and criminal war caused by the Nazis and Japanese killed a total of an estimated forty million persons. Therefore, the allies were convinced that it would be wrong not to punish the wrong doers.

The History of the Human Slavery Business

One of the major sources of slavery arose from winning the control and power over prisoners of wars in the many wars which have occurred throughout human history.

Although it is probably true that hunter gathers had no slaves, but after humans started living in larger communities with sizeable economic activities creating wealth the business of slavery started and existed throughout antiquity and up to recent times. It was not illegal and was a widespread respected institution. Even today there are millions of humans who are slaves for illegal sexual or economic exploitation even though in most developed countries it is a criminal offense.

The essence of slavery is treating other people like property sometimes purchasing them and selling them. They have no rights or liberty. The Nazis in World War II had Russian slave workers.

As of November 2003, 104 nations had ratified the International Covenant on Civil and Political Rights approved by the United Nations General Assembly based upon Article 4 of the Universal Declaration of Human Rights. Slavery is one of the best examples of how ethics

have changed over time since it was considered legal and ethical for most of the history of the human race¹⁷⁶.

The Piracy Business

It is interesting to note that a leading business magazine recently featured an article about Piracy in the Gulf of Aden with the comment "Piracy is a crime, but it is above all a business". This article analyzed the business aspects of this activity which often includes kidnapping, torture, extortion and killing people. This is already a criminal activity in most developed countries. However, in Somali there is no efficient central government and local autonomous states often tolerate it and share the significant profit often made. The following information is provided in this article.

In 2010, a peak year, there were 321 attempted hijackings with about 1 out of 4 successful ones.

There is also a business selling security services to ship owners to protect their ships. Insurance companies insure the risk since only about 19% of total shipping traffic is impacted. The attacking team usually takes 30% with a special bonus for the first one to board the ship, a team on shore who hold the hostages and takes the ship get 10%. Another 10% is divided among local community and politicians, 20% percent goes to smaller investors and 30% to the "big boss" money people. The highest ransom received was 13.5 million paid for the Irene SL which had a cargo of \$200 million of crude oil. However, 2 or 3 million is a standard. Small pleasure craft are worth about \$500,000.

However, there is estimated \$300,000 costs involved to get into and continue in the business and to be a serious pirate. The business is dangerous. On January 15, 2011,

¹⁷⁶ This section of this book is drawn from general knowledge and encyclopedias like en.wikipedia.org/wiki/History_of_slavery#Cite_note_Britannica_1-1. For further research see David P. Forsythe ed (2009) *Encyclopedia of human-rights* Oxford University Press page 494-502 + Finley, Moses ed *Slavery in Classical Antiquity* (1960) Heffer.

South Korean special forces killed eight pirates who had taken over Samho Jewelry, a chemical tanker, and rescued all 21 hostages¹⁷⁷.

Another recent article¹⁷⁸ reviews two books which gave the impression that facts about Somali pirates are based mostly on oral statements which may be quite unreliable. This article is interesting because the author was invited to lunch with Abshir Bojah, a pirate chief in Puntland and where he is a celebrity. Stopping piracy will probably be possible only when the standard of income rises sufficiently in a country, and an effective central and local government is established and the other nations stop paying pirates. Israel and Russia have this policy.

Courageous Lawyer Fights for Victims of Wrong Committed by Multinationals in Court and Through Law Reform

A well known French lawyer, William Bourdon, wrote a book in 2010 *Face aux crimes du marché - Quelles armes juridiques pour les citoyens ? [Crimes of the market – What Remedies for Citizens?]*¹⁷⁹. This book describes cases tried or settled and the difficulties of victims of criminal misconduct of multinational corporations have in recovering damages for human rights violations and environmental disasters damaging them. One reason for this difficulty is the parent company is generally not legally responsible for actions of its subsidiaries who are separate legal entities.

Mr. Bourdon is not an ordinary lawyer or citizen but one imbued with great ethical conviction. He works to right wrongs for many clients unable to pay him. He established

¹⁷⁷ See *Dog Millionaires*, Bloomberg Business Week, May 16-May 22, 2011, pages 64-71, from which the text in this article is summarized

¹⁷⁸ « The pirates are winning », the New York Review of Books, October 14-27, 2010, Gettleman Jeffrey reviews two books : *Somalia : the new Barbary ? Piracy and Islam in he Horn of Africa*, Martin N. Murphy, Columbia University press [...]

¹⁷⁹ Bourdon, William. 2010. *Face aux crimes du marché - Quelles armes juridiques pour les citoyens ?* Editions La Découverte.

Sherpa, a not-for-profit association with pro bono volunteers to help him reach his objectives. Sherpa has expert knowledge and specializes in promoting forests and helping to slow climate change, analyzing environmental problems caused by mining, lack of access to clean water and agro-food, financial crimes, and research and development to provide effective legal actions.

This association not only attacks wrong-doing by multinationals but negotiates practical solutions to alleviate future problems. It is not just anti-multinationals but cooperates with them to find the best solutions. However, in his book, there is a Chapter entitled "Financial criminality, a congenital sickness of capitalism" which for most U.S. readers probably appears too socialistic and anti-capitalistic especially those on the political right since in the U.S. freedom of individuals and a free market are widely thought to be fundamental values that should not be subject to much regulation.

This association is primarily financed by private charitable gifts from foundations.

The Sherpa and Mr. Bourdon have been active in some high profile litigation such as Agent Orange use in Vietnam, defense of French Guantanamo's prisoners, the Pinochet case, and defense of genocide victims in Rwanda, Total's role in human rights violations in Burma and the negotiated settlement benefiting the victims.

The book is especially interesting because of the thirty-nine propositions or practical suggestions given for improvements in French law and practice.

William Bourdon would expand French court jurisdiction to accept jurisdiction over crimes and misdeeds in other countries by French corporations and their subsidiaries somewhat like what has happened in some Alien Tort Claims law litigation in the United State. This

law was reviewed by the U.S. Supreme Court (see *Kiobel vs Royal Dutch Petroleum Co.*) and has been limited.

In answer to the question "Are some businesses unethical by nature?", one is led to believe by the discussion in this book and experience that ethical ideas are mixed into business activities in various ways. However, the drive for profit or greed often, if not usually, overpowers ethics. When this occurs it is to the detriment of its customers and the public interest. In addition to this difficulty, the history of corporations is one of periodic scandals. The nature of the corporate structure is designed and built to maximize profit not to produce ethical behavior. When and whether the public interest, however that is defined, through public pressure, active associations, non-governmental organizations, new and more effective laws and government regulation, will effectively curb corporate abuses is an open question.

William Bourdon's idea of new national legislation to make multinationals more directly responsible and liable could also be an example for the U.S. should its citizens reach a level of public opinion to motivate its legislators to update the 18th Century Alien Tort Claims act and make it effective.

In France on December 13, 2012 there was an important conference in the *Assemblée Nationale* under the title *Devoirs des Etats, Responsabilité des Multinationales* (Duties of the Nations and Responsibility of Multinationales), organized by NGO's "*Collectif Ethique Sur Etiquette* and *Forum Citoyen Pour La Responsabilité Sociale des Entreprises*" which also included a number of leading politicians members of the French Assembly National, who were interested in these questions to work and promote new legislation.

The United Nations, OECD, and the European Union in the last two years have formulated norms relating to Human Rights going in the same direction but are limited

and do not provide practical remedies for abuses. One objective of this conference was to align French legislation on new international norms and texts. The conference was attended by civil society actors, law professors, activists, and others interested in promoting reforms.

The organizers distributed a one page (front and back) practical Summary of proposed Measures "Multinationals, Human and Environmental Rights: 4 Important Measures to Prevent Violations."

(i) The first one is one proposed in Mr. Bourdon's book as a priority "Responsibility of Parent Company for Activities of its Subsidiaries and its chain of suppliers in France and Abroad." This changes two legal principals and situations (1) where each company is independent and autonomous of other related companies in the same group and (2) shareholders in companies have limited liability. These two principals usually prevent effective remedies for victims of abuses and prevents lawsuits in the country of the parent country because of the legal separation of these entities and/or their suppliers or subcontractors when the parent company exercises some control over those other entities (whether contractual, through owning shares or other evidence of indirect or direct control in fact). This occurs through recognizing an obligation of care (*vigilance*) on the part of the parent company relating to the other entities under its effective control.

The immediate action provided is for a group of parliamentarians interested in parent company responsibility for corporate responsibility to be formed on the initiative of the two associations organizing this conference for the purpose of holding hearings and drafting propositions to put in place the obligation of due care (*vigilance*) for parent companies as well as the 4 measures outlined in this document.

(ii) The second important measure to work on is to eliminate obstacles to access to court action by victims of

injustice to introduce class actions into French Justice to apply to more than consumer protection law. It should be expanded to include all civil cases to all individuals and legal entities whether French or foreign residing in France or abroad to join together as plaintiffs against a French enterprise when the activities of such enterprise are the only facts causing the actual and personnel damages to such person. This should provide for recovery of all damages in accordance with the principals of tort law, i.e. personal injury damage and intangible damage (moral damages) allowed based upon the case law in the Erika case where ecological damage was compensated.

Other immediate action should be studied and consultation with all civil society actors concerned by those interested in broadening the French class action procedure in French law especially those interested in increasing court access to victims of wrongful action by multinationals.

(iii) The third action that needs to be taken is to insure that the French national government sets appropriate standards that will be an example where it conditions investments or participates in the financing itself or guaranties investments. These must satisfy social, societal and environmental requirements.

This applies to government investment insurance by entities such as COFACE and AFD who should not support or guarantee projects endangering human or environmental rights. This means that such clients should be required to follow reasonable due diligence procedures relating to the potential impact of such activities.

Other immediate action to be taken is to organize debates in Parliament on the report sent to the European Parliament by the Ministry of Foreign Commerce on the COFACE and NATIX is on activities they manage for the Nation.

(iv) The fourth important measure to be taken is to guarantee the transparency and access to information on activities of enterprise and their impacts in the field of human and environmental rights and tax paying. At present, even though strengthened by the law of 12 July 2010 (Grenelle II) reporting is still unsatisfactory and it should cover larger geographical areas and French subsidiaries.

More immediate action in France is required to reinstate Article 225 of the Grenelle law II in its version of 12 July 2010 to avoid any further limitation. It is important to give the chance to employer representative organizations and civil society representatives to give their opinions on matters other than financial matters in annual reports and requirements for reporting by subsidiaries.

With regard to Europe, France should continue its active role in the adoption of the European directive in reporting on non financial matters presently being drafted by the European Union.

Jean-Jacques Prompsy goes to Jail – Business and Ethics were incompatible.

One author, who was an executive in a large well-known French company, spent time in jail. His company had contracts with a municipality for supplying water and was involved in a service contract which was a cover for considerable financing of a political party. He notes (i) that illegal market sharing or price fixing were common (*ententes*) among companies, (ii) that corruption payment to officials in foreign governments is necessary to secure contracts in some markets and (iii) industrial espionage is practiced by some states especially by intelligence services of the United States.

This example is cited to emphasize that even in the same country there are conflicts as to what has been

common in business and ethics. In such a situation, reality is one thing and ethics another¹⁸⁰.

Grielen's Predatory Businesses

Alain Grielen, a former French chief executive of a company, who worked for an association of businesses, believes that a quote he attributes to Abraham Lincoln describes the present day situation:

"The financial powers make the nation its prey in peace time and conspires against it in times of adversity. They are more despotic than a monarchy, more indolent than the aristocracy and more egoist than the bureaucracy. The financial groups have become all-powerful. What follows is an era of corruption of high offices. The financial powers seek to prolong their reign in using the prejudices of the people, which they have contributed to create and maintain, until fortunes are concentrated in a small number of hands [...] and the Republic will be destroyed."

The author adds that in the position he had, Lincoln was destined to pay with his life for writing such statements. The author also sees companies as predators, squeezing labor costs down and destroying democracy by controlling politics, the government and the media, so citizens are powerless. Since democratic values contribute to our ethical culture, this powerful ultra free enterprise system is leading our capitalistic democracy to ruin¹⁸¹.

¹⁸⁰ Prompsy, Jean-Jacques. 2007. *Traité des corruptions ou pratiques incorrectes des entreprises*. L'Harmattan. Paris. His book discusses the dilemma faced by an executive where the law, custom (*mœurs*) and morality have distinct meanings, depending on his job and responsibilities, and which vary depending on the time and place, and which might have been unofficially tolerated at some point in the past but then later condemned and punished.

¹⁸¹ Grielen, Alain. 2006. *Menace sur l'humanité à l'ère des prédateurs*. L'Harmattan, Paris. Pp. 23; 59-60.

See also Robert Reich's interview in www.lesechos.fr of 28 January 2008, *L'Europe va devenir super capitaliste*: <http://www.lesechos.fr/info/inter/300235688.htm> (viewed 18.2.2008).

Elizabeth Warren exposes Credit Racket and the creation of the Financial Products Safety Commission¹⁸²

Recent unregulated abuses in credit card credit and mortgage lending in the 3 billion U.S. dollar annual financial services industry have Americans drowning in credit. In 2006, a then record 1.3 million families received foreclosure notices followed by 2.2 million families who were in foreclosure in 2007. That is 89 billion out of the pocket of ordinary middle-class families into bank employees and collection agencies payrolls. This situation has precipitated what some fear to be a worldwide recession due to the lack of credit worthiness of debtors; so now there is no trust, causing a shortage of credit.

The author poses the question: why is the purchase of a toaster so much safer than when a consumer signs a mortgage for credit or a credit card? The answer is that the price of the toaster can't change after purchase. Mortgages and credit cards can have the price increased after being signed by the purchaser at the discretion of the other party. This system seems like an illegal contract with only one party able to change the terms of a contract.

Why are these transactions so different? The answer to this question is regulation. Debt has become much riskier and creditors, mostly bankers, abuse consumers.

Financial products should enjoy the same protection for consumers as for tangible consumer goods, which are regulated by the Consumer Product Safety Commission, an independent agency founded in 1972.

The average Americans have acquired too much debt and many are unable to repay it. This could be for the reason that low and middle income families in the last 30 years have not seen income growing as fast as the wealthy

¹⁸² See Warren, Elizabeth. May-June 2008. *Making Credit Safer. The Case for Regulation*. Harvard Magazine.

class. With prices rising, increased debt has therefore become the reaction of such families to maintain their standard of living.

Those businesses granting credit have increased fees and developed small print in much longer contracts that consumers can't read and understand, and that are highly unfavorable to consumers.

There have been state regulations limiting interest rates, rules against usury, in the past but these have been eliminated with the help of the Supreme Court.

The unfairness of this situation is aggravated by enormous lobbying expenditures made by banks and the credit industry. Consumers have little or no lobbying effort on their behalf.

This situation has been improved by the establishment of the Financial Products Safety Commission, an independent agency to review new products for safety to eliminate hidden snares for consumers and hopefully avoid another serious financial crisis in the US like that occurring in 2007-2008.

Robert Reich – Competitive Pressures on Ethics

Robert Reich, the former Secretary of Labor in the Clinton administration and professor of public policy, has written about the intensification of the competitive struggle between companies in the United States in recent decades and the huge increase in lobbyists and money spent influencing the U.S. government to take actions favoring private corporate interests. He attributes this intensification of competition to progress in science and technology leading to easier communication and transportation, and to the deregulation of industry. As a result, the relative power of individuals as citizens has been greatly reduced while there has been very substantial growth in the U.S. economy. He notes that there are now oligarchies of industrial groups, usually not large numbers of small competitors, and

deregulation has liberated business from bureaucratic rules so it is efficient. Observers on the left claim that corporate leaders have become greedier, but greed is not a new phenomenon. Thus, he claims the U.S. is concentrating too much on economic efficiency and not enough on social, human and ethical values of citizens. As a result, the author sees a growing conflict between corporations and their investors against the citizens. Investors and consumers are winning but salaried employees are losing and citizen's power to participate meaningfully in government is reduced. There is less investment in the public good. He thinks China has a remarkable capitalistic economy in an authoritarian state. Since our democracy seems to be weakening, the author is concerned about the U.S. becoming more like China¹⁸³.

Some would say, to paraphrase Churchill, that the free enterprise system is the worst of all the economic systems, except for all the others.

But in order to make the immense and highly technical investments needed to develop new technologies in some industries like the production of atomic energy, the weakening of democracy as described above may be accelerated even further if a large centralized power like China is the only model that can possibly succeed in making such large long term (fifty or so years in advance) investments. The democratic free enterprise model may not have what it will take to get consensus necessary to make such colossal investments. Even now, the large competitors in the oil and other industries are working together to do the necessary fundamental research and development followed by a competitive phase where each partner takes its development know-how and competes. One major French power company has invested in China because it anticipates

¹⁸³ Reich, Robert B. 2007. *Supercapitalism: The Transformation of Business, Democracy and Everyday Life*. Alfred Knopf, New York.

China may replace France as the leading producer of nuclear power¹⁸⁴.

Professor Reich also points out that the U.S. public has less and less faith in its government and now believes it is run by "a few big interests".

Robert H. Frank – When Liberty and Competition Do Not Produce the Common Good

Robert H. Frank in his book *The Darwin Economy*¹⁸⁵ writes that Darwin had better insights into economic problems than Adam Smith suggesting that Smith's idea that the result of all selfish interests was the common good – the invisible hand at work "was almost an exception to the general rule of competition." Darwin thought that "individual and group interests often diverge sharply". It seems unlikely to the author of this book to think that the sum of the competing private interests and those who win their private competitive wars will together constitute the general interest or the common good for the community. Ferocious dinosaurs (large companies) gobbling up smaller animals and sharks eating other fish do not appear to lead to the common good. But that is competition and survival of the fittest.

The recent experience in the banking and financial sector where competition resulted in larger and larger enterprises eating smaller weaker ones securing ever more pay for top executives and the huge increase in the relative size and power of the financial sector seems to have ushered in the worst financial crisis since 1929 – certainly not in the common good.

¹⁸⁴ These questions and considerations were raised by executives of Total, the French Atomic Energy Administration, EDF and a power executive of BP in a seminar "Cooperation and Industrial Competition (Energy and Transportation)" held on February 19, 2008 at the French Senate and sponsored by the association ADAPES.

¹⁸⁵ Frank Robert H. 2011 *The Darwin Economy Liberty, Competition and the Common Good* Princeton University Press Princeton NJ.

Professor Frank's solution is to tax harmful behavior not to prohibit it. Those that can afford the tax will finance the government but the harmful activity by others less wealthy will be discouraged by taxation.

9. DOES ETHICAL CONDUCT PAY?

This question is difficult to answer because it is not easy to prove one way or the other since unethical conduct is usually hidden. However, in major business enterprises there are few open advocates for unethical dealing because it adversely affects the business's reputation, weakens employee morale and can create large potential risks for the business if the activity is not only unethical but illegal.

There have been many examples in the press where unethical conduct has been extremely costly to countries, companies and many individuals. Recent events in the U.S. relating to Enron and World Com are examples where the real financial condition of the business was not apparent to investors because of lack of transparency and questionable accounting practices which resulted in overstating earnings.

This situation with Enron in the U.S. arose recently after development of new trading markets with high risks. Significant speculation in a more competitive stock market with vanishing margins in some companies pushed business executives into unrealistic and dishonest accounting to maintain earnings, which, when discovered, provoked a steep downturn in the market for its stock and substantial losses for shareholders, including numerous pension funds. For workers, their jobs disappeared. In contrast, many top executives made millions of dollars selling shares based on insider knowledge before the fall. Some criminal indictments and jail sentences have been secured and law suits alleging illegal or insider trading, fraud and other legal theories have been filed and settled for large sums. Even so, unethical conduct may still have been profitable for some corporate executives as it appears to have been for