

Corporate Corruption and Other Pathologies

Joseph LaPalombara
Yale University
USA

Introduction

The Oxford English Dictionary gives this as the first definition for the word, "corruption": "The destruction or spoiling of anything, esp. by disintegration or decomposition, with its attendant unwholesomeness and loathsomeness; putrefaction." The second definition refers to contagion, taint," followed by another, which specifies a process and condition: "A making or becoming morally corrupt; the fact or condition of being corrupt; moral deterioration or decay; depravity."

Although apt, this term may not be strong enough to describe the behavior that has come to light about American corporate managers. Once considered the standard bearers of America's vaunted market system, these persons have engaged in behavior alongside which the swashbuckling Robber Barons of yesteryear appear as rank amateurs. They have lied to governmental authorities as well as their own stockholders. They have falsified official reports, created bogus entities abroad, inflicted vast unemployment and human suffering, destroyed pension funds, and placed their own companies at or over the brink of bankruptcy. Along the way they have enriched themselves, their families and many of their friends.

Taint is everywhere, even in those institutions that are designed to prevent it and, when this fails, to expose and punish the miscreants involved. In exchange for giant-size fees, banks have colluded with corporate malefactors. Major auditing firms, as consultants, helped firms disguise some of the same accounts that others of the same firm were then auditing, and

certifying as accurate. One such firm, Arthur Andersen, actually went out of business, after its senior managers engaged in a frenzy of shredding possibly incriminating evidence. At least two of the remaining "Big Four" are suspected of wrongdoing.

The need for reform is obvious. Some of it may be under way, but it is highly improbable that what emerges will be more than mild palliatives. The truth is that formidable obstacles, including related pathological conditions in American society, threaten to turn such efforts into window dressing. The probability remains high that genuine amelioration of what's wrong will simply not materialize. Unless obstacles to reform are recognized and overcome, the future is unlikely to look very different from the past.

Forms and Magnitude of Corruption.¹

It will help to recall, in brief compass, the unprecedented magnitude of recent corporate misbehavior. The Enron Corporation is emblematic of the problem. Until the scandal broke, its senior managers were lionized everywhere - not just in the business world but in the mass media, the legislative assemblies and university lecture halls of the leading management schools. In the year 2000, Fortune magazine named Enron "the most innovative company of the year." Four years later it would describe this same company as an organization of criminals.

Enron's violations include not just falsified reports. Its executives also created offshore entities in blatant violation of law, and used these instruments to enrich

themselves and their friends, at the expense of the parent company. Together with managers of other energy companies, top executives recorded entirely bogus sales of electric power, maneuvers that were also the apparent cause of the equally bogus energy crisis that cost the state of California and its citizens an estimated thirty billion dollars.²

This astonishing behavior could not have persisted for long were it not for the fact that, in tacit collusion with these scams, as the Financial Times put it, "Leading Wall Street figures knew Enron was misleading investors when they took part in sham deals to disguise its financial problems. . . ."³ Similar complicity occurred with leading banks, in the U.S. and Europe, that encouraged fraud in many other companies as well, by providing these errant firms with "layers of financial engineering."⁴

The banks engaged in other morally and legally dubious behavior as well. Like paying each other fat fees in exchange for favorable reports that each bank would make on securities being underwritten by one of its presumed competitors. This practice was analogous to the role of shells in scams like Three-Card Monte. Prosecuted in New York, the banks paid fines totaling over one billion dollars, a sum lamented by the Financial Times not to be even remotely fitting the gravity of the misbehavior involved.⁵

In the words of Stephen Cutler of the Securities and Exchange Commission, the banks were widely "committing securities fraud."⁶ In the Enron case, one of the "greatest scams ever," the banks were described by Fortune magazine as the company's "partners in crime."⁷

Enron was of course only the first in a long series of corporate scandals, many of which are still unfolding. A life of mendacity became the norm for corporate managers, bankers, auditing firms, consultants and Wall Street analysts alike. There were no whistle blowers around. Only cynics. Nothing remotely approaching these scandals - in their spread, magnitude and noxious effects - has ever before afflicted American society.

Furthermore, Enron represented only the top of the iceberg. In short order, similar behav-

ior was revealed in companies like WorldCom, HealthSouth, Tyco, Dynegy, Lucent, Adelphia, Xerox, Global Crossing, IMClone and many others. The accounting fraud at WorldCom caused "the largest collapse in U.S. corporate history."⁸ One of the company's senior executives told the U.S. Senate's Judiciary Committee that WorldCom was really a "criminal enterprise."⁹ Nevertheless the fine imposed, of \$750 million, was judged by the Financial Times to be so paltry as to constitute "A ringing endorsement of fraud."¹⁰

Early reassurances from corporate apologists that the Enron and WorldCom scandals represented only a few "rotten apples" in an otherwise wholesome business community were dimmed as evidence to the contrary piled up.¹¹ Inferential evidence as to the depth of the problem was apparent in the astonishing number of firms that, in the aftermath of the first exposes, rushed to amend their own earlier financial reports. In effect, the cream of corporate America, which boasted its hiring of only the brightest MBAs that money can buy, suddenly discovered internal "errors" that any beginning student of accounting would never have missed.

The Myth of Self-Regulation.

Despite evidence of widespread misdeeds, there exists a powerful tendency in the United States, reinforced by equally powerful corporate interests, to minimize the problem. The message we are hearing from corporate executives and lobbyists is to deny any need for additional governmental regulation of corporations. Because the corporate community has heard a loud wake-up call, we are assured, it will forthwith correct its own behavior. This mantra is echoed in legislative halls, in our daily newspapers, on radio and television talk shows, as well as in the classrooms of our business schools.

The current buzz-phrase is "better corporate governance." Deans of leading business schools, who once sang paeans to so many executives, first rushed to condemn the malefactors. Then, in harmony with the mantra, they assure us that the best approach to reform

is self-regulation, buttressed by the introduction of much more attention to business ethics in the MBA curricula. Almost no one is ready to admit that the problem is structural and that for this reason also requires surgical intervention from the outside, perhaps in the form of new and/or expanded governmental regulations.

To counter this impression that these promises of reform are so much "spin", corporations are mimicking the management schools. For example, droves of "ethics officers" are now being appointed. The national Ethics Officers Association formed in 1992, has leaped from ten members then to over 1,000 today.¹² Along with consultants from the outside, this new breed lead seminars on corporate ethics, and work to bring corporate "codes of social responsibility" into existence. The message is unmistakable: We've been bad, but we will be good in the future.

This is really an old and well-worn refrain. Forty years ago, the Senate sub-committee on "unusual payments", headed by Frank Church of Idaho, shocked the nation with its findings of corporate misconduct. Corporate executive were then hiding from their own boards of directors off-book payments made overseas to promote their interests. In a limiting case like that of Chile under Salvatore Allende, corporate money was used to topple a legitimate government and encourage a coup d'etat.

The scandals revealed by this committee, and later by another such body created by the United Nations, led to two important steps. First, the United Nations created a special branch on Transnational Enterprises, designed to keep tabs on the behavior of multinational corporations operating in the Third World, and to assist such countries in their dealings with multinational corporations. Second, in 1976, the Federal Corrupt Practices Act was passed, which makes senior corporate officers criminally liable for certain malpractices defined in the act itself.

American corporations engaged in damage control on this occasion as well. To ward off new governmental regulations, they engaged in a rage of writing internal "codes of conduct". To round out a picture of self-reform, institutions

like the International Chamber of Commerce and the O.E.C.D. also wrote "guidelines" for corporate conduct abroad. The idea was to take the edge off demands made on companies by the United Nations, with demands made on nation-states regarding the fair treatment of firms that sought to make direct investments within their borders.

Obviously, these earlier codes were anything but effective insurance against corporate deviancy. This was apparent as early as the 1980s, when scandals emerged involving U.S. defense industries. The wrongdoing was then so severe that the corporate community feared new governmental regulations. To short-circuit them, firms created the Defense Industry Initiative (DII). Its stated purpose was to encourage more ethical behavior in the competition for rich governmental contracts, and the modes of performing under the terms of these arrangements.¹³

These defensive strategies are being reprised today, accompanied by books that argue the case that to behave honestly and ethically is actually good for business as well.¹⁴ But even as the volume is turned up on these proclamations of future good behavior, news to the contrary keeps popping up. We learn, for example, that mutual fund managers have long indulged a wide range of unethical practices that make victims of their own investors. Similarly, despite the existence of the Federal Corrupt Practices Act, some corporations have easily found their way around its restrictions. The SEC reports that, between 1994 and 2002, 474 contracts overseas, worth \$237 billion, may have been secured through the instrument of bribery.¹⁵

Contributory Pathologies

This leads us to note several of the structural conditions of American society that aid and abet deviant corporate behavior. The most obvious of these, examined in great depth by Charles Lindblom, involves the entrenched position of business organizations in America.¹⁶ Lindblom's analysis goes beyond the observation that the political institutions of democra-

cies tend to defer more to the business community than they do to any other segment of society, or that business organizations exercise considerable control over governments themselves.¹⁷

This concentration of power and influence while not consistent across issue areas, is particularly true of the United States. A prime reason, also explored by Lindblom, is that other basic institutions of civil society, beginning with the schools and including religious and fraternal organizations, tend to inculcate or to reinforce value systems dominated by the rights of private property and enterprise, both individual and corporate. Against this entrenched position, the other institutions of civil society, and of government itself, constitute relatively weak countervailing power centers.¹⁸

However, business organizations are far from relying only on the protection offered by this privileged status. Thus, in the United States, they have fostered to the point of pathology the salience of money in politics. No other country even remotely rivals the United States in the role played by electoral contributions in the determination of electoral outcomes. The sums of money now required (or felt to be so) by candidates are so huge that both winners and losers become beholden to business and corporate contributors.

The existential condition created by American electoral laws brings about an additional irony, namely that only the independently wealthy, if they chose to finance their own campaigns, can hope to remain free of the implied quid pro quo that typically accompany large electoral financial contributions. Thus, to capture the office of the mayor of New York City, one successful candidate spent almost seventy million dollars of his own fortune. One result of this system, says the *New York Times*, is that "The modern party's key allegiance is to corporate America, and its tolerance for intrusive federal government ends when big business is involved."¹⁹

The pervasiveness of this mode of influencing public policy is reflected, for example, in a singular aspect of the 250 members of Congress who sat on the nine committees that

investigated the Enron scandal: All except a small handful of them had earlier received electoral contributions from Enron. Similarly, Arthur Andersen and other leading auditing firms had funneled millions of dollars in electoral money, and not just to George Bush and Dick Cheney and other Republicans. Democrats like Senator Christopher Dodd and others of that party were equally coddled beneficiaries of their largesse. When it comes to "buying" influence in high places, corporations are without narrow ideological considerations.

In return for these investments, the least the corporate donors expect to get is opposition to legislation or regulatory changes that might hurt their interests. When necessary, they will also expect that new formal rules will be introduced on their behalf, concerning, for example, fiscal matters, access to natural resources, some protection from external competition, etc. The list could be very long. The legislative history of the Sarbanes-Oxley Act would vividly show this process at work.

There are other ways in which those in high places who benefit from campaign financial assistance can express their gratitude. In the midst of all the scandals, for example, the Bush administration named Harvey Pitt to head the SEC, a lawyer widely known as the major tax advisor to the same firms he would now presumably regulate. Objections to this act were so vociferous, President Bush shifted his choice to William Donaldson, a former dean of the Yale Management School, and a principal in one of the most powerful firms on Wall Street.

It took no time at all for the latter to express his fear that prosecutors might move so relentlessly against corporate managers as to damage the United States by diminishing the risk-taking propensities of managers.²⁰ Alan Greenspan, Chairman of the Federal Reserve, quickly followed suit. Having once warned the business community of the dangers attaching to its "excessive greed," he now worried that the rigorous enforcement of the Sarbanes-Oxley Act (see below) would create among managers a "pervasive sense of caution."²¹ These statements were being issued, it should be noted, at a time when only a handful of malefactors had actually

been indicted!

Former and sitting Senators also got into this act. John Danforth publicly took to task federal authorities that prosecuted Arthur Anderson executives, on grounds that such actions risked jeopardizing the "legitimacy" of the United State government.²² And Senator John Warner excoriated federal agents who had dared to handcuff John Rigas, thus administering "humiliating punishment before conviction." This is the same John Rigas, head of Adelphia, who, together with his family, defrauded the company, its stockholders and its creditors of several billion dollars.²³

And Republicans in Congress, including Michael Oxley (the co-sponsor of the Sarbanes-Oxley Act), are actively working, with open encouragement from William Donaldson, to place severe limitations on the authority of state-level prosecutors, like Eliot Spitzer of New York, to bring legal actions against corporate managers.²⁴ It is patent that to "federalize" such prosecutions at this time would be to render them crippled or stillborn.

This recitation could go on at length, but several other structural conditions that contribute to pathology should be mentioned, however briefly. For example, the industrial "hollowing out" of the country has clearly and perhaps permanently weakened organized labor, thereby greatly reducing its "countervailing" role in politics. Today, the unions of America are only pale reflections of the kind of political and electoral clout these organizations once wielded. By and large, they represent little threat to corporate interests.

Similarly blunted has been the historically important role of the mass media in exposing misbehavior in the business community, and then championing reforms on behalf of the collectivity. The media today are either big business per se, or they are divisions of even more gigantic corporate entities. The television industry in particular, being the principal beneficiary of the explosion in campaign spending, is unlikely to foster any change, for example in the electoral laws, that would reduce the cash flow it realizes from political campaign advertising.

Thus, the so-called "voice" option in

American politics has been sharply muted.²⁵ This means that the media, like the political parties, are markedly less effective today as either instigators of or transmission belts of demands for more effective regulations. Nor can citizens exercise what Albert Hirschman once called the "exit" option, as a means of registering their dissatisfaction with existing conditions. Ironically, it is now the business firm that, when it finds local laws and regulations unappetizing, can and will "exit" from the system - by pulling up stakes and taking its capital and its jobs elsewhere.

Management schools, unwittingly perhaps, are also a part of the overall pathology. The values they inculcate are basically the same ones followed by "the smartest guys in the room" - at Enron and elsewhere. Cutting corners, artful deception, evasive and complex strategies, and the search for other competitive advantages are some of the things learned and admired by MBA students. Professor of finance, business strategy, and marketing dominate the top of the academic pecking order. At the very bottom of the pyramid one finds those who teach courses or hold workshops in business ethics. The very fact that, as in the past, management schools are again singing the praises of business ethics is in itself a telling indication of the nexus between the academic environment and the gross misbehavior uncovered in the corporate world.²⁶

The toleration of corruption would appear to be endemic in America. Eminent bishops not only do little or nothing about priests discovered to have been child molesters. They have gone to great pains to hide these terrible practices, and to deny that they exist, until it is shown that this form of depredation is widespread indeed widespread. Notwithstanding the exposes, the Vatican will issue strong reservations about the alleged haste with which these deviations have been exposed, and the guilty prelates punished.²⁷ This sounds much like complaints that apologists have voiced about moves against corporate miscreants.

Professional and amateur sports are also tainted. The illegal use of steroids and of other illegal substances is now widely acknowledged.

Books revealing these practices written by athletes become best sellers. So does a book written by a baseball manager in which, after lying for years about accusations that he violated rules against gambling, a confession finally emerges. The consensus around the United States is strong that this malefactor will eventually be installed in baseball's Hall of Fame.

Owners of professional teams, as well as university presidents and athletic directors, often go to extremes to cover up violations of rules that pertain to their respective realms. No one doubts that in sports too "money talks". Malefactors themselves, whether the athletes or their coaches most of the time can count on escaping discipline. When a few are punished, especially the "stars", they are solaced to know that other teams and institutions will be rushing to hire them.

The same erosion of earlier more stringent standards now applies to the academic side of American universities. Plagiarism, once considered almost automatic grounds for expulsion has come to infect whole generations of students, who learn to copy the work of others, and represent it as their own, very early in their educational careers. Today, even distinguished professors whose plagiarism is exposed will find their acts rationalized by university administrators.

Indeed, the same thing will happen when faculty members are accused of much graver crimes, as in the instance of the U.S. Government's claim that Harvard's Institute for International Development, in connection with its Russian program, had defrauded the government of tens of millions of dollars. Not just Harvard's president came to the defense of Andrei Schleifer, the program's director, but colleagues in the economics department as well, tried to put exonerating "spin" on these eye-popping revelations.²⁸

It is clear that, even these academic figures, presumably committed to finding and divulging truth, can get away with egregious violation of ethics or law. In those rarest of instances when they face dismissal, they, like star athletes and their coaches, will have little trouble finding other universities who will wel-

come their presence on campus.

The daily stream of media attention to deviant behavior of all kinds would satisfy even the hungriest of scandalmongers. One day the world's major petroleum companies confess that they have greatly over-estimated their "proven reserves", thus artificially boosting the quoted stock-exchange price of their companies' shares. The next day, the board of the Ford Foundation finds it perfectly normal to name as its chairman a person who has just paid a one million dollar fine and foregone seven million dollars more in bonus pay, in order to settle formal charges that he had committed fraud, as head of the Xerox Corporation. This is quickly followed by media reports that, despite the Federal Corrupt Practices Act, major U.S. companies have engaged in bribery abroad, without any apparent adverse consequences to any of their senior managers.

This steady diet is only part of a much broader daily intake that underscores the pervasiveness of corruption. American firms operating in Iraq and headquartered in Texas are found to be gauging the American government that provided the lucrative contracts in the first place. Medical doctors are leaving the profession in frightening numbers largely because recklessly brought legal suits about alleged malpractice have brought insurance levels to unacceptable levels. Bogus or exaggerated lawsuits in the sphere of personal accidents and injuries are an integral part of this type of corruption. In this general context, why would anyone be surprised that general public has developed a "hohum" attitude about lying, cheating and more serious acts of corruption in the corporate world.

Even investors and stockholders in global firms seem relatively uninterested in reform. The CEOs of twenty-six major American and European firms were recently asked how much interest and attention their companies were paying the matter of corporate ethics and good conduct. Contrary to all the talk about widespread interest in "better corporate governance," these persons said that this matter was not at all of much interest. Why? Because investors, including major institutional

investors, are so single-mindedly interested in short-term profits, it is almost impossible to make a "business case" for spending money to induce better conduct. Conclusion: "It is difficult for managers to 'do the right thing' when being driven by profit-oriented investors".²⁹

It may all boil down to what David Callaghan calls "The Cheating Culture".³⁰ Lying and cheating, he notes, actually begin in the classrooms of elementary schools, and progress into and through other social institutions. According to this author, the root cause of this situation is also structural: Where the pay-offs for successful deviancy, like cheating or worse, are very high, and the punishment for the unfortunates who get caught is very low, deviant behavior becomes essentially automatic, perhaps axiomatic.

The Prospects for Reform

Despite the gravity of the scandals, only a relative handful of corporate executives have been indicted. One (Samuel Waksol of IMClone) was convicted and sentenced in June, 2003. Two more (Mr. and Mrs. Andrew Fastow, of Enron) have plea-bargained for lighter sentences. Yet another major Wall Street figure (Frank P. Quattrone) escaped punishment in Manhattan when his prosecution ended in a mistrial. And in February of this year, Jeffrey Skilling, a former CEO at Enron, surrendered to federal authorities, but he entered pleas of "not guilty" to the forty-two counts his indictment contains.

There will be a few other indictments, more of them by state prosecutors, provided however that William Donaldson of the SEC and Republicans in Congress do not succeed in clipping their wings. It is sardonic that so much media attention has centered on Martha Stewart, whose insider trading violation, if that is what it was, returned a paltry profit of \$44,000. But, Mrs. Stewart was tried and convicted not for this but, rather, because of allegations that she lied under oath about it to a federal prosecutor.

Thus far, it is the Sarbanes-Oxley Act that represents the most prominent effort at reform.

Enacted in 2002, this legislation set off a storm of protest that it was too harsh, and that it would discourage risk-taking by corporate managers.³¹ Given the law's relative mildness, rendered so by modifications to an early draft that Senator Sarbanes was forced by Republicans and some Democrats to accept, these protests appear more self-serving than they are substantive.

To be sure, the law requires corporate managers, under threat of criminal prosecution, to certify that they have examined for their transparency and accuracy the internal modes of recording and accounting, and not found them wanting. Corporate boards are now must appoint an internal audit committees, - at least one of its members is an expert in accounting. Firms are also urged to appoint more outside members to their boards, and also to write internal codes of conduct and social responsibility. None of this appears excessively onerous.

The Sarbanes-Oxley Act also mandates the creation of the Public Accounting Oversight Board, whose purpose it is to bring about more transparency in corporate accounting and reporting. This is all to the good, especially if, as some anticipate, the agency will do much to assure that emerging codes of conduct are more than rhetorical documents.

Much more should and can be done. No one imagines that, in the short run, the privileged position of American business can be dislodged, or radically modified. Similarly, substantive changes in the electoral laws of the country remain unlikely. One possible attenuation of the negative effects of the latter may be the apparently emergence of the Internet as a tool in electoral campaigns.

Other more demanding regulations should be considered. Legislation or regulatory rules can be enacted that clearly and neatly separate auditors from financial consultants. Firms specialized in these services should be strictly prohibited from providing both of them for the same client. The so-called "firewalls" now being built within such firms to separate the two functions obviously will not work. To cavil about this will inevitably lead to another round of mischief.³²

Equally desirable, indeed urgent, is that auditing firms assume legal responsibility for their reports, a change they are ferociously resisting. This seems odd. For generations, engineering firms the world over have been held legally responsible for their certifications regarding the structural conditions of everything from bridges to nuclear power plants. Negligence or graver acts in the provision of these certifications may subject such firms to civil and criminal prosecution. The best of them survive and prosper despite this onus. Why should auditing firms, whose negligence or venality can be as devastating as we have learned, not be similarly regulated?

Whistle blowers also require more substantial protection than is currently provided. One might consider paying them a "bounty" similar to those paid informants that expose tax dodgers. Whistle blowers in the corporate world, because they typically need to go public with their claims, may require material protection and compensation for long periods. In the "cheating cultures" of the world, whistle blowers will be more shunned than honored, less likely to find gainful employment, sometimes for many years.

Other, more feasible steps are in order. There should be an absolute prohibition against the creation abroad of so-called "special purpose" vehicles whose activities do not appear on corporate balance sheets. These were prominently used in the scams pursued by Enron's managers. Such arrangements currently in existence should be closed down.³³

Radical change must be forced on the offshore fiscal and banking "paradises". After long dragging its feet about this need, the U.S. government is now collaborating with other O.E.C.D. countries to bring about this reform. Past American reluctance was premised not to protect individual tax evaders. It is reasonably certain that, once made transparent, these secret accounts will reveal that American corporations, perhaps in large numbers, have been hiding cash from their stockholders, as well as from tax collectors. The U.S. government can set a new tone within the O.E.C.D. by vigorous championing this needed change.

Corporations should also be compelled to do what Microsoft has elected to do on its own initiative: Report as current operating expenses all of the stock options issued in any fiscal period. Amounting as they do to hundreds of millions, even billions, of dollars, options, if not charged against current income, also create a false impression of the financial condition of the firm. Far from aligning the interests of managers with those of stockholders, the options are a strong contributing factor to the moral degeneration of managers.³⁴

The U.S. government should also move forthwith to bar from any bidding on government contracts all firms found to be in violation of law, or who have paid penalties to the government to avert or settle formal accusations of misconduct. Permitting such firms to bid on and actually to be granted lucrative contracts is not only immoral. It also sends an entirely wrong signal to the rest of the corporate community, namely, that deviancy really does pay or, in any case, carries easy-to-carry penalties.

The need for more legal compulsion is beginning to be recognized at the international level as well. A set of revised O.E.C.D. guidelines on proper corporate conduct may include the recommendation that certain rules of transparency be legally mandated by national governments. Such legal compulsions may well include the strict separation of the roles of board chairman and chief executive officer. Similar measures must be taken to give shareholders much-needed greater empowerment, such as more efficacious ways to sue board members and corporate officers.

Should the O.E.C.D. actually move in this more restrictive direction, it may also wish to re-consider its conclusion, after much research into the matter, that there is little or nothing that national governments can do to discipline the universal corporate practice euphemistically called "transfer pricing." This practice of over- and under-invoicing is well known to involve corporate lying to at least two different tax authorities. Management schools, in their professed greater concern with ethics, might wish to explore the moral implications involved in this practice.³⁵

Implications for the Future

It is much too early to suggest that these suggested reforms will actually materialize. To begin with, many of the items we have treated are the kinds of myths, metaphors and deep structural conditions that experts in future studies assume are present in any society.³⁶ This being so, and with the U.S. stock market in apparent recovery, apologists are rushing to reassert the validity of these myths and metaphors. Despite all of the deviancy, they proclaim, the system "really works". Thus, at the conceptual level that singles out the social, cultural or political causes of the corporate corruption, there will continue to be strong efforts to deny that there are widespread aspects of society that breed, aid and abet corporate misbehavior.

The deeper truth is another, namely, that no, the American system does not really work at all, or certainly not nearly as well as is preached. Indeed, the scandals have exploded precisely because the reality of things drifted much too far from what the general public was expected to believe about the American system of free enterprise. Even the stockholders of these deviant firms, including their huge institutional investors, have been shocked by the deep discrepancy between myth and reality. The critical question is whether, as a result of all of these shocking revelations demands for amelioration will be strong enough to bring about substantive change.

The rush to new codes of conduct, and the proliferation of Ethics Officers are by not means encouraging signs of a future scenario of the kind required. One of these Ethics Officers, employed by the bankrupted WorldCom/MCI Company, has recently issued a new set of "Ten Commandments". These are little more than platitudes, urging managers to build trust, respect the individual, uphold the law, avoid conflict of interest, promote loyalty and, in short, to do the right thing!³⁷ How much can such urgings change the behavior of managers who have long since been told, even explicitly, that "greed is good!"³⁸ Members of the corporate community itself warn us that "It is not hard to

realise that measuring integrity of senior managers on a 10-point scale may not prevent a repeat of the excesses of the last boom." Or, as a fund manager at Wells Capital puts it about these efforts at self-healing, "It won't necessarily change anything the next time."³⁹

An alternative approach to the crisis, and the future scenario that would follow from it, would be a conscious and skeptical re-examination of existing structural arrangements, and, indeed, in the dominant mindset about American capitalism. For example, the prevailing mantra about de-regulation of government controls should be weighed against the widespread and still escalating negative externalities that these policies have helped bring into being. More, not less, government "interference" is required. The depression-era Glass-Steagall Act, which kept the banks on a straight-and-narrow path, should and could be re-instated, providing one of the building blocks of a future scenario that would be, in a constructive way, backward-looking.

This alternative future scenario would lead to a more careful and nuanced examination of the dubious idea that the so-called American model of capitalism and the free market is so superior to anything else that it warrants being emulated in every other part of the world. To be sure, Europe has also experienced a few large scale corporate scandals in recent years, and the most spectacular of these, involving the Italian Parmalat Company, may well turn out to out distance any U.S. firm in the magnitude of fraud committed.

Yet, the Parmalat case actually makes a point about how different things might be in the U.S. were some of the suggested reforms to come into existence. In Italy, as well as elsewhere in Europe, the laws pertaining to the legal responsibilities that attach to corporate board membership are much more severe than those of the U.S. Furthermore, it might be noted the senior executives of the Parmalat Company were immediately arrested, and kept in jail on the grounds (certainly not exaggerated) that, on the loose, they might well work to destroy incriminating evidence. The moral here would be that, even where certain myths and

metaphors about the market and free enterprise are widely shared, there can be considerable variation in how the state treats corporations.

Thus, the Financial Times, itself not rigidly tied to an American litany about the rights of private property and free enterprise has little trouble in its conclusion as to what the future requires. To correct existing pathologies, it warns, "Only collective action by government, regulators and shareholders will work."⁴⁰

The prospect for such a future scenario is not terribly bright. For example, for several decades the European Union has for decades been unsuccessful in bringing a "Company Law" into existence. Not only have corporations and their professional associations from member countries been unable to agree as what such a regulation might contain. Member states have permitted narrow nationalistic considerations to get in the way of its enactment.

A long-debated Multilateral Agreement on Investments met a similar fate. The proposed agreement would establish a much-needed set of rules for both multinational corporations and the national governments of the home and host countries where such firms are present. The opposition of "No-Global" movement, consisting of persons with their own thoughts as to acceptable future scenarios, was only one reason what the MLA failed. The truth is that neither national governments nor their corporations are prepared to foster a future that would bring only relatively mild changes to the present. Here too a qualitative leap is required before leaders on both sides will accept the necessity and/or utility of bringing about change.⁴¹

This being said, it remains apparent that new and/or modified regulatory regimes are urgently required, at both the national and international levels. Some hope for such a future scenario may actually lie in an enlarged European Union, whose members have already come to learn, often painfully, the limitations of the American conceptions of free enterprise and free market capitalism. Indeed, a European philosophical tradition that does not raise the concept of "limited government" to the some-

times-destructive heights it has reached in the United States may also serve the purpose of identifying a more universally acceptable and mutually beneficial future.

Less narrow and myopic thinking about the proper relationship between state and civil society is therefore a pressing need. One way or another, the future require from governments everywhere resolute and efficacious steps designed to safeguard the collectivity against rapacious behavior, no matter from what quarter it may emanate.

Correspondence

joseph.lapalombara@yale.edu

Notes

1. The term "corruption" carries many definitions, and, when it refers to politics, requires that at least one person to a corrupt transaction be an elected or appointed public official. My usage in this essay is broader. See, Joseph LaPalombara, "Structural and Institutional Aspects of Corruption," *Social Research* Vol. 61 (Summer, 1994), 325-350, esp. 340-245.
2. A close look at this sordid behavior is provided by Bethany McLean and Peter Elkind, senior writers for Fortune magazine: *The Smartest Guys in the Room: The Amazing Rise and Scandalous Fall of Enron*. New York: Penguin, 2003. See also an insider's account of what transpired: Brian Cruver, *Anatomy of Greed: The Unshredded Truth from an Enron Insider*. New York: Carroll and Graf, 2002. Cf. Mimi Schwartz and Sherron Watkins, *The Inside Story of the Collapse of Enron*. New York: Doubleday, 2003. For a short and hair-raising version of the behavior of Enron's manager, see Roger Lowenstein, *Origins of the Crash: The Great Bubble and Its Undoing*. New York: the Penguin Press, 2004, Ch. 7.
3. July 29, 2003, 1.
4. *Ibid.* Cf. *The Economist* March 9, 2002, 21, on this point.
5. July 29, 2003, 13. See also *New York Times*, July 29, 2003, C1,5. The latter news-

- paper lists as the banks involved in paying these fines: Lehman Brothers, Bear Stearns, Goldman Sachs, Salomon Smith Barney, Merrill Lynch, First Boston, Credit Suisse, UBS Warburg, and others.
6. Financial Times, July 29, 1. The banks involved in these penalties include Merrill Lynch, Citigroup and J.P. Morgan Chase.
 7. "Partners in Crime," *Fortune* Vol. 143, No. 9 (October 27, 2003). 78-100. This article is an excerpt from the book by McLean and Elkind, cited above.
 8. Financial Times, August 6, 2003, 11.
 9. *Ibid.* The witness was George Barr, who had been in the U.S. Attorney General's office during the administration of George Bush, Sr. He called the government's leniency toward WorldCom "one of the most shameful episodes I have witnessed in Washington since starting my career in public service." Barr also noted that, despite evidence of deliberate fraud, the U.S. government continued to allow WorldCom/MCI to bid on government contracts.
 10. Financial Times, July 29, 2003, 13. The fine is called ludicrous because, even in bankruptcy, WorldCom/MCI was enjoying daily revenues of \$500 million. Indeed, having earlier lied about its income to the tune \$11 billion, MCI was trying to collect back taxes on it. The FT found this "chutzpah. . . breathtaking."
 11. The Economist magazine, October 18, 2003, 14, had no doubt whatever that "the entire barrel was tainted." It lamented that, where the auditing firms are concerned, "deep-pocketed industry lobbyists managed to water down the reforms proposed after the scandals broke."
 12. Financial Times, December 3, 2003, 9.
 13. This history is nicely and succinctly reviewed in the Financial Times, December 31, 2003, 9.
 14. See, for example, Marc Benioff and Karin Southwick, *Compassionate Capitalism: How Corporations Can Make Doing Good an Integral Part of Doing Well*. London: Career Press, 2004; Lynn S. Paine, *Value Shift: Why Companies Must Merge Social and Financial Imperatives to Achieve Superior Performance*, New York: McGraw-Hill, 2003. Cf. "Understanding Corporate Governance," Financial Times, January 16, 2004, Part 3.
 15. Exxon Mobil (to finesse the Federal Corrupt Practices Act) is reported to have paid an American, who acted as an intermediary for the company \$51 million, to be used as bribes in Kazakhstan, to secure a lucrative petroleum contract. IBM is accused of paying \$25 million to secure a contract in Argentina. Financial Times, May 8, 2003, 11.
 16. Charles E. Lindblom, *Politics and Markets*, New York: Basic Books, 1977. See esp. Ch. 13, "the Privileged Position of Business."
 17. *Ibid.* 178-185.
 18. *Ibid.* 162-167, 198-200.
 19. December 28, 2003, 8.
 20. Financial Times, July 24, 2003, 11.
 21. Financial Times, July 30, 2003, 12.
 22. New York Times, May 6, 2003, 1.
 23. *Ibid.* See, also, Roger Lowenstein, "The Company They Kept," *New York Times Magazine*, February 1, 2004, 26-32, 42-43, 62. Lowenstein notes that, however venal the Rigas family may have been, they were helped along with their crimes by "just about anyone whose job it should have been to protect the public" (28).
 24. Financial Times, July 24, 2003, 11.
 25. See Albert Hirschman, *Exit, Voice and Loyalty: Responses to Decline in Firms, Organizations and States*. (Cambridge, MA: Harvard University Press 1970).
 26. See Sumantra Ghoshal, "Business Schools Share the Blame for Enron," Financial Times, July 18, 2003, 11. The author, a professor of international management at the London Business School delineates illustrates how pseudo-scientific academic theories easily lead to corporate misbehavior.
 27. New York Times, February 24, 2004, A8.
 28. For a chronology of this scandal, see Johnson's Russia List, www.cdi.org/Russia/Johnson.
 29. Financial Times, January 8, 2004, 8. This was a report from the World Economic Forum, held in February at Davos, Switzerland. Cf. the Economist, January 24, 2004, 53-54. which takes only a mildly more optimistic view. "Greed is out," says this economically liberal magazine, "Corporate virtue, or the appearance of it is in." (My emphasis.) It might be added that it

- is all too easy for these executives to imply that profit-hungry investors so to speak force their misdeeds on them.
30. David Callaghan, *The Cheating Culture*. New York: Harcourt Brace, 2004.
 31. See John Plender, "Capitalism Under Scrutiny," *Financial Times*, September 5, 2003, 2.
 32. These "firewalls" may work more effectively to create a badly needed separation within international investment banks, between their research branches and the branches that become involved in underwriting activities.
 33. The pervasiveness of these clever schemes is illustrated by Roger Lowenstein, *op. cit.*
 34. Lowenstein, *Origins of the crash*, *op. cit.*, 14-21, 165-166, 196-199, 205-208, provides a wealth of evidence as to the deeply nefarious consequences of present modes of treating stock options. This change might also be a first step in the reform of corporate executive salaries, which are now so out of hand that commentators the world over have criticized U.S. practices. See, "Where's the Stick," *The Economist*, October 11, 2003, 13.
 35. The new and revised O.E.C.D. guidelines are scheduled to appear in May, 2004. See *Financial Times*, January 12, 2004, 11. Similar empowering of American shareholders is strongly advocated by Lucian Bebchuk, of the Harvard Law School. *Financial Times*, October 22, 2003, 17.
 36. For a discussion of alternative approaches to analysis and to depiction of alternative futures, see Sohail Inayatullah, *The Causal Layered Analysis Reader*. Taipei, Tamkang University Press (in press).
 37. *Financial Times*, January 16, 2004, Part 3, 2-3.
 38. The pages of Roger Lowenstein's *Origins of the Crash*, *op. cit.*, contain chilling examples of how deeply rooted in American corporate culture is the concept of greed.
 39. *Financial Times*, January 22, 2004, 17.
 40. July 2, 2003, 8.
 41. The best treatment of the politics that led to the failure of MAI is by Edward M. Graham, *Fighting the Wrong Enemy: Antiglobal Activists and Multinational Enterprises*. Washington, D.C. Institute for International Economics, 2000. Cf. Amory Starr, *Naming the Enemy: Anti-Corporate Movements Confront Globalization*. London & New York: Zed Books, 2000.

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- _____. July 29, 2003. The banks involved in these penalties include Merrill Lynch, Citigroup and J.P. Morgan Chase.
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