



Crime and (the Lack of) Punishment

Neil Senturia

I am passionate about great crimes and the criminals who commit them.

But I often wonder if the long arm of our law, the finest justice system in the world, is at times deeply corrupt, especially with regard to the most recent financial meltdown of 2008.

Bernie Madoff is living in a one-room condo properly known as the Federal Correctional Institution in Butner, North Carolina. The furnishings are modest, one might even say, spare, a bed and a toilet—no Martha Stewart towels, no Richard Meier architectural floor to ceiling windows, and no view of the park. Look at the bright side, though... no mortgage to refinance and no HOA fees.

In contrast, several fistfuls of equally corrupt, devious, deceptive, crooked, manipulative titans of the financial industry have somehow completely avoided any liability, responsibility or accountability for the crimes they committed. (As well as some accomplices in Washington, D.C.)

Why? What uniquely American legal principles come into play such that the only person in jail at this time is Bernie while the rest are still living in their Park Avenue apartments?

A [recent article](#) in *The Wall Street Journal* states, “The U.S. government’s investigation into the collapse of Lehman Brothers Holdings, Inc. has hit daunting hurdles that could result in no civil or criminal charges ever being filed against the company’s former executives.”

It seems that bad behavior has become an acceptable business practice. If you get caught, you only pay a fine. If you get away with it, you win. What kind of system is that?

The Lehman story hinges on some delicate legal nuances. I am not a lawyer, I’m only a simple citizen of the world, and it does seem to me that often our system of justice gets spun around in such a strict legal sense that no one is ever guilty. It feels like the perpetrators take the plea we all make in front of the judge when we are hauled up on having run a red light. “Nolo contendere your honor.” This legal phrase essentially stands for, “Guilty, but with a really good explanation.”

How is this possible? Or said another way, WTF. This country approached a financial meltdown that rivaled the China Syndrome, and somehow no one is responsible. Of course there are many culprits and fingerprints, admissions and recriminations but no one has yet been found guilty and put in jail. Yet Ponzi scheme mastermind Madoff sits in prison.

It's not just Lehman, let's include the full litany, the all-star lineup of the best, biggest and brightest as well as the most (in my humble and personal opinion) dishonest, devious, crooked, manipulative, lying, deceitful members of the financial greed and corruption fraternity which also includes some of the most generously compensated. It's the equivalent of the 1927 Yankees and their infamous Murderers' Row.

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At least the Yankees won the World Series. These boys merely tried to bankrupt America. And by the way, Ruth and Gehrig never got paid like these guys and they had really good numbers—they hit .342 and .356 respectively.

Allow me to approach the home plate umpire and turn in the starting line-up, including some relief pitchers:

Bear Sterns: Jimmy Cayne

JP Morgan: Jamie Dimon

Merrill Lynch: John Thain, Stanley O'Neal, Kenneth Lewis

Countrywide: Angelo Mozilo

AIG: Hank Greenberg, Martin Sullivan

Bank of America: Ken Lewis

Citigroup: Chuck Prince

Wells Fargo: John Stumpf

Goldman Sachs: Lloyd Blankfein

Morgan Stanley: John Mack

Hedge fund managers: Cioffi and Tannin and a half-dozen more who have managed to lose a few billion here and a few billion there, including but not limited to insider trading charges currently underway with Raj Rajaratnam.

Numerous books have been written on the subject of the meltdown. I offer you *Fools Gold*, *Too Big to Fail*, *House of Cards*, *Black Swan*, *Bailout Nation*, *Collateral Damaged*, *The Colossal Failure of Common Sense*, *In Fed We Trust*, *The Greatest Trade Ever*—more than enough to fill a floor to ceiling book shelf.

But I am not going to recount all the myriad sins or the sinners. Rather, what I want to write about is how and why this happens in America. I have begun to believe that “bad behavior” is an acceptable business practice. Bad behavior is factored into the budget, into the strategy and into the practice of American business. And most significantly, it is condoned in the boardroom.

I contend that “crossing the line” is now more than ever an integral part of the American Way of Doing Business. This is not a new phenomenon. Think of Arthur Miller’s play *All My Sons* (written 64 years ago), and the shoddy airplane parts that lead to disaster.

Examples abound—patent infringement, deceptive sales practices, monopolistic pricing, cutting every corner you can to increase your margin, even at the risk of the health of the customer... lead paint ring a bell?

I believe that in many cases the company knows that what it is doing is wrong, maybe not legally wrong, maybe not technically wrong, maybe on the edge, with the approval of a coterie of lawyers and accountants and consultants whose livelihood depends on the largesse of the big boys.

So they shade the facts, they maneuver the numbers, they argue for arcane legal theories—anything that will give cover to the crime.

Pause for a moment. Did you ever wonder why more than 40 business schools currently require as a core course—ethics? It is a stand-alone course—not just a nice chapter in the business book on management. It is its own course. What has happened in America such that ethics is now a required course?

Apparently that course was not available when our Wall Street barons got their MBAs.

The implication is that a student needs to learn not only the second law of thermodynamics but also the difference between right and wrong.

Huh. When did this happen? Did the basic ethics course somehow get lost in the first grade syllabus or did we skip the class in second grade, or did the concept of ethics become so obtuse, so convoluted, so shaded, so gossamer that we need to explicate each the concepts for an entire semester? Ethical behavior is no longer as obvious it seems. It is now such a complex subject with associated nuances and subtle distinctions that it must be taught.

Are the inmates running the asylum?

Let's go back to the boardroom. The basic premise of American business now seems to be damn the torpedoes, full speed ahead. If by chance we are found to be using faulty torpedoes, with misaligned GPS guidance systems, or infringing on other torpedo makers or engaging in monopolistic torpedo pricing, or selling torpedoes to people who do not need them, do not want them, do not understand them but hey, if we can make a 58% gross margin on those torpedoes, well then, I'm there for you, baby.

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And if one of those torpedoes comes back at us through some kind of misguided mistake whereby a torpedo purchaser is able to send it back our way, why then we have a plan.

We do not say we are sorry, we do not say we will take it back, we do not say we will honor the warranty and send out a new non-defective torpedo, we do not quickly rectify the torpedo mistake. No. What we do is stonewall.

We hire torpedo lawyers who are experts, who can demonstrate that the torpedo was in fact perfectly reasonable (think of collateralized mortgage debt obligations, lightly sprinkled with synthetic derivatives), and we fight. We argue that it was user error. The consumer hit the accelerator, not the brake.

We proclaim our innocence, we find the loophole, the keyhole, the foxhole—any damn hole we can straddle or jump into. And if we get down in the hole deep enough, the torpedo just zooms over our head and we are home free. Safe and sound and the world keeps spinning until finally we are forced to recall over 350,000 vehicles (Toyota). But, hey, we put up a good fight. At least we had the float for a while, we double straddled, and pointed all eight fingers and two thumbs in 11 different directions. Floor mat, accelerator, brake—they are all down there around your foot. Not our problem. Cut your toenails. Get a smaller shoe.

So back to the titans of high finance. Ask yourself: How is it that the only guy in jail for high crimes and misdemeanors in the financial forest is Bernie Madoff? This poor schlub was a big time crook, he tried a little Omerta to try to save his wife and kids. Then he takes the fall, and he gets 150 years.

But the rest of the fraternity—the big boys above him, around him, to the side of him, in the limo with him, at the golf club with him, in South Beach with him, the ones who traded with him—they get a hall pass. Sure, some of them have to give back some money but none of them is in jail.

Not one!

If you want to cure financial and business fraud, I have a simple solution. By the way, my use of the word “fraud” is not in the legal sense, it is in the ethical sense. Please refer back to that ethics course they are teaching at Wharton and Harvard and Yale and Stanford—the one that teaches the difference between right and wrong.

You want to stop white collar crime? Just put Fuld or Cayne or Blankfein in jail for one year with a roommate named “Bubba.”

Welcome to America, boys. Now you can get a first hand, upfront, close and personal view of how the system really works.

Bubba does not know a sinking debenture from patent infringement on a chip design or a genomic drug discovery or a sliced and diced \$1 million mortgage given out to a house gardener who makes \$25,000 per year. But he does know right from wrong.

If he knows right from wrong, why is he in jail? I contend that most of the citizens of the criminal justice system know right from wrong. Sure, they got caught, they may have pleaded not guilty at their first hearing, but in the end, when the jail door slams shut, I am willing to suggest that most, if not all, know the difference between right and wrong. They have all kinds of other issues that caused them to end up there but fundamentally, leaving aside the very few who are actually innocent and wrongly adjudicated, most of the boys and girls in the slammer know the difference and are anxious to do the time and get out and have one more chance at life and redemption.

They know that what they did was wrong. A jury told them so. And I argue that they knew it inside, in their guts, as well. They were not blind to the moral imperative. They just got caught.

Let's bring the argument back to the boardroom. I believe that some business executives today simply factor the cost of rotten behavior into the cost of doing business. Their mantra: "If we are caught, then after spending many years denying and prevaricating and elaborating and elucidating the miasmatic shifts that caused us to go astray, we will just pay the fine and move on down the road."

"Pay the man the \$5 and fuhgetaboutit."

And if we are not caught or if we get off with a slap on the wrist (house arrest or probation or community service or a modest fine), well then I am definitely there for you, baby, and we can continue the dance, taking special care that the musical chair industry does not stop making chairs.

Now let me circle back to the law. Ernst and Young were the accountants for Lehman. The prosecutors have characterized their audit of Repo 105 as a “house of cards” business model, designed to hide billions in liabilities in the years before Lehman’s collapse.

Ernst and Young of course vigorously denies such a characterization and are defending themselves “against the allegations that this maneuver violated generally accepted accounting principles.”

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I love the word “maneuver.” Elegant, simple, modest and benign. After all, the double steal is a maneuver in baseball, the Hail Mary pass is a maneuver in football, and “creative accounting” is a maneuver in business.

The bottom line (or the one right above that line) is that if one parses the legal maze of accounting very carefully, it appears that Ernst will get off and Richard Fuld will get off and somehow in the final analysis, no one is ever really legally accountable for the fact that Lehman imploded amidst a \$50 billion fraud. (This time, it is in the full-throated sense of the word.)

“Accountable.” What a lovely, tricky, legal word. I ask you: why is the chasm so wide between right and wrong, when it seems like it should be quite narrow? Maybe that is why they now teach ethics.

Believe me, I am not in favor of abrogating laws, I believe in the Constitution, I believe in due process, I am not an anarchist. But what I want to explore, to shine a light on, is how did it happen that behavior in the 21st century seems to be so rotten and how is it that no one is ever really responsible?

At least during the Middle Ages, they put bad people in the stocks in the town square. Of course, the truth is that unethical behavior did not start in the last 20 years. Go back to the Robber Barons of the early 20th century. America has a long and glorious history in the dark arts of chicanery, bribery and malfeasance.

Have we become a country where “my dog ate my homework” is the equivalent of a “get out of jail” card from Mr. Monopoly? The testimony Wall Street executives gave in front of the Congress was equivocating and nuanced so fine that you could let go of a sentence, and it would rise to the ceiling as if lighter than air.

“How did it happen that behavior in the 21st century seems to be so rotten and how is it that no one is ever really responsible?”

Having framed the question, here is my suggestion.

Look at recent events in Egypt and Tunisia and now Libya. Angry citizens are protesting against their leaders in their desire for democracy. We do not need to seek democracy in America since we have it. But I wonder why so few people seem to be outraged by the lack of ethical behavior amongst us. Where is our anger, where is our outrage, where is our fury, and where is our demand for better behavior?

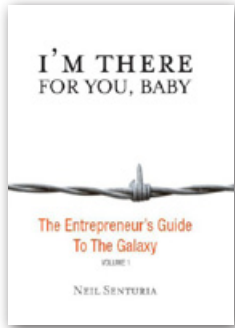
We protest high gas prices, we love/hate health care reform, we favor/oppose unions and political parties. The list is endless. But in the matter of behavior, we seem a bit tame, a tad modest, as if it would be unseemly to actually storm the Bastille.

As a country we don't seem very wound up about ethical behavior. I am not advocating for more regulatory agencies. The ones we have would be enough if they did their job and did not have a closed-loop, revolving door with the same crooks that they are supposed to regulate. In the end it is like every deal I have ever done. You name the price, and I'll name the terms. You explain the rules of the game, and I will find a way to beat your brains in.

What I want to see is more "Sesame Street." It's time to teach Tiny Tot Ethics 101, a six-week course in the sandbox. Maybe a downloadable app—Angry Birds Meet Mr. Right and Mr. Wrong. Or Farmville for Future Financiers. Ethics and honorable behavior belong in the early education curriculum.

By college and business school it is too late. 🇺🇸

Info



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ABOUT THE AUTHOR | Neil Senturia has re-invented himself several times in his relentless pursuit of entrepreneurial success. Currently he is the CEO of Blackbird Ventures, an investor in high growth potential companies. Neil's diverse endeavors range from writing sitcoms to technology with a stint as a real estate developer in the middle. He has been CEO of six technology companies. His companies have been sold to Cisco, Kofax and Lockheed Martin. And no bio is complete without

noting that one of the six went broke. Currently he teaches entrepreneurship at UC San Diego's Jacobs School of Engineering von Liebig Center for Entrepreneurism and Technology Advancement.

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