Can a Corporation be a Criminal?

The right to bring civil suits against corporations for the damage their activities have caused has long been established in American law. However, the notion that criminal charges can be brought against a corporation is less self-evident, for, as the saying goes, "One cannot jail a corporation." There is a tendency to confuse crimes committed by one corporate executive for his or her personal gain with corporate crime, or with crime committed by a corporation as a whole. Thus when Martha Stewart was charged and convicted of lying to investigators about insider trading, it was not Martha Stewart, Inc. (a corporation she founded and headed) that committed or facilitated a crime, or was otherwise involved in wrongdoing. Indeed Stewart's corporation (the shareholders, employees, clients) was considered one of the victims of her crime, albeit indirectly.

Corporations as a whole, however, can be charged with a crime because they are collective entities, made up of organizational networks and hierarchies, means of communication and transportation, office space, and other assets that can be put to criminal use. When agents of a corporation use the corporate infrastructure or assets to commit a crime meant to boost general profits and benefit shareholders, the corporation as a whole can legitimately be held as the culprit. Thus when the president and vice-president of Beech-Nut Nutrition Corp. systematically orchestrated the adulteration of purportedly pure apple juice for babies, and its shareholders reaped the benefits, that corporation was charged and convicted.¹

Federal law recognizes corporations as subject to criminal laws by ascribing to them a legal status similar to that of an individual.² From the viewpoint of a communitarian sociologist, treating corporations as individuals means that they have the rights and responsibilities of individuals and therefore can legitimately be punished when they fail to discharge their legal and moral responsibilities properly.

As to the claim that shareholders remain innocent when corporate employees act illegally and thus should not be punished, it must be remembered that the shareholders are nevertheless the beneficiaries of the illegal behavior. The corporation as a whole is the transgressor when illicit profits are channeled into
its coffers rather than pocketed by executives. Hence, it seems proper to hold the shareholders responsible. It is up to them, after all, as the ultimate source of corporate sovereignty, to see to it that the executives, acting as their agents, uphold the law. And if the executives do not, it is up to the shareholders to retain a law-abiding crew.

Legal scholars debating the costs and benefits of criminal versus civil prosecution for corporations focus on the distinction between deterrence through monetary fines available through civil sanctions and deterrence through the combination of monetary fines and moral condemnation available through criminal sanctions. Criminal sanctions typically assume the victim has a moral right to be free of the defendant’s conduct, regardless of its profitability or its greater utility to the defendant or society.

Corporate nominalists such as V.S. Khanna, Alan Sykes, and Daniel Fischel view corporations as contractual associations of individuals, with a “personhood” limited to legal transactions. Corporations do not have an independent identity, cannot suffer moral stigma, and therefore only waste public resources when subject to criminal sanctions. Communitarians will be quick to point out that the corporation is a social entity with a distinct personality in society. Those who manage and own them are far from unmindful of their reputation and know what is morally right corporate behavior. Thus and in fact many companies prominently advertise their efforts to practice corporate social responsibility.

Frequency

There are no definitive or reliable assessments of how common corporate crime is in the United States, either in this decade or previous ones. The F.B.I. does not compile comprehensive data on corporate crime in its Uniform Crime Reports. Indications exist, however, that many of the major corporations in any given industry have engaged in activities that are at least ethically wrong even if not outright illegal. The sociologist Edwin H. Sutherland published the first academic study of corporate crime in 1949, White-Collar Crime. His study of 70 non-financial corporations found that in total they had been convicted of 980 criminal and civil charges, for an average of 14 convictions per corporation. In the 1970s, Marshall B. Clinard and Peter Yeager found that of 582 large U.S. companies they studied over a two-year period, 60 percent faced an average of four charges of violating the law. In recent years, many of the major pharmaceutical companies have been investigated for withholding information about the negative side effects of drugs they have marketed. The Corporate Crime Reporter found in June 2005 that 9 out of 30 Dow Jones Industrial Index Companies have been convicted of a crime, and this study did not include their subsidiary companies. Finally, since its creation in July 2002, the President’s Corporate Fraud Taskforce has helped federal prosecutors charge over 900 corporate wrongdoers and secure over 500 convictions, with many trials still pending.

Corporate crimes are often difficult to detect and prosecute, either because the wrongdoing can be passed off onto one or more individual employees or because the illegal behavior is buried in complex networks of transactions, hidden behind corporate fronts, or concealed in offshore accounts. However, one only has to open the Wall Street Journal on any day to learn about another
allegation of corporate fraud, environmental destruction, antitrust violations, or
some other form of corporate antisocial conduct.

A Short History of Corporate Crime in America

Corporate crime is hardly new. Throughout American history there have been
major incidents that have caused great suffering and captured public attention.

In the early 1800s, banks within the United States began taking liberties and
testing just how closely their internal operations were monitored. In 1832,
President Andrew Jackson vetoed a motion to extend the charter of the Second
Bank of the United States, attributing his decision to the bank’s corrupt and
tyrannical actions. In the same year, Pennsylvania revoked the charters of ten
banks, citing operations contrary to the public interest.

One of the most infamous early examples of corporate corruption was the
Crédit Mobilier scandal of 1872, during which Union Pacific Rail Road con-
tracted with the Crédit Mobilier construction company to build a government-
subsidized railroad. The company, owned by major Union Pacific shareholders,
overcharged to the point of depleting all of Union Pacific’s government grants.
To avoid a congressional inquiry, the head of Crédit Mobilier sold stock to
prominent members of Congress at sub-par prices; thus when Congressmen
voted to increase government grants to Union Pacific, some of the money went
directly into their own pockets.

In the early 20th century, Upton Sinclair and other muckraking journalists
brought to light such scandals as the poor sanitation in food-processing plants,
the large-scale adulteration of meat products, and the false claims of medicine
ads, leading to massive public outrage. Journalist Ida Tarbell’s rev-
elations about the Standard Oil Trust stoked public fears about corporations
that merged together into “trusts” and then dominated particular industries. In
an early case of a corporation being caught defrauding the government, the
Department of Commerce and Labor discovered in 1907 that the American
Sugar Refining Company had failed to pay the government large sums in im-
port duties.

War profiteering has been a part of American history since the Revolutionary
War, and the period of the World Wars was no exception. Edwin Sutherland
details widespread price inflation and tax evasion on the part of American
corporations during World War I, as demonstrated by Federal Trade Commis-
ion investigations and the 1935 report of the Nye Committee. Stuart Brandes
has shown that during World War II, 14.4 percent of defense company profits
were the result of price increases, despite government attempts to prevent war
profiteering. Moreover, the mean salary of presidents of corporations jumped
159 percent before taxes from 1939 to 1945. The 1980s saw a rash of defense
procurement fraud, when upward of 50 U.S. contractors came under investiga-
tion for overcharging the Defense Department and other violations. Between
1983 and 1990, a quarter of the 100 largest Pentagon contractors were found
guilty of procurement fraud. In the 1988 to 1990 period, there were 16 cases
involving 14 of the largest weapons makers.

In the 1960s, the auto industry came under fire after revelations, largely by
Ralph Nader, that it had systematically avoided incorporating safety features
into automobiles in order to reduce costs. The case of the defective Ford Pinto,
that was prone to exploding in rear-end collisions, was one of the most flagrant
examples of an auto company’s knowing of a car’s safety problems but choosing not to fix them.

Environmental crime perpetrated by corporations became a serious cause of public concern during the 1960s and 1970s. Incidents such as the polluted Cuyahoga River’s bursting into flames in 1969 and books such as Rachel Carson’s Silent Spring alerted the public to the dangers that dumping chemicals into waterways and spewing pollutants into the air posed to human health. Numerous cases have since come to light of companies exposing workers and communities to toxic substances with full knowledge of the dangers.

The 1980s are notorious for the savings and loan scandal, when the owners of savings and loan associations throughout the country fleeced their members of billions of dollars. These crimes, however, do not fit under the rubric “corporate crime” as defined here because the beneficiaries of the crime were not the shareholders of the company, in this case the depositors, but the individual owners.

The late 1980s and 1990s saw the first legal penalties imposed on the tobacco industry for misleading the public about the health risks of smoking. In 1988 the tobacco industry lost its first lawsuit holding it responsible for the death of a smoker, and this decision set off a flurry of suits brought by state attorneys general, culminating in a $206 billion dollar settlement with 46 states in 1998.

The beginning of the 21st century has seen a new wave of corporate scandal. Many of the most notorious cases—Enron, WorldCom, Tyco, Adelphia—have involved executives misleading investors about the financial health of the company and misappropriating company funds for personal use. While they do not qualify as corporate crimes as previously defined, the scandals have led to revelations that accounting firms have consistently failed to audit their clients’ books properly. Their motivation for not questioning accounting irregularities appears to have been to hold on to their clients’ business, especially the lucrative consulting services they provided on the side.

Historically, much of the focus on corporate crime has been on large corporations with many investors, but small corporations have also been charged with their share of corporate wrongdoing. Especially prominent in the media have been stories of nursing homes, doctors’ offices, and pharmacies defrauding the government out of Medicaid and Medicare payments.

Waves of Disclosures, Reforms, and Backsliding

The history of counteracting corporate malfeasance in America has been one of public outcry, followed by spurts of reform, and then partial erosion of these reforms. For much of the 19th century, and especially during the Gilded Age (approximately 1876–1900), politicians often exhibited a laissez-faire attitude about corporate crime—when they were not complicit themselves. Tycoons of the period, often called “robber barons,” were allowed by and large free rein in their business practices. However, as the power of the industrialists grew, and many corporations merged into even more powerful trusts, the public began clamoring for controls. In 1887 President Grover Cleveland signed one of the first significant pieces of federal legislation to regulate corporations, the Interstate Commerce Act. It was meant to prevent excessive charges, pools, rebates,
and rate discrimination by railroad companies. However, the Supreme Court during the period struck down several key legal provisions needed to prosecute corporations. The federal government’s first effort to break monopolies, the Sherman Antitrust Act of 1890, was similarly ineffective in the years following its passage.

It took Theodore Roosevelt and his “Square Deal” for America in 1901 to initiate a period of serious “trust busting.” Empowered by the reform spirit of the Progressive movement, Roosevelt successfully broke up J.P. Morgan’s Northern Securities railroad trust and John D. Rockefeller’s Standard Oil. He signed legislation that gave the Interstate Commerce Act real authority, and created the Department of Commerce and Labor. When Upton Sinclair’s *The Jungle* was released in 1906, Roosevelt called for immediate action against the meatpacking industry, resulting in the 1906 Pure Food and Drug Act and the Meat Inspection Act. The regulation of industry continued through William H. Taft’s administration and into Woodrow Wilson’s term. Wilson created the Federal Trade Commission to investigate unfair and corrupt behavior by corporations, secured the passage of the Clayton Antitrust Act in 1914 to strengthen the government’s ability to break up trusts, and in 1916 signed the Adamson Act to institute an eight-hour work day for railroad employees, the first initiative on the part of the federal government to regulate working hours in private companies. However, World War I brought an end to the wave of reform, and in the years between the war and the Great Depression, industry regained much of its autonomy. Large conglomerates once again dominated entire industries and antitrust laws were used mainly against labor unions.

This laissez-faire era came to a close with the election of Franklin D. Roosevelt. In his second Fireside Chat, May 1933, Roosevelt declared that “government ought to have the right and will have the right . . . to prevent . . . unfair practice [by industry] and to enforce this agreement by the authority of government.” The Federal Securities Act of 1933 was intended to increase corporate transparency about the value of stocks and other securities, and thus better protect investors. In 1934 the Securities and Exchange Commission was established to monitor trading on the stock market and ensure that corporations properly disclosed their financial situation. To improve the conditions of working men and women engaged directly or indirectly in interstate commerce, Roosevelt signed the Fair Labor Standards Act in 1938. The Act established a maximum workweek, overtime standards, and a minimum wage and set up the Wage & Hour Division within the Department of Labor to ensure that employers complied. Roosevelt’s ability to pass new regulatory laws began to fade after the 1937 recession, his failed attempt to pack the courts, and increased Congressional opposition. By the start of World War II, the wave of reform brought on by the Great Depression had effectively come to an end.

During the 1950s, corporations once again faced little in the way of new government regulation. Eisenhower staffed his cabinet primarily with business executives and believed in minimal government involvement in the economy. During the 1960s, however, government increasingly had to respond to public demands for corporate regulation, largely inspired by the rise of new consumer protection groups and the environmentalism movement. For example, Congress passed the Traffic and Motor Vehicle Safety Act of 1966, in part due to the efforts of Ralph Nader.
In 1963 the first major effort to counteract environmental pollution by corporations emerged with the passage of the Clean Air Act, which was further strengthened in 1970 and 1990. Rachel Carson’s book *Silent Spring* is widely credited with spearheading the contemporary environmentalist movement and alerting Americans to the role of corporations in polluting the environment. Growing public demand for a cleaner environment led to the creation of the Environmental Protection Agency in 1970. The new agency was charged with setting environmental standards for industry and enforcing compliance. The Occupational Safety and Health Administration was also created in 1970 to protect workers and ensure that industries maintained healthy workplaces.

The 1980s under Ronald Reagan was a decade of rolling back much regulation of corporations. By the late 1980s, however, and then again at the beginning of the 21st century, government renewed its efforts to institute stiffer penalties for corporate crime and stricter oversight. The following account of these recent efforts provides a detailed sense of the tug of war between attempts to rein in corporations and their successes in getting out from under regulation.

**The U.S. Sentencing Commission**

The *U.S. Sentencing Commission* was formed in 1984 because judgments meted out for individuals in federal courts varied greatly, so that, for instance, a person caught with a “joint” of marijuana could get 20 years in one court and receive a suspended sentence in another. The commission formulated a set of guidelines that Congress enacted in 1987, and required judges to vary not more than 25 percent from these guidelines. (In January 2005 the Supreme Court ruled that sentencing guidelines could only be advisory and not mandatory.)

Heartened by its early success, in the late 1980s the commission decided to turn to studying the penalties for corporate rather individual crimes; it found that such penalties were often minimal. For example, in the 1980s, of the 60 some banks convicted of money-laundering, 25 received fines of $10,000 or less. Such small fines have a negligible effect; corporations can easily absorb them as part of the costs of doing business. Some economists argue that fines must take into account not only the potential for gain, but also the likelihood of being detected. Thus, Gary Becker of the University of Chicago said in a 1985 *Business Week* article, “If the illegal act does $1 million worth of harm with a 50-percent chance of going unpunished, then the fine would be $2 million.”

This is indeed a valid observation except that the probability that a corporate crime will be detected, the responsible corporation will be tried and convicted, and the government will actually collect the fine is much lower—perhaps even closer to 0.5 percent, rather than 50 percent.

The U.S. Sentencing Commission published its first-draft guidelines in November 1989 and opened them to public hearing on February 14, 1990. While the commission asked for comments, it offered only two options: One option provided for fines ranging from two to three times the amount of damage caused (or illicit gains obtained) by a corporation; and the second established a 32-level sliding scale of fines that was dependent on the severity of the offense, nature of the crime, and mitigating circumstances.
The guidelines suggested the introduction of huge fines, up to one-third of $1 billion, for crimes that had previously resulted in fines of tens of thousands of dollars. For such serious crimes as drug companies neglecting to report data showing that drugs they sold caused multiple fatalities or for crimes causing major and repeated damage to the environment, fines could be as high as $364 million per single offense. In contrast, four-fifths of all corporate convictions between 1975 and 1976 resulted in fines of $5,000 or less. Between 1984 and 1987, the average corporate fine was $48,000, and 67 percent of the fines were $10,000 or less. Consider some specific cases: Eli Lilly & Company, the pharmaceutical manufacturer, was fined $25,000 for a guilty plea to a misdemeanor charge for failing to inform the government of four deaths and six illnesses related to its arthritis drug Oradex. Though the company was charged with only a misdemeanor, the drug was linked to at least 26 deaths in the United States and even more from its sale overseas.\(^\text{13}\)

The commission's proposed guidelines elicited a firestorm of opposition from major corporations, their lawyers, trade associations, and the columnists close to them. Liberal groups that might have fortified the commission's firm stance were barely aware of the hearings and initially played a rather minor role in the process. The result was predictable: the commission withdrew its recommendations and promised to reconsider them. It then swung full force in the opposite direction.

Its new set of recommendations, released March 6, 1990, drastically scaled back most of the penalties, in some cases by as much as 97 percent! For example, under the commission's original guidelines, a level 10 offense carried a penalty of up to $64,000; the new option reduced it to $17,500. Level 25 dropped from a hefty $136 million to $580,000. The maximum proposed penalty dropped from $364 million to about 3 percent of that, or $12.6 million.\(^\text{14}\)

These much diluted and weakened guidelines were still not acceptable to the big corporations and their political allies. Liberal groups finally entered the arena, though rather weakly. Business groups by contrast, riding high on their recent victory over the commission's draft, went in for the kill. They called upon the commission either to withdraw its conclusions completely or adopt only recommended guidelines. They even successfully enlisted the White House to help restrain the commission.

The commission finally reached a formula acceptable to big business and, issued its final report on May 1, 1991, on all but environmental crimes. In a minor concession to the critical press and liberals, the commission somewhat enhanced the reduced penalties, but provided a list of extenuating circumstances that allowed offending corporations easily to reduce the remaining penalties to small amounts, if not to nothing.

One major avenue the commission allowed for mitigating penalties was the existence of internal policies dealing with criminal conduct. The guidelines contained detailed definitions of an effective compliance program, including designation of a specific high-level person to be responsible for the program, written policies and reporting procedures, and mandatory participation in training programs by employees.

In the end, the U.S. Sentencing Commission's mountain of deliberations and studies produced a molehill of enforcement. It zigzagged itself into a position that has some merit, but it made overwhelming concessions to the pro-business environment.
Sarbanes-Oxley Act of 2002 (SOX)

The corporate scandals revealed at the dawn of the 21st century led to Sarbanes-Oxley (or “SOX”), a Congressional act passed in 2002 in the aftermath of the Enron and WorldCom debacles to “protect investors by improving the accuracy and reliability of corporate disclosures.” It has tightened rules for corporate behavior, giving boards heightened responsibility (and liability) for eliminating illegal conduct. It was overwhelmingly approved by a vote of 423-3 in the House, and by 99-0 in the Senate, reflecting the public outcry to “do something.” The act was signed into law on July 30, 2002, by President Bush, who explained that its intent was “to use the full authority of the government to expose corruption, punish wrongdoers, and defend the rights and interests of American workers and investors.” SOX was celebrated as the most sweeping legislation aimed at curtailing corporate scandal since the Glass-Steagall Act, which was instituted after the stock market crash of 1929.

The Sarbanes-Oxley Act applies to publicly traded companies and requires that their audit committees be composed of “independent” individuals, meaning those not belonging to the management team nor receiving compensation for other professional services. The act also defined a role for the Public Company Accounting Oversight Board, empowered to enforce new compliance standards.

The criminal provisions of the Act are found in Title VIII (the “Corporate and Criminal Fraud Accountability Act of 2002”), Title IX (the “White-Collar Crime Penalty Enhancement Act of 2002”), and Title XI (the “Corporate Fraud Accountability Act of 2002”). These fortify criminal sanctions by creating new federal criminal offenses, increasing penalties for existing federal criminal offenses, and mandating review of current federal sentencing guidelines to ensure they effectively deter criminal activity.

In the short time that has passed since the law was enacted, SOX has already faced the prospect of dilution, despite claims to the contrary from officials. For example, while SOX forbids accounting firms from providing many kinds of consulting services to the companies they are auditing, the SEC has made an exception for selling advice about matters such as tax shelters—even though part of what the firms audit are their clients’ tax arrangements. The SEC has also backed down from requiring that every five years accounting firms rotate all the auditors working on a client’s accounts, to prevent individual auditors from becoming too close with clients. In February 2005 The New York Times reported that “under heavy pressure from Bush administration officials, business groups, and Wall Street, Mr. Donaldson [former SEC chairman] denied that the agency was in a period of significant retrenchment, but said that it was part of his plan to reflect on the regulatory experience of the past two years and make some rules more ‘cost-effective’ without diluting their impact.” The SEC has already announced that it will allow small and foreign companies with shares traded in the United States more time to comply with provisions many contend are too expensive. It remains to be seen whether regulators will further give in to intense pressures from corporations to ease oversight and controls.

It follows that to deter corporate crime more effectively, fines may well have to be close to the stiff ones initially suggested by the U.S. Sentencing Commission, and monitoring will have to be at least as tough as that required by the 2002
Sarbanes-Oxley Act and other such measures. Given the public’s mercurial interest in corporate crime, we are likely to see more cycles of scandals, public outrage, and reforms that are enacted and the in part rolled back, although some improvements will stick. The best course of all is to prevent corporate crimes, i.e., to lock the door of the barn rather than to try to go after the horse after it has bolted.

Preventing Corporate Crime

In addition to government regulation and stiff penalties, the literature on preventing corporate crime notes the importance of fostering a culture of respect for the law within corporations and creating internal controls to prevent misconduct. Several measures can be taken by corporations to encourage an atmosphere where management and employees abide by the law. General Dynamics represents one of the most notable examples of a corporation building such a culture after being found guilty of serious ethical and legal infractions. In the mid-1980s, General Dynamics became synonymous with defense procurement fraud and dubious overhead charges to the governments, such as country club memberships and kennel charges for an executive’s dog. In May 1985, the Secretary of the Navy wrote a letter informing General Dynamics that the Navy would not do business with the company until it changed management and put a stop to misconduct. General Dynamics responded by creating a comprehensive ethics program and hiring Kent Druyvesteyn, a former head of the University of Chicago Business School, as staff vice-president of ethics. 

Druyvesteyn set about ensuring that all employees and management were well aware of what was stipulated in the company’s new code of ethics and knew how to communicate concerns. The company set up an ethics hotline that employees could call for information about the code or to report any wrongdoing. Thirty-three ethics program directors were hired to investigate cases of potential misconduct and serve as sources of information. To give teeth to the program, an enforcement system was put in place whereby those found guilty of a violation would be subject to various types of sanctions, including termination of employment and referrals for criminal prosecution. In 1998 there were 206 sanctions, with 35 of them resulting in discharge and four leading to criminal referrals.

Druyvesteyn contends that for an ethics program to work, it must be clear to employees that management is serious about creating a culture of respect for the law; if management does not respond to ethics concerns, and is apathetic about questions of legality, employees are unlikely to report misconduct. Numerous corporations have codes of ethics and other internal controls meant to ensure compliance with the law, but it is up to management at all levels to set the example of taking ethics seriously.

Education as a Preventive Measure

Business schools—the training grounds for corporate executives—have a role to play in preventing corporate crime by instilling respect for the law and more generally for moral values in their graduates. However, most business schools teach very little ethics or none at all. The Harvard Business School—which deserves particular scrutiny, as it is the school to which many others look when they
design their own curriculums—had little in the way of formal ethics teaching until 1987. And that was typical. A 1988 survey of MBA schools found that only one-third had a required ethics class. It was in 1987 that John S. R. Shad, then chairman of the Securities and Exchange Commission, made a personal donation of $20 million to the Harvard Business School (HBS) to support the teaching of ethics. On April 21, 1989, after months of deliberations, an initial proposal for teaching ethics was put up for a faculty-wide vote. Reactions ranged from distrust to outright hostility. One economist argued, “We are here to teach science.” Another faculty member wanted to know, “Whose ethics, what values, are we going to teach?” And a third pointed out that the students were adults who got their ethics education at home and at church. By meeting’s end, the project had been sent back to the drawing board.

Debates continued regarding whether ethics should be a required course or a separate elective or, alternatively, whether the topic should be integrated into all classes. A member of the marketing department mused that if the latter policy were adopted, his department would have to close because much of what it was teaching constituted a form of dissembling: selling small items in large boxes, putting “hot” colors on packages because they encourage people to buy impulsively, and so forth.

A finance professor was also concerned about its effects on his teaching. Students later told me that they learned in his course how you could make a profit by breaking implicit contracts. Say, for instance, that you acquire controlling shares in a company such as Delta, where workers used to work harder and pose fewer demands than at other airlines because of an informal understanding that they had lifelong employment. The finance course would explain that once you take over, you could announce that you are not bound by any such informal arrangements. While such a move might be deemed a prudent move for the company, it could also bring personal gain to the new management: Your stock jumps (because your labor costs seem lower, absent commitments to carry workers during a downturn) and, bingo, you cash in your stock options and move on.

In the following years, an ethics course was taught at HBS, but it was only a minor requirement to be gotten out of the way as quickly as possible. These days, students take a required “mini” course on ethics upon arrival, and there is a required first-year course titled, “Leadership and Organizational Behavior.” And that’s it. The same situation can be found at other schools. One student at Stanford’s business school, which until recently had a similar program, described his ethics class as “like going to church on Sunday.” The George Washington University School of Business and Public Administration has an elective on moral reasoning (the art of clarifying what your values are, rather than educating you on how to develop higher moral standards). And the University of Michigan, which has an activist student group that pushed its business school to be mindful of social policy, requires only that students take one class in ethics or in law. Many other schools do less.

In recent years, many business schools have added courses that promote values other than the maximization of investors’ and managers’ incomes, and Harvard has been praised for being at the forefront of this trend with its “Social Enterprise Initiative.” Such courses generally favor social values, and usually liberal ones, such as concern for the environment or the well-being of minorities.
and workers in the Third World rather than personal values, such as integrity, veracity, and loyalty.

An Aspen Institute study of about 2,000 graduates of the top 13 business schools found that business school education not only fails to improve the moral character of a student, it actually weakens it. The study examined student attitudes three times while they were working toward their MBAs: on entering, at the end of the first year, and on graduating. Those who believed that maximizing shareholder values was the prime responsibility of a corporation increased from 68 percent upon entrance to 82 percent by the end of the first year. In another study, students were asked if, given a one percent chance of being caught and sent to prison for one year, they would attempt an illegal act that would net them (or their company) a profit of more than $100,000. More than one-third responded yes.

In light of continued corporate scandals, some business schools will attempt to strengthen ethics education. They should recruit more faculty members to teach ethics. And ethics courses should be approached not as a way to circumvent challenges by outsiders (such as the consumer protection movement or advocates of the poor) but as a moral obligation any decent person needs. The ethics requirements set by the Association to Advance Collegiate Schools of Business, which is responsible for the accreditation of business schools, should be more straightforward: No MBA student should graduate without having taken at least one full-term course in a class aimed at heightening ethical standards. Even more important, all teaching material and class presentations should be examined to ensure that they do not promote unethical conduct. Although such changes will not end corporate crimes, they might make them less likely.

Endnotes

2. 1 USC § 1 (2005): “The words ‘person’ and ‘whoever’ [in any Act of Congress] include corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals.”
References


