THE WAY WE THINK: ETHICS, HEALTH AND THE ENVIRONMENT IN INTERNATIONAL BUSINESS

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ABSTRACT

Breaches of ethics and social responsibility in domestic and international business are typically thought to be anchored in such phenomena as greed, dishonesty and conflict of interest. While these forces are frequently at work in international business transactions, there is often another major force at work when failures of ethics and social responsibility occur. This article addresses the question of what is it about the way that transnational company managers and government officials think or don't think that leads to breaches of ethics and social responsibility – breaches that often result in major health, environmental and social tragedies. The article considers several cases of breaches in ethics and social responsibility: Texaco's and Shell's oil exploration and development in Ecuador and Nigeria, the Bhopal gas plant explosion in India, Wal-Mart's sourcing of timber from China for manufacture of wood products, the trade in biofuels, the trade in toxic financial instruments, and the China milk crisis. The article discusses the roles of a variety of thought-processes in corporate and governmental decision-making and raises the question of whether we do enough in law schools and in business schools and school of public administration to address how companies and governments and their advisors think.

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I. INTRODUCTION: BREACHES OF ETHICS AND SOCIAL RESPONSIBILITY IN INTERNATIONAL BUSINESS

The goal of this article is to examine what we mean by "ethics and social responsibility" in the international business context and to examine some of the underlying causes of breaches in ethics and social responsibility in trans-border transactions. I begin with several examples of situations in which things have gone tragically wrong for international companies, host country governments, and local communities in those host countries.

A. Texaco in Ecuador; Shell in Nigeria

The Human Rights Watch Film Festival held in New York in June 2009 featured the documentary film *Crude* which focuses on a lawsuit brought by Ecuadorians against the Chevron oil company. The lawsuit alleges that Texaco (taken over by Chevron in 2001) was responsible for environmental and health damage resulting from the dumping of oil waste in the period 1964-1992. In lawsuits filed in 1993 and 1994 in a United States federal district court, it was alleged that Texaco, through its Ecuadorian subsidiary, dumped over 18 billion gallons of toxic waste in the rainforest over the 18 year period. These suits were followed by litigation brought in Ecuador in 2003. The health-related issues involve claims of leukemia and birth defects resulting from leaching of toxic chemicals, including benzene, from Texaco's waste pits into ground water.[1]

Also in June 2009, the *New York Times* reported that the Shell oil company agreed to pay a $15.5 million settlement in a case alleging human rights abuses in connection with its oil operations in the Niger Delta in the early 1990's. The underlying conflicts related to the impact of oil

[1] *See generally* Stephen Holden, *From Ecuador to Rwanda: Portraits of Global Threats and Struggles*, N.Y. TIMES, June 12, 2009, at C17, *available at* http://www.nytimes.com/2009/06/12/movies/12rights.html (last visited Mar. 17, 2010); *see generally* Simon Romero & Clifford Krauss, *In Ecuador, Resentment of an Oil Company Oozes*, N.Y. TIMES, May 15, 2009, at B1, *available at* http://www.nytimes.com/2009/05/15/business/global/15chevron.html. (last visited Mar. 17, 2010). For facts of the case, *see* Aguinda v. Texaco, Inc., 303 F.3d 470, (2d Cir, 2002). For varying views on the lawsuit, *see generally* Amnesty International USA, *Chevron (CVX) in the Amazon – Oil Rights or Human Rights? Texaco's legacy, Chevron's responsibility*, http://www.amnestyusa.org/business-and-human-rights/chevron-corp/chevron-in-ecuador/page.do?id=1101670 (last visited Mar. 17, 2010) and *see* Lago Agrio, *Extortion – the hounding of an American oil company*, ECONOMIST, May 21, 2009, *available at* http://ecuador-rising.blogspot.com/2009/05/ecuador-chevron-and-pollution-justice.html (last visited Mar. 17, 2010); *see* CRUDE (Entendre Films 2009).

operations on the health and environment of communities in the Niger delta.[2]

B. Union Carbide in India

In 2008 the *New York Times* reported on developments in the aftermath of the December 1984 pesticide plant explosion in Bhopal, India that released 40 tons of methyl isocyanate gas, resulting in thousands of deaths and a 25-year legacy of major health problems in the local population.[3] The plant was a joint venture with several partners including the Union Carbide Corporation and the Indian Government and others. The news article focuses on the "hundreds of tons" of stored pesticide waste that have, despite the storage, seeped into soil, contaminating groundwater and drinking water, and the allegations of resultant medical problems, including birth defects and mental retardation. A doctor for an NGO is quoted as saying "Dow (Union Carbide became a subsidiary of Dow Chemical Company in 2001)[4] was the first crime. The second crime was government negligence." [5] The problem over the years has been compounded by people flocking to the area to buy cheap land and building homes in the area of the former plant.

The question I want to address later in this article is this: What is it about the way that transnational company managers and government officials have thought and operated that lead to such tragedies? What are the underlying causes of what we typically characterize as major breaches in ethics and social responsibility?

C. Wal-Mart in China

Another area of ethical concern is natural resource sourcing.

In October 2008, the *New Yorker* magazine reported on the work of a nonprofit group called the Environmental Investigation Agency (EIA) in tracing the network of the supply of hardwood products in Wal-Mart retail

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[2] Jad Mouawad, *Shell to Pay $15.5 Million to Settle Nigerian Case*, N.Y. TIMES, June 9, 2009, at B1, *available at* http://www.nytimes.com/2009/06/09/business/global/09shell.html (last visited Mar. 17, 2010).

[3] Somini Sengupta, *Decades Later, Toxic Sludge Torments Bhopal*, N.Y. TIMES, July 7, 2008, *available at* http://www.nytimes.com/2008/07/07/world/asia/07bhopal.html (last visited Mar. 17, 2010). *See also* Suketu Mehta, Op-Ed., *A Cloud Stills Hangs over Bhopal*, N.Y. TIMES, Dec. 3, 2009, at A43, *available at* http://www.nytimes.com/2009/12/03/opinion/03mehta.html (last visited Mar. 17, 2010).

[4] *See generally* Union Carbide Corporation, http://www.ucarbide.com/ (last visited Mar. 17, 2010). The website provides a chronology of events relating to the Bhopal disaster. The company's website statement suggests that the release of water in a potentially explosive chemical was "deliberate" and that the explosion was thus "caused by an act of sabotage".

[5] *See* Sengupta, *supra* note 3.

outlets (including such items as baby cribs), on a route from Russia through "the complicated network of Wal-Mart's Chinese suppliers." [6] The investigation involved a physical audit of all wood products sold by Wal-Mart in an attempt to determine the origins of some 900 products. The EIA report alleged that some furniture sold in Wal-Mart had been sourced from illegal logs taken from Russia through China. The report lists five other Asian countries from which illegal timber has been a source of wood products manufactured in China: Indonesia, Malaysia (where illegal wood from Indonesia is trafficked), Thailand, Burma, and Papua New Guinea.[7]

Although the ethical issues involved in illegal sourcing of timber are not, on their surface, as dramatic as those issues associated with the Bhopal case or the Texaco and Shell cases, they are significant. The ethical issues associated with illegal logging include the loss of biodiversity, increased vulnerability to flooding and erosion, the fostering of the spread of corruption, and the rise of resource outlaw gangs. Other ethical issues that arise from illegal sourcing of timber include deforestation and the resultant contribution to global warming as well as the loss to governments and local communities of revenue that can be used for public health and other services.[8]

D. Trade in Biofuels

A fourth area of ethical concern relates to the international trade in biofuels. As the world's focus on global warming has increased (and as oil prices rose to record-breaking levels in 2007- 2008), renewed attention has been given to the production of fuels from plants, such as soybeans and corn in the United States, sugar cane in Brazil, and palm oil in Malaysia and Indonesia. In the European Union and North America, targets have been set for increased use of biofuels and this has led to increased demand for biofuels from Asia and elsewhere. In 2008 it was estimated that European consumption of plant-based fuels would increase from about

[6] Raffi Khatchadourian, *The Stolen Forests: Inside the Covert War on Illegal Logging*, THE NEW YORKER, Oct. 6, 2008, *available at* http://www.newyorker.com/reporting/2008/10/06/081006fa_fact_khatchadourian (last visited Mar. 17, 2010).

[7] *See generally* Environmental Investigation Agency, *Attention Wal-Mart Shoppers – How Wal-Mart's Sourcing Practices Encourage Illegal Logging and Threaten Endangered Species* (2007), *available at* http://www.eia-global.org/PDF/report-Walmart-forests-dec07.pdf (last visited Mar. 17, 2010).

[8] Wal-Mart, in response to the EIA findings, has signed an agreement with the World Wildlife Fund (through WWF's Global Forest and Trade Network) to eliminate illegal wood from its furniture within six years. *See* Walmart, *Walmart Joins WWF's Global Forest & Trade Network*, http://walmartstores.com/FactsNews/NewsRoom/8438.aspx (last visited Mar. 17, 2010); *see* BusinessGreen.com, *Wal-Mart Pledges to Phase Out Illegal Timber*, July 15, 2008, *available at* http://www.businessgreen.com/business-green/news/2221704/wal-mart-pledges-phase-illegal (last visited Mar. 17, 2010); Khatchadourian, *supra* note 6.

three million tons in 2007 to more than thirty million tons in 2010.[9] In 2007, the United States Congress mandated a fivefold increase in the use of biofuels.[10] In 2006, 14% of the corn crop in the United States was used to produce ethanol, a figure that was expected to rise to 30% by 2010.[11]

The reasons for the movement to developing biofuels are well-known. Fuels made from plants are much cleaner burning than coal, oil and natural gas, and their use will result in cleaner air, less global warming, and better health. But the use of such fuels may not come without social and environmental costs, and a variety of ethical issues have been raised by the move toward greater use of biofuels: the carbon footprint of the production and transportation of biofuels and the competition with the use of certain plants as a food source.[12] These ethical issues will be discussed below. (Of course, it remains to be seen whether interest in alternative energy sources will be sustained in periods of low-to-moderate oil prices.)

E. Trade in Toxic Products

Finally by way of introduction to the cases to be dealt with, I turn to two very recent occurrences which can also be considered "breaches in ethics and social responsibility": the trade in toxic financial instruments and the trade in contaminated milk in China. They are discussed in combination because they have a good deal in common and because of the light they both shed on the intersection of corporate governance and public governance.

As is well-known, the collapse or weakening of financial institutions has affected a wide-range of parties: shareholders, retirement-fund holders, employees, banks, and other commercial enterprises around the world.[13]

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[9] Tom Young, *New certificates to prove palm oil sustainability*, Sept. 19, 2008, http://www.businessgreen.com/business-green/news/2226489/palm-oil-sustainability (last visited Mar. 17, 2010).

[10] Andrew Martin, *Fuel Choices, Food Crises, and Finger-Pointing*, N.Y. TIMES, Apr. 15, 2008, at A1, *available at* http://nytimes.com/2008/4/15/business/worldbusiness (last visited Mar. 17, 2010).

[11] Editorial, *The High Price of Diverting Food into Energy*, INT'L HERALD TRIB., Mar. 3, 2008, at 4, *available at* http://www.nytimes.com/2008/03/03/opinion/03iht-edfood.1.10653166.html.

[12] *See* Joel K. Bourne, Jr., *Green Dreams*, NAT'L GEOGRAPHIC, Oct. 2007, at 38; *see Biofools*, ECONOMIST, Apr. 8, 2009; *see* The Economist, Science and Technology, *available at* http://www.economist.com/sciencetechnology (last visited Mar. 17, 2010) (on biofuels and the attendant production of nitrous oxide and impact on global warming); *see* C. Fred Runge & Benjamin Senauer, *How Biofuels Could Starve the Poor*, FOREIGN AFF., May/June 2007, *available at* http://www.foreignaffairs.com/articles/62609/c-ford-runge-and-benjamin-senauer/how-bio-fuels-could-starve-the-poor (last visited Mar. 17, 2010).

[13] John Cassidy, *Anatomy of the Meltdown*, THE NEW YORKER, Dec. 1, 2008, at 49, *available at* http://www.newyorker.com/reporting/2008/12/01/081201fa_fact_cassidy (last visited Mar. 17, 2010) ("[M]any of the banks that had bought subprime securities and needed to lend dollars weren't in the United States."); *see, e.g.*, Francis Chan, *Investors to lose principal*, THE SING. SUNDAY TIMES, Nov. 16, 2008, at 2, *available at*

The milk contamination crisis led to kidney-related illnesses in close to 300,000 children in China, a number of deaths in China, and apprehension in markets for Chinese-sourced milk. Quick action in withdrawing the toxic food products from the marketplace spared these other markets the health problems encountered in China. China itself, in addition to the health-related tragedies, has faced loss of credibility among its people and markets overseas.[14] New Zealand's major transnational company, Fonterra, was a 43% shareholder in Sanlu, which was one of the major companies involved in the melamine contamination scandal. Fonterra suffered significant financial loss as well as damage to its reputation.[15]

II. BEYOND GREED: RETHINKING "ETHICS AND SOCIAL RESPONSIBILITY"

I turn now to the question of what draws these various cases together – Texaco/Chevron in Ecuador. Shell in Nigeria, Union Carbide/Dow Chemical in Bhopal, Wal-Mart's illegally sourced timber, the mixed picture on biofuels, the financial crisis, and contaminated milk in China – and to the question of the underlying breaches in ethics and social responsibility. The answer lies in part in the way we think – or at least in the way that corporate executives, government officials, and others charged with various types of oversight think.

A. The Magic of the Marketplace

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http://www.straitstimes.com/Breaking%2BNews/Singapore/Story/STIStory_302272.html (last visited Mar. 17, 2010) 700 investors in Singapore had invested S $26 million in Morgan Stanley Pinnacle Notes Series 9 and 10; 10,000 Singapore investors have been affected by the collapse of structured products linked to Lehman Brothers, including minibonds; *see also* Francis Chan, *$100,000 Life Savings Gone – Retirees Recount Their Big Losses*, THE SING. STRAITS TIMES, Oct. 16, 2008, *available at* http://www.straitstimes.com/Breaking%2BNews/Singapore/Story/STIStory_291048.html (last visited Mar. 17, 2010).

[14] Most of China's dairy products were shipped to Hong Kong, Taiwan, Singapore, Japan and other parts of Asia but some found their way into the wider global market. *See* David Barboza, *China Detains 22 in Tainted-Milk Case*, N.Y. TIMES, Sept. 29, 2008, at A10, *available at* http://www.nytimes.com/2008/09/30/world/asia/30milk.html (last visited Mar. 17, 2010).

[15] Fonterra "has written off $200 million on its 43 per cent stake in the now-defunct joint venture." *See* Fran O'Sullivan, *So Long, Sanlu*, N.Z. HERALD, May 2, 2009, *available at* http://www.nzherald.co.nz/apec/news/article.cfm?o_id=10&objectid=10569769&pnum=1 (last visited Mar. 17, 2010) See this article for other follow-up information, including Fonterra's US$8 million gift to the Soon Ching Ling Foundation for support of maternal and infant care hubs in rural areas; *See also Fonterra Accepts Chinese Court's Verdict,* N.Z. HERALD, January 25, 2009, *available at* http://www.nzherald.co.nz/world/news/article.cfm?c_id=2&objectid=10553485 (last visited Mar. 17, 2010). The verdicts related to a cattle farmer and milk distributor, both sentenced to death. The article reports that Fonterra said that it "accepted the court's findings but not the death penalties."

I begin with the financial crisis and melamine-contaminated milk in China (the latter a surrogate, in part, for China's difficulties in being able to ensure safe products generally).

In the context of the meltdown in the financial industry, the usual suspects – greed and dishonesty – characterized some of the first stages, including sub-prime mortgage lending by banks and the role of certain brokers and property valuators.[16] Comparable ethical breaches are at the source of the adulteration of milk products in China.[17] Conflict of interest involving credit rating agencies and others also played a role in the financial crisis[18] and conflict of interest played a role in the failure of Chinese government agencies to report on the milk contamination at an earlier stage.[19] But there were other forces at work. What were they?

Further down the line, after the greed and fraud and conflicts of interest, considerable responsibility can be attributed to:

1. The ignorance or negligence of Chief Executive Officers (CEOs) in managing financial instruments and company "assets" and the supply chain
2. Wishful thinking on behalf of company executives and government officials, and
3. Government failure to regulate.

And, in the context of both the economic crisis and the China food crisis, one might say that governments and shareholders have put too much

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[16] *See Fault Lines*, N.Y. TIMES, Aug. 5, 2007, *available at* http://www.nytimes.com/imagepages (last visited Mar. 17, 2010) Chart illustrating flow of securitized mortgage-backed debt: borrowers/banks/mortgage brokers/investment banks/rating agencies/servicers/trustees/investors.

[17] *See Fonterra May Sell Sanlu Stake*, N.Z. HERALD, Oct. 20, 2008, *available at* http://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=10538410&ref=rss (last visited Mar. 17, 2010); *see* Peter Ford, *Behind Bad Baby Milk, An Ethical Gap in China's Business,* THE CHRISTIAN SCI. MONITOR, Sept. 17, 2008, *available at* http://www.csmonitor.com/World/Asia-Pacific/2008/0917/p01s03-woap.html (last visited Mar. 17, 2010).

[18] *Credit Rating Agencies and the Financial Crisis: Hearing on The Financial Crisis and the Role of Federal Regulators Before the Comm. on Oversight and Governance Reform*, 110th Cong. 4 (2008) (Opening Statement of Rep. Henry A. Waxman, Chairman, Comm. on Oversight and Governance Reform), *available at* http://oversight.house.gov/images/stories/Hearings/Committee_on_Oversight/Credit_Agencies_Hearing_HAW_Statement_10.22.08.pdf (last visited Mar. 17, 2010). ("The story of the credit rating agencies is a story of colossal failure. The credit rating agencies occupy a special place in our financial markets. Millions of investors rely on them for independent, objective assessments. The rating agencies broke this bond of trust, and federal regulators ignored the warning signs and did nothing to protect the public. The result is that our entire financial system is now at risk.").

[19] Local authorities did not want to release information on the contamination in the run-up to the Olympics, so as not to damage China's reputation; s*ee* Shi-jia Huang, *China's Baby-milk scandal Formula for Disaster*, ECONOMIST, Sept. 18, 2008, at 38. It was reported that in the same province (Hubei) local government officials covered up a coal mine explosion that killed more than 30 people; s*ee* Malcolm Moore, *Officials from Chinese Tainted Milk Province Hid Mine Disaster*, TELEGRAPH, Oct. 8, 2008, *available at* http://www.telegraph.co.uk/news (last visited Mar. 17, 2010).

faith in companies – too much faith in the free market system and too much reliance on the belief that companies will do what is best for themselves and thus best for shareholders and society. The fact is that many of the financial institutions and other companies that have played economically dominant roles in the world did not operate in a way that was good for the companies, much less for the rest of us.

With regard to the financial crisis, the first point of note is that it appears that many CEOs simply did not understand the financial structure of their own companies and the financial instruments purchased by their companies. It appears that many CEOs did not come to terms with the complex derivatives and securitized products their companies had purchased or insured.[20] In some cases it may have been negligence at work. In others it may have been willful ignorance. In either case, the result may stem from arrogance or pride – captured best in the word hubris – or simply not focusing or not having developed a system for understanding.

Nick Paumgarten, writing in the *New Yorker* magazine, states that CEO's may not have understood, or wanted to understand, the assets and the risks that lurked on (and off) their firms' balance sheets; but the potential for catastrophe was clear to see, for all who had eyes to see it, and (CEOs) were paid tens of millions of dollars to have or hire such eyes.[21]

He adds: "*One of the central flaws of the system is that naysayers were silenced. If you worked at an investment bank and made a stink about the level of risk, you were likely to be pushed aside*."[22]

As one commentator in the *Financial Times* has suggested, "It cannot just be greed, or stupidity, that has led so many financial institutions astray. Management itself has failed in its must basic supervisory task. There has been a lack of control and understanding. And an unwillingness to heed warnings that came from impeccable sources."[23] As is well-known, it turned out that many of the financial instruments that executives regarded as assets had little or no value. The securitized mortgages and other derivative instruments were anchored in financial quicksand.

And it appears that company executives and others proceeded on what Mr. Paumgarten, in an earlier article, has characterized as "magical

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[20] *See* Gillian Tett, *How Panic Gripped the World's Biggest Banks*, FINANCIAL TIMES, May 8, 2009, *available at* http://www.ft.com/cms/s/2/e3b972fc-3aa6-11de-8a2d-00144feabdc0.html (last visited Mar. 17, 2010), excerpted from GILLIAN TETT, FOOL'S GOLD (2009) ("Citi operated as a vast empire so fragmented – and feuding – that the many businesses within it rarely interacted. As a result few bankers outside the CDOs team knew how the operation worked.").

[21] Nick Paumgarten, *The Death of Kings: Notes from a Meltdown*, THE NEW YORKER, May 18, 2009, at 40.

[22] *Id.* at 44.

[23] Stefan Stern, *How Did We Get Into This Mess? Ask the Management*, FININCIAL TIMES, Oct. 14, 2008, *available at* http://www.ft.com/cms/s/0/3970523a-9988-11dd-9d48-000077b07658.html?nclick_check=1 (last visited Mar. 17, 2010).

thinking."[24] "Wall Street has honed the art of creating and selling financial products with an increasingly tenuous connection to reality" and company executives engaged in the psychological phenomenon of believing that "wishing it so makes it so."[25] Stocks were only going to go up. Bad financial history as we have known it was, well, history.

In mid-2009, the New York Times reported that at the Harvard Business School 20% of the graduating class took an oath to "serve the greater good" and that they pledged to act responsibly and ethically and "refrain from advancing their own narrow ambitions at the expense of others."[26] But if the "magical thinking" phenomenon has any basis, it would seem that there needs to be more to this oath.

B. Deregulation

Of course, there were other forces at work. One is that governments in the U.S., Asia, and elsewhere failed adequately to regulate new financial products and to give appropriate oversight to financial institutions. In 2004, the U.S. Securities and Exchange Commission in the U.S. withdrew a rule that required financial institutions to keep a cushion of funds to guard against just the type of accumulation of debt and disappearance-of-liquidity phenomenon occurred. The U.S. government (and perhaps others) was also engaged in its own "magical thinking" about how the market works.[27]

C. Ideology

A related factor in terms of how we think is ideology. As was widely reported, in late October 2008 Alan Greenspan, the former Chairman of the Board of Governors of Federal Reserve System appearing before a U.S. Congressional committee, acknowledged that "he had put too much faith in the self-correcting power of the free markets and had failed to anticipate the

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[24] Nick Paumgarten, *Wiz Bucks*, THE NEW YORKER, Sept. 29, 2008, at 28, *available at* http://www.newyorker.com/talk/2008/09/29/080929ta_talk_paumgarten (last visited Mar. 17, 2010).

[25] *Id.*

[26] Leslie Wayne, *A Promise to Be Ethical in an Era of Immortality*, N.Y. TIMES, May 30, 2009, at B1, *available at* http://www.nytimes.com/2009/05/30/business/30oath.html?scp=1&sq=leslie%20wayne%20promise&st=cse (last visited Mar. 17, 2010). The oath has also been taken by graduates of other schools. *See* Max Anderson, *New Chapter of MBAs Take Oath to Do Better*, FINANCIAL TIMES, June 29, 2009, *available at* http://discussions.ft.com/bused/forums/Soapboxforum/new-chapter-of-mbas-take-oath-to-do-better (last visited Mar. 17, 2010).

[27] Stephan Labaton, *Agency's '04 Rule Let Banks Pile Up New Debt*, N.Y. TIMES, Oct. 3, 2008, at A1, *available at* http://www.nytimes.com/2008/10/03/business/03sec.html?scp=1&sq=Agency's%20'04%20Rule%20Let%20Banks%20Pile%20Up%20New%20Debt,%20and%20Risk&st=cse (last visited Mar. 17, 2010).

self destructive power of wanton mortgage lending."[28] Asked by the chairman of the House Committee on Oversight and Government Reform whether he felt that "ideology pushed you to make decisions that you wish you had not made," he replied, "Yes, I've found a flaw . . . . I've been very distressed by this fact."[29]

The Bush administration was criticized by the U.S. House of Representatives Committee on Oversight and Government Reform in 2007 for basing its denial of the role of human activity in global warming on ideology.[30] Recently, Nobel Prize winner Paul Krugman, in commenting on the U.S. House of Representatives' passage of the Waxman-Markey climate-change bill, noted that 212 representatives voted against the bill. He wrote:

> A handful of these no votes came from representatives who considered the bill too weak, but most rejected the bill because they rejected the whole notion that we have to do something about greenhouse gases . . . . Well, sometimes even the most authoritative analyses get things wrong. And if dissenting opinion-makers and politicians based their dissent on hard work and hard thinking – and if they had carefully studied the issue, consulted with experts and concluded that the overwhelming scientific consensus was misguided – they could at least claim to be acting responsibly.

But . . . what you saw, instead were people who show no sign of being interested in the truth. They don't like the political and policy implications of climate change, so they've decided not to believe in it.[31]

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[28] Edmund L. Andrews, *Greenspan Concedes Error on Regulation*, N.Y. TIMES, Oct. 24, 2008, at B1, *available at* http://www.nytimes.com/2008/10/24/business/economy/24panel.html?scp=1&sq=greenspan%20concedes&st=cse (last visited Mar. 17, 2010).

[29] *Id.*

[30] Committee on Oversight and Government Reform, U.S. House of Representatives, *Committee Report: WHITE HOUSE ENGAGED IN SYSTEMATIC EFFORT TO MANIPULATE CLIMATE CHANGE SCIENCE*, *available at* http://oversight.house.gov/index.php?option=com_content&view=article&id=3373:committee-report-white-house-engaged-in-systematic-effort-to-manipulate-climate-change-science-&catid=44:legislation (last visited Mar. 17, 2010); *see* Sheryl Gay Stolberg, *Obama Puts His Own Spin on Mix of Science with Politics,"* N.Y. TIMES, Mar. 10, 2009, at A18, *available at* http://www.nytimes.com/2009/03/10/us/politics/10obama.html?scp=1&sq=Obama%20Puts%20His%20Own%20Spin%20on%20Mix%20of%20Science%20with%20Politics&st=cse (last visited Mar. 17, 2010).

[31] *See* Paul Krugman, Op-Ed. Columnist, *Betraying the Planet*, N.Y. TIMES, June 29, 2009, *available at* http://www.nytimes.com/2009/06/29/opinion/29krugman.html (last visited Mar. 17, 2010); *see Humans Cause Global Warming, US Admits*, BBC NEWS, June 3, 2002, *available at* http://news.bbc.co.uk/2/hi/americas/2023835.stm (last visited Feb. 12, 2010) ("The White House had previously said there was not enough scientific evidence to blame industrial emissions for

D. Overseeing the Overseers

The well-documented collapse of the Enron Corporation early in this decade – with disastrous results for employees, shareholders, banks, those who had invested retirement funds in Enron stock, among others – is due to the work of managers who (in distinction to some of the managers of financial institutions) knew what they were doing. Obfuscation, fraud, greed, recklessness and hubris played major roles. A tactical culprit was creative accounting that made liabilities on books appear as assets and that gave a value today to speculative future profits (through "mark-to-market" accounting).[32] But Enron's collapse, like the financial market collapse, was also due to the failure of the overseers – the guardians – to whom we normally turn for keeping companies on the straight and narrow – regulatory agencies and those on whom regulatory agencies and the rest of us rely for on-the-ground supervision – auditors, lawyers, credit-rating agencies and bankers.

The question is what were these overseers thinking and how were they thinking. Many presumably did not act as they should because they were swept up on the magic carpet of magical thinking of the corporation – the seventh largest in the United Sates at the time, putting skepticism in abeyance. And this mind-set was reinforced by conflicts of interest: auditors, lawyers, and bankers had a stake in not rocking the fee-paying Enron boat and, as a result, were apparently prepared, in many cases, to look the other way.[33]

Professor Robert Gordon of Yale University, in an article titled "Professionalisms Old and New, Good and Bad"[34] raises the question of how the legal professions can develop "realistic, maintainable, sets of ethical standards and practices that are adequate to the functional requirements of the lawyer's task, in an intensively competitive and commercialized environment of practice." One might also add "increasingly complex business environment". One example given by Professor Gordon of the challenges is a set of opinion letters "written by eminent law firms to officers of the Enron Corporation" approving the accounting treatment of various dubious transactions. Whether the

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global warming."); *see also* Andrew C. Revkin, *Bush Aide Softened Greenhouse Gas Links to Global Warming*, N.Y. TIMES, June 8, 2005, *available at* http://www.nytimes.com/2005/06/08/politics/08climate.html?scp=1&sq=Bush%20Aide%20Softened%20Greenhouse%20Gas%20Links%20to%20Global%20Warming&st=cse (last visited Mar. 17, 2010).

[32] *See* ENRON: THE SMARTEST GUYS IN THE ROOM (Magnolia Pictures 2005).

[33] *Id.*

[34] *See generally* Robert W. Gordon, *Professionalisms Old and New, Good and Bad*, 8 LEGAL ETHEICS 23 (2005).

transactions were fully understood or not, the lawyers ended up sanctifying the transactions through supporting opinion letters.[35]

E. Complexity: Due Diligence

On the thinking side, the complexity of Enron's financial maneuvering undoubtedly played some role in the failure of lawyers, accountants, bankers and others not blowing the whistle (in addition to the conflict of interest issue.). And this phenomenon undoubtedly also played a role in the failures of company executives, governments and private supervisors in connection with the financial crisis. This raises issues of competence and due diligence, how lawyers and others process information, and the role of skepticism in dealing with (financial) complexity and financial "experts". Mr. Paumgarten quotes a financial advisor: "Financial engineering fills the gap between people's desires and their wherewithal. So what you have is optimism buttressed by pseudo-science and statistical legerdemain."[36]

It is likely that some of the source of the financial meltdown problem is an unfortunate convergence of a combination of factors such as modern information technology, globalization, increased competition, and deregulation, as well as financial engineering and the fact that some finance concepts and financial instruments may have become too complex for non-specialists to grasp. Globalization and modern information technology may work in a way that does not give executives sufficient time to think. E-mails must be answered immediately. The business operates on a 24-hour global basis. PowerPoint presentations may fail to highlight the critical decision-making issues. Added to this mix is the short-sightedness of executives, fueled by rewards for short-term profits (providing incentives for inflating quarterly reports) and a lack of a stake in the long-term health and viability of the company.[37]

As far as regulation is concerned, a government has to understand these dynamics – that the usual private supervisors may be asleep on the job, or may be mesmerized by financial wizardry, or are turning their heads the other way because of conflicting interests, or are not capable of understanding what they are expected to keep an eye on, and that the company executives themselves may be baffled by the complexity created by their financial engineers. In the case of the financial institutions, governments did not see the need to step in to regulate because, in addition

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[35] *Id.* Professor Gordon says that the role of lawyers was to "sprinkle the transactions with holy water." For an interesting discussion of the scope of the lawyer's obligations and the distinction between "legal advice" and "commercial advice," *see* Satinder Singh Garcha v. Uthayasurian Sidambaram, SGHC 240 (Sing. High Ct. 2009).

[36] Paumgarten, *supra* note 21, at 46.

[37] Paumgarten, *supra* note 21, at 46 ("The abandonment of the private partnerships was a key ingredient in the world-destroying self-immolation of the last few years.").

to free market ideology, no one could imagine that this lack of attention and knowledge was occurring.

One lesson from this is that we may need to reform legal education and public administration education to train better-informed and better-prepared lawyers and government officials and to reform business education to focus on the barriers to thinking and analysis, including how to deal with constructs and information coming from those trained in other disciplines.

The central point is that ignorance, magical thinking, lack of competence and due diligence, and the ideological box (in this case deregulation), while not usually thought of as "ethical" issues, come to the same thing as greed and dishonesty. As a result, people lose their investments, their savings, their retirement plans, and their jobs. The economy suffers. Good governance at both the corporate and government levels means coming to terms with how executives and others in the game think – or don't think.

III. BEYOND GREED: TOXICITY IN THE FOOD CHAIN

I turn briefly now to the parallels in the toxic milk tragedy. The Chinese government, the Sanlu joint venture partner, and the multinational companies that purchased food products manufactured in China failed to provide the scrutiny and oversight of the chain of supply that was necessary. That supply chain is not unlike the worldwide chain of assignment of securitizations of toxic financial products.

As noted above, close to 300,000 Chinese children suffered from kidney-related problems because of melamine contamination in milk products.[38] Farmers brought their cows or raw milk to a middleman distributor. The middleman watered down the milk and then added melamine, a deadly chemical used in the manufacture of industrial products, to bolster the milk product to give the impression that it contains a desired grade of protein.[39]

These toxic products reached into food stores and homes. At the beginning of the supply chain, as with the toxic mortgages, there was greed and fraud. Further down the line, as with the securitized financial instruments, there was magical thinking and inattention on behalf of transnational companies and local purchasers, and an absence of government regulation. The result was a failure of international companies

[38] Gillian Wong, *China: 6 Babies May Have Died from Tainted Milk*, Dec. 2, 2008, http://www.foxnews.com/wires/2008Dec01/0,4670,ASChinaTaintedMilk,00.html (last visited Mar. 17, 2010). The figure of 294,000 represented a six-fold increase from prior estimates.

[39] Melamine does not dissolve easily and thus inhibits the body's filtering system, leading to kidney failure and, in some instances, death. *See U.S. Blocks Chinese Dairy Products*, INT'L HERALD TRIB., Nov. 15-16, 2008, at 3.

(investors, joint venture partners, purchasers, and traders) to set up systems for checking the source and the chain of supply.[40] Again, this is a type of magical thinking. This has also been seen in the import into the United States and Europe of other harmful products, including children's toys that contained toxic lead from the factories in China.[41]

In China, the problem of toxic products has been complicated by decentralization of decision-making and enforcement. Even with appropriate regulations at the national level, implementation at the urban and regional level is always questionable. Why? Local protectionism. Corruption. Lack of training. Not wanting to embarrass the central government.[42] National price controls may also be involved: if the final market price of a commodity is controlled, there may be temptations to reduce costs along the way.

As for the importing companies themselves, they need to recognize that the burden is on them: their own home governments through the food and drug administrative agencies and customs agencies are typically not capable of screening more than a limited amount of imports.[43] However, audits and screening on a sustained basis are expensive. In addition, one has to know what to look for and to have the scientific wherewithal to check for a particular type of contamination.

IV. WAYS OF THINKING

A. Thinking across Space

[40] Fonterra, a New Zealand dairy company, held, as noted earlier, a 43% stake in the Sanlu Group, China's largest producer of milk powder formula for infants. *See China Detains 19 in Spoiling of Baby Milk*, INT'L HERALD TRIB., Sept. 15, 2008, at 5 (" . . . Cadbury PLC, one of the world's biggest confectioners, said that some of the chocolate it sells in Hong Kong, Taiwan and Australia had tested positive for melamine. The company said those products had all been produced in its Beijing facility. Cadbury announced that 'we believe it is appropriate to take a precautionary step to withdraw from the market all of our Cadbury chocolate products that have been manufactured in Beijing.' . . . ."). The problem was compounded by secrecy; *see supra* note 19.

[41] *See New Recall of Chinese Toys in U.S.*, BBC NEWS, Aug. 22, 2007, *available at* http://news.bbc.co.uk/2/hi/business/6959574.stm (last visited Mar. 17, 2010); *see EU Warns Over "Risky" China Goods*, BBC NEWS, Apr. 17, 2008, *available at* http://news.bbc.co.uk/2/hi/europe/7353118.stm (last visited Mar. 17, 2010); *see China Promises Lead-Free Toy Export to U.S.*, CHINA DAILY, Sept. 12, 2007, *available at* http://www.chinadaily.com.cn/china/2007-09/12/content_6100244.htm (last visited Mar. 17, 2010) On U.S.-China agreement to prohibit use of lead paint in toys exported to U.S..

[42] *See supra* note 19. This same phenomenon occurs with regard to the implemental of environmental laws – China in fact has developed some very good environmental policies – and WTO implementation. To take the WTO example, the national government has agreed to a range of rules that forbid discrimination against foreign companies and products, but at the local level where provincial and urban officials are concerned about local employment and economic development, those rules may seem unreasonable.

[43] In Singapore a batch of herbal medicine-based diet pills manufactured in China and "approved" by the government health agency turned out to contain toxic elements that lead to kidney failure. *See* TV Media Pte. Ltd. v. DeCruz Andrea Heidi and Another, 3 SLR 543 (Sing. C.A. 2004).

Now I turn briefly to the failures in thinking that played a role in the earlier cases I mentioned: Texaco in Ecuador, Shell in Nigeria, Union Carbide in India, and timber sourcing by Wal-Mart and the lessons to be learned from the movement toward encouraging biofuels.

As shorthand, one might characterize the failures in the Texaco, Shell and Bhopal cases, and the attendant environmental, health and social tragedies, as corporate failure to think across space. Thinking across space means understanding the differences between the social, bureaucratic, governmental, commercial, and political cultures at home and those overseas.

The social, economic, bureaucratic, and legal infrastructure of a country that a company is moving into for the first time may be radically different from what the company is accustomed to, requiring radically different corporate policies. In the movie *Wizard of Oz*, a young girl falls asleep (in black and white) on a farm in the state of Kansas in the U.S. and wakes up in a Technicolor fairyland. She says to her dog: "Toto, I've got a feeling we're not in Kansas anymore." Corporate managers and their advisors have too often failed to recognize the fact that they are not in (fill in the blank) anymore and are facing an environment that makes many of their assumptions wrong and irrelevant.

The explosion at the Union Carbide Corporation-affiliated pesticide plant in Bhopal, India in December 1984 was one of the greatest industrial disasters of all time. Forty metric tons of methyl isocyanate (MIC) were released into the atmosphere as a result of several safety devices being out of commission. Some three thousand people were killed, and hundreds of thousands have suffered illnesses over the last quarter-century as a consequence of resultant air, ground and water pollution.[44]

The disaster was due in part to the U.S. company's failure to recognize that the operating environment for its India plant was far different from the operating environment of a similar plant it owned and operated in the U.S. For one thing, Indian governmental safety and environmental inspections were, because of poorly staffed government agencies, limited. Government inspections were far less frequent than at Union Carbide's U.S. plant. As a result, safety and environmental laws were simply not being enforced. It is a fact of corporate life in Europe and North America that companies often rely on government inspectors to keep them doing the right thing. That oversight was missing.

In addition, the Indian subsidiary (owned 50.9 % by the Union Carbide Corporation) was facing cost constraints due to declining demands for

[44] *See* statement of facts in In re Union Carbide Corp. Gas Plant Disaster at Bhopal, India in December 1984, 809 F.2d 195, (2d. Cir. 1987) [hereinafter Gas Plant Disaster Case]; *see also* Deena Murphy-Medley, *Exportation of Risk: The Case of Bhopal*, http://www.onlineethics.org/Resources/Cases/Bhopal.aspx (last visited Mar. 17, 2010).

pesticide in India. This resulted in the management of the local subsidiary undertaking a program of staff reduction and cost-cutting without comprehensive planning in conjunction with, and oversight by, Union Carbide's home office.

As a consequence of both the failure of government oversight and a cost-reduction mentality in the local subsidiary, plant maintenance was poor and the community warning system, the refrigeration unit (that keeps MIC temperatures low), the gas scrubber (that neutralizes escaping gas) and the flare tower (for burning off escaping gas) had all been shut down prior to the accident.

A further fact contributing to the scale of the disaster was that a township was allowed to grow up in close to the plant, contrary to existing government policy. Neither the government nor the local subsidiary took steps to address the risk that this created.[45]

Thus, the underlying causes of the disaster were not fraud or greed (although economic considerations played a role) but the inattention and complacency of transnational corporate managers and their failure to understand the special problems that exist in newly industrializing countries.

Similarly, both Texaco and Shell found themselves in settings where government oversight was missing. Regulatory agencies were not keeping any eye on any of them. In addition, the picture gets very complicated where a state enterprise is a local joint venture partner and where the host country government does not encourage or support local community development or environmental protection. The state enterprise and the national government may both be interested in the bottom line of profits, and environmental protection or community development costs reduce profits that can be shared or taxed. At the same time, a government may actively discourage a transnational company from developing alliances with local communities.

B. Out-of-Sight, Out-of-Mind; Rationalization

Related to the concept of thinking across space is "out of sight, out of mind." If the transnational company's CEO doesn't see the environmental damage, or the impact of a mine on a local community, or children in the Congo mining a resource used by the company,[46] that corporate executive is less likely to be concerned about it. Physical distance reduces the tendancy for ethical considerations. The CEO in the home office doesn't

[45] Gas Plant Disaster Case, *supra* note 44.

[46] *See* Brook Larmer, *The Price of Gold*, NAT'L GEOGRAPHIC, Feb. 2009, at 34, *available at* http://www.gold101.com/blog/index.php/the-real-price-of-gold-by-brook-larmer-national-geographic/ (last visited Mar. 17, 2010).

see the workers close up and is not dealing directly with unions or worker complaints.

How is the chief executive of Wal-Mart and those in similar positions to think about deforestation half-way around the world? If morality is "fundamentally concerned with the effects of actions on other people," and justice "pertains to institutional actions with respect to their effects on the relative status of people in society,"[47] the question in international business and for transnational lawyers is how large is that universe of people and how extensive is that society? How far geographically do or should our ethical obligations and empathy extend? How far down a company's supply chain do the company's obligations run? Are we obligated to provide the same "justice" for people half-way around the globe -- who do not work directly for our company -- as we are at home?

C. "Best Practices" and "Due Diligence"

On a related front, an increasing amount of foreign investment and trade is emanating from Asia – particularly China and India – and many overseas managers from state-owned and private companies in these countries may not have much prior international experience. They are moving into unknown corporate territory as well as geographic territory. And in the rush to secure energy and metals resources, there may be little thinking about minimizing ethical risks or maximizing social responsibility.[48] The mentality may be: "Get the resource at any cost." Further, the practices in the home country of companies from, say, China in terms of environmental or worker safety may differ from contemporary international "best practices." The "due diligence" that company executives and lawyers from developed countries may be expected to exercise may not be part of the culture and modus operandi of the Chinese companies or other companies from newly industrializing and developing countries.

D. Competing Ethics; Unanticipated Consequences; Rationalization; Cost-Benefit Analysis

In many realms of ethics and social responsibility, the ethical picture is often not a clear one. Frequently, competing ethical claims are made. Take the example of sourcing alternative fuel from palm oil in Asia. On the plus side, for Malaysia and Indonesia, are increased jobs and income from palm oil production and increased taxes revenues for governments. And on the

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[47] Both quotes are from *Never Again Should a People Starve in a World of Plenty*, 121 HARV. L. REV. 1886 (2008).

[48] *A Ravenous Dragon*, ECONOMIST, Mar. 15, 2008, at 60, a special report on China's quest for resources.

plus side for the importing countries of Europe and North America is the increased availability of clean-burning (non-carbon-emitting) fuel. On the negative side, however, are major concerns about the (often illegal) clearing of rainforest for palm oil plantation use: it has been argued that the carbon savings from using biofuels derived from palm oil are negated by the carbon that is emitted from trees as tracts of land are deforested.[49]

With regard to the use of corn as a biofuel, it has been argued that ethanol from corn leaves a carbon trail that outweighs the advantages of the clean-burning fuel and that the production of biofuels from corn may decrease the supply of food in a world where populations are growing and hunger is a fact of life in many parts of the globe.[50]

Government policy formulation may suffer from not looking beyond the immediate problem and apparent solution to possible negative consequences and not thinking across space. Unanticipated consequences may be unanticipated because they are beyond the world view of those attempting to solve the particular problem.

Those concerned about pollution in the cities of Europe and the United States may rightly feel that the use of clean-burning fuels in automobiles, trucks, motorcycles, and buses will be beneficial for the (local) environment and the health of local citizens, and will contribute to a reduction in global warming. But they may not consider the broader environmental implications in manufacturing and processing biofuels or in clearing rainforest for growing. As we pull a strand of the spider web toward cleaner fuel use, this act may, elsewhere in the web, produce the negative effects mentioned above. As information on the negative implications of biofuel use has become available, there has been some rethinking in the U.S. and Europe of biofuel targets.[51]

Another challenge is understanding the science. In the recent movement toward trying to reduce the consumer's "environmental footprint," it has been assumed in some quarters that buying products that

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[49] *See Unilever Backs Moratorium on Palm Oil Deforestation in Indonesia*, INDUSTRY WEEK, May 2, 2008, *available at* http://www.industryweek.com/articles/unilever_backs_moratorium_on_palm_oil_deforestation_in_indonesia_16245.aspx (last visited Mar. 17, 2010).

[50] *See* Runge & Senauer, *supra* note12.

[51] *See* Mark Rice-Oxley, *Why Europe Backpedals on Biofuel Targets*, THE CHRISTIAN SCI. MONITOR, July 8, 2008, *available at* http://www.csmonitor.com/Innovation/Energy/2008/0708/why-europe-backpedals-on-biofuel-targets (last visited Mar. 17, 2010) ("The British Government indicated . . . it would take a more cautious approach following an official report that raised multiple warnings about the technology, specifically that it contributes to high food prices and may create more greenhouse gas emissions than it prevents.") The article notes that some experts suggest that the negative implications have been overstated and others who say that the future of biofuels lies in non-edible plants.

are produced locally is better for the environment than products transported from overseas. But science may not support the assumption.[52]

Related to the concept of competing values is social cost-benefit analysis. At any moment in time, one may argue that actions that look morally wrong from one perspective can be morally justified from another. And the positive aspects of certain actions may help company executives in rationalizing activities that seem morally dubious from another perspective.

One example is the use of child labor in mining. On the one hand we think child labor is wrong and bad for the child's development and education. On the other hand, the child's family may be without income, the child may be without parents and means of support or the child may need to assist a parent in earning an income.[53] Another example is the choice, mentioned by a *New York Times* columnist visiting Cambodia, between children scavenging in toxic garbage dumps for plastic cups that can be sold to recyclers and children working in manufacturing sweatshops.[54]

What balance do we strike? How do we analyze these apparent choices? And to what extent do companies and governments use such juxtaposed choices as rationationalizations? At the very least, wisdom requires taking into account a vast range of social, economic, and political concerns in developing rational ethical policy. The ethical solution for policy-makers is a multi-disciplinary one. And the apparent options may not be the only ones that should be put on the table.

V. CONCLUSION

The intent of this article is to expand our understanding of what we mean by breaches of ethics and social responsibility in the international business context and to help us understand the causes: why transnational companies find themselves charged with major abuses involving damage to health, environment, and local communities in host countries. The focus has been on how company managers, government regulators, and others – including lawyers, who are charged with overseeing the operations of companies, think. Assumptions, wishful thinking, magical thinking, failure to think effectively across space and across time, ideology, false choices, and intimidation by other disciplines are mental phenomena that we need to

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[52] For a discussion of environmental footprints, *see* Michael Specter, *Big Foot – in measuring carbon emissions, it's easy to confuse morality and science*, NEW YORKER, Feb. 25, 2008, at 44.

[53] *See* Shantha Bloemen, *Pounding Rock and Crushing Potential: Child Labour in DR Congo*, June 12, 2009, UNICEF, http://www.unicef.org/infobycountry/drcongo_49979.html (last visited Mar. 17, 2010).

[54] Nicholas D. Kristof, Op-Ed. Columnist, *Where Sweatshops Are a Dream*, N.Y. TIMES, Feb. 15, 2009, at A35, *available at* http://www.nytimes.com/2009/01/15/opinion/15kristof.html (last visited Mar. 17, 2010).

address in educating business managers, lawyers, accountants, bankers and others.

Of course, as noted earlier, in some cases the culprits are greed and reckless disregard, but in others it is a failure to connect intellectually and emotionally. In this context we need to address how we train managers and others to deal with complexity, science, mathematical and economic models, information from other disciplines, and the pressures of modern information technology. We also need to address how we train mangers and others to think about what is occurring in far-flung operations. We need to examine what interdisciplinary analysis and global education really mean and what the barriers to rational analysis are. And lawyers, as advisors to international enterprises, need a similar education.

It might also be noted that some of the issues discussed here have been translated in the past year into lawsuits based on theories of negligence and failure of duty of care.[55]

As for regulation, the question is: how much regulation do we need to compensate for corporate failures in thinking and in doing what is best for society, shareholders, consumers and others? How much regulation do we need to ensure that the private overseers – the lawyers, the accountants, the credit agencies, the lenders – carry out their assigned tasks? How much regulation is needed to encourage corporate executives to think across space?

On the latter, governments have taken some steps to enlarge the society to which corporations are responsible. The Foreign Corrupt Practices Act in the United States, the OECD Convention on Combating Bribery of Foreign Government Officials in International Business Transactions, and the Singapore Prevention of Corruption Act are examples.[56] So are the U.S. Government's expansion of the Lacey Act[57] (re timber sourcing), the European Commission's regulations to control trade in illegally sourced timber,[58] and the U.S. Clean Diamond Trade Act.[59]

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[55] For example, *see* Press Release, Minibond Investors Action Group, http://www.miagsg.com/Press-Release-on-10092009.html, (Sept. 10, 2009). Announcing write of summons in the High Court of Singapore on Sept.9, 2009 against a minibond issuer, Lehman Brothers Singapore, and a distributor (Royal Bank of Scotland). ("The claim against the distributor is grounded in negligence and negligent misstatements . . . . The Plaintiff's Case is that the distributor owed them a duty of care, and that they breached the standard of care, when they failed to properly understand the product . . .").

[56] *See* U.S. Foreign Corrupt Practices Act, 18 U.S.C.A. § 1350 (1998); Convention on Combating Bribery of Foreign Public Offcials in International Business Transaction, Apr. 10, 1998, DAFFE/IME/BR(97)20; *see* Singapore Prevention of Corruption Act, ch. 241 (liability of citizens of Singapore for offences committed outside of Singapore).

[57] 16 U.S.C.A. §§ 3371-78 (2008).

[58] *See* Lacey Act, 16 U.S.C.A. §§ 3371-78 (2008); *see also* EUROPA, *Environment: Commission Unveils Package to Tackle Illegal Logging and Deforestation*, Oct. 17, 2008, http://europa.eu/rapid/pressReleasesAction.do?reference=IP/08/1543 (last visited Mar. 17, 2010).

With regard to government regulation of corporate activity, the tension is typically between too much regulation and too little. The answer, as Confucius told us centuries ago, lies in moderation: "The middle way is indeed a perfect virtue."[60]

[59] *See* Global Witness and Amnesty International, *Conflict Diamonds – U.S. Jewelry Retailers Still Not Doing Enough*, Feb. 2007, *available at* http://www.globalwitness.org/media_library_get.php/368/gw_ai_us_diamond_retail_survey_summary_2007.pdf (last visited Mar. 17, 2010).

[60] *See* 100 SAYINGS OF CONFUCIUS 199 (Ding Wangdao, *ed*., 1997). A disciple asked Confucius: "Who is more virtuous, Shi or Shang?" Confucius said, "Shi often goes too far and Shang often falls short." "Does that mean that Shi is better?" Confucius said, "Going too far is the same as falling short."

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