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Radical Decency Reflection #34
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Triumphal Business and the Demise of Checks and Balances

In the early 1980s, I was an attorney deeply immersed in the EPIC bankruptcy. What happened was that a smart promoter bought undervalued model homes in housing developments, mortgaged them and sold the mortgages in bulk to Savings and Loans, then the country's prime originators of mortgages. The S&Ls loved his product. Instead of accumulating mortgages one by one, they could now close 50 or 100 in an afternoon.

Here's where the problem came in. Since the mortgages were immediately resold, the promoter had no financial stake in how the loans actually performed. And because his product was so popular, keeping up with the demand became a huge challenge. So, before long, he was selling junk – loans secured by mortgages far in excess of the underlying properties' values. But the S&Ls didn't care. EPIC was, after all, a "hot" company, run by a "genius," and potential losses, if any, were years down the road. Moreover, since "everyone was doing it," the pressure was on not to be left behind – leaving other S&Ls to report this impressive growth on their financial statements.

If all of this sounds familiar, it should. Back in the 1980s, the S&L crisis – of which this was a part – was a very big deal; a bail out that ultimately cost hundreds of billions of dollars. But we learned nothing. 20 years later, the exact same thing happened again. Promoters – making obscene amounts of money from front-end fees, and having no stake in the quality of the underlying product – became the prime drivers of the mortgage industry. Only this time, the promoters included the country's largest investment banking firms and when the bubble burst, in 2008, it froze up the world's financial system and shook it to its core. This time, the losses will be counted in the trillions.

And the trend continues. Very little by way of structural reform has come out of the latest crisis, and no effort has been made to hold the Goldman, Sachs of the world – or their senior executives – criminally accountable. Is any reasonably sober observer willing to bet that it won't happen again?

The essence of power is the ability to aggregate large amounts of money and to command large numbers of people to do your bidding. At the time of the founding fathers, government had a monopoly on this kind of power. Thus, they structured a system, based on separation of powers and checks and balances, to prevent too much governmental power from flowing into the hands of one or a small group of people.

Given their focus – on governmental power – the system has worked well. For over 200 years we have avoided a dangerous accumulation of power in the hands of a President, or Congress, or (less plausibly) the courts. But that system was crafted in a very different world.

In the last 50 years, computer technology has created a revolution in communications and in our ability to analyze and manage vast amounts of complex material. That, in turn, has created hitherto unimaginable opportunities for businesses to shift enormous sums of money from one investment to another with extraordinary speed, and to create and keep track of ever more intricate and far-flung investment strategies.

As a result, the possibilities for making – and accumulating – money, by managing money, have exploded. Today's most visible business moguls – exemplified by Warren Buffett and Goldman Sachs – focus, not on production and profitability, but on investment strategy and rate of return. They move seamlessly into and out of industries based solely on return; aggressively investing in the mortgage business at the height of the bubble, moving on – to new markets, new opportunities – when it burst.

Given these new realities, businesses can now marshal the tools of power to an extent that would have been unthinkable to the founding fathers. So, while arbitrary and destructive governmental power is still a threat, it is no longer the sole source of danger.

Through the use of these now, almost unimaginably large aggregations of capital, the business sector has, in the last half century, greatly expanded its power over our lives. How has it done this? Not through coercion – the typical way in which government exercises its power – but by buying off virtually every segment of society that could meaningfully limit its power.

The most visible example is, of course, government. While there is a clear philosophical divide between the two major parties, the deeper reality is that they are both fueled by business contributions. So, on the really make or break issues – such as meaningful regulation of business – the real divide is between largely symbolic programs, the Democratic policies, and no regulation at all. And – lest pressure for change come from other sources – our culture is organized so that almost every college, media outlet, and religious organization of any size is heavily dependent on investments, loans, and/or contributions from banks, businesses, or people who business made wealthy.

As one of my law professors noted, "business is not vicious, it's just avaricious." But the fact that its goals are not immoral does not mean that its actions are benign. Business' priority – pursued with singular focus – is on policies that allow it to pursue its amoral goal of ever expanding profits with impunity: Tax breaks and public subsidies; programs that lead to lucrative government contracts; a weakening of any sort of regulatory control.

The result? The last half-century has witnessed a steady reduction in support for social safety net programs, the better to fund tax savings that disproportionately favor businesses and the wealthy. It has also been the occasion for a historic decline in the system's checks and balances on business: Antitrust laws; usury laws (outlawing excessive interest rates); bank regulation; class action lawsuits; bankruptcy protection for individual debtors. Ongoing efforts seek to similarly emasculate personal injury lawsuits, environmental laws, and programs that protect the rights of employees.

These policy shifts have caused incalculable harm. The savings of millions are being devastated as banks demand repayment of debt only made possible, to begin with, by the exploitative, regulation free environment they worked so tirelessly to create. Insurance companies – regulated in theory only – gouge customers for premiums and deny valid claims. Credit card companies arbitrarily raise interest rates, on exemplary customers, to levels that a generation ago would have been subject to criminal and civil sanction. The list of abuses goes on and on.

Note that, utterly failing to deal with this new power reality means that, as a culture, we are now living in a world where there is a complete disconnect between who we are and who we think we are. We continue to trumpet our system of governance as one of mankind's great triumphs. And yet, we have allowed the very essence of that system – checks and balances to prevent the accumulation of undue power – to be totally gutted.

To me, the most important take away from this chilling state of affairs is that current strategies for making things better – elections, lobbying for more enlightened laws, efforts of nonprofits and service organizations – are inadequate. We need to reframe the problem, as I attempt to do in this Reflection. We also need to name, again and again, things that currently go unnamed, such as the complicity of the media, the religious establishment, academia and, of course, both Democrats and Republicans.

Finally, we need to develop new strategies for change. Where to start? By working to replace competition, dominance, and control – the amoral values, predominant in business and the culture at large — with a counter set of values that can systematically reorient our outlook and offer fresh perspectives on where and how to push for change.

This last goal has been a powerful motive force in the development of Radical Decency. In earlier Reflections, I have discussed certain ideas that emerge from a systematic thinking through of the philosophy, ideas that could be part of a new, more effective strategy: Building a counter-model of business based on Radical Decency (Reflection 15); creating deeper, more enduring, and diverse alliances with like-minded people (Reflection 7); embracing the importance of ideas and theory, and harnessing them to our purposes (Reflection 21); creating and nurturing values based communities, the fertile soil out of which social movements can grow (Reflection 29).

Our wisdom and moral and emotional stamina are sorely tested when we seek to make a meaningful contribution to a more just, equitable, and decent world. But, the alternative – getting by in the world as it is – seems a like an anxiety provoking, spirit draining way of living. By way of contrast, Radical Decency is – as I am fond of saying – the surest pathway to a more vibrant and fulfilling life.