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**Corporate Misconduct: Examining Government Intervention,  
Market Solutions and Alternative Deterrents through Ethic Systems Pedagogy  
(A Legal and Economic Analysis of Corporate Scandals and the Effectiveness of  
Various Remedial Approaches)**

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## ***Abstract***

The frequency and pace of corporate scandals since the Enron horror has considerably slowed. Marginal are surface revelations concerning serious corporate misconduct regarding financial and ethical procedures. Certainly, the 2002 enactment of the Sarbanes-Oxley Act (“SOx or the Act”) largely contributed to the halt of unethical corporate behavior. Yet, a legitimate question continues in legal, ethical and economic debate regarding whether SOx is the most efficient manner to combat corporate misconduct? On the one hand, arguments against SOx include the notion that the Act promotes companies toward inefficient, ineffective and unduly burdensome allocation of corporate resources to comply with the Act’s provisions. Companies argue then that such results tend to alter various aspects of their business units into bureaucratic stalwarts. On the other hand, proponents of SOx offer that the Act restores investor and consumer confidence in market reliability. A logical reflection (legal or economic) concerning the usefulness of SOx is more effective if one examines the origin or cause of the Act—namely corporate misconduct.

An examination of corporate misconduct leads to three questions that offer significant analysis of the topic. First, how does corporate misconduct economically affect a capitalist market system? Second, from a legal and economic perspective, is government intervention (*vis-à-vis* SOx) the best manner in which to deal with corporate corruption or should and can a purely market driven correction remedy resolve the problem? Finally, are there alternative methods toward remedying corporate misconduct?

This article presents four parts in an attempt to examine and answer the three aforementioned questions. Section I offers an economic analysis of how corporate misconduct shapes and can ultimately lead to the destruction of a capitalist market system (despite government interventions). Section II offers a legal and economic analysis of the effectiveness of government interventions concerning remedying and deterring corporate scandals by mainly examining the practical application of SOx implementations over the past four years versus a proposed *laissez faire* market approach. Section III of the article reviews current business and law school ethic systems pedagogical approaches and discusses alternative measures for preventing corporate misconduct (mostly achieved through professional curriculum reform concerning business and law schools ethics pedagogy toward implementing courses more appreciative in understanding ethic systems and economic discourses). Section IV presents a summary discussion of the presentation.

## TABLE OF CONTENTS

<i>Introduction</i> .....	1
<b>I. An Economic Analysis</b> .....	5
<i>A. The Economics of Corporate Misconduct</i> .....	5
1. Market Credibility Strains .....	8
a. Market reputation .....	9
b. What’s the point of doing business in a suspect market? .....	11
2. Capitalist System Philosophy and Market Adjustments .....	13
3. Doom and Gloom! The Effects of Corporate Misconduct .....	14
<b>II. Government Savior or Hurtful Distraction?</b> .....	15
<i>A. Government Intervention Concerning Corporate Misconduct</i> .....	15
1. Sarbanes-Oxley Act .....	17
a. History and Purpose of the Act .....	17
b. Performance of the Act .....	18
i. Pros .....	18
ii. Cons .....	18
2. Government Intervention via the Act Versus a Course of <i>Laissez Faire</i> .....	19
<b>III. Correcting Business Misconduct Through Alternative Deterrents     Regarding Ethic Systems Pedagogy</b> .....	22
<i>A. Law School and Business School Ethic Courses</i> .....	22
1. Historical Observations .....	24
2. Reform Observations .....	25
<i>B. Teaching Ethic Systems from an Economic and Reasoned Philosophy</i> .....	27

1. Can Ethic Systems Understandings Truly be Taught? .....	27
2. Client and Mission of Future Corporate Leaders (Today's student Tomorrow's Benefit or Burden) .....	28
<b>IV. Summary</b> .....	<b>32</b>

## *Introduction*

Over the last seven years corporate accountability in North America began a regulated and cumbersome transformation concerning corporate ethics reporting and company transparency regarding financial and operational concerns. Corporate scandals involving Enron, WorldCom and other large publicly traded companies ushered in such reforms. Not surprisingly, after government intervention, companies aggressively began to modify their corporate culture regarding financial reporting and audit procedures to comply with a new focus on corporate ethics. Companies developed emboldened positions for Ethics and Compliance officers. In addition, a large increase developed concerning the need for companies to staff accounting professionals and lawyers. Consequently, companies began to question the role of academia in producing corporate managers and lawyers who possess sound business and professional ethics training and understandings. From this perspective, then, the following article addresses the *how to* regarding corporate North America's quest that business and law schools produce business managers and lawyers with sound business and professional ethics training.

In a society dominated by a capitalist market system, investor and consumer confidence in market integrity must prevail even as much as the goal of corporate decision-makers to efficiently maximize profits and earnings for a company's shareholders. Historically, at least as nineteenth and twentieth century history are concerned, the main objective of a corporation is to generate income and profits to the benefit of the company, which passes on such benefits in the form of earnings to shareholders. This underlying business goal in modern era produces numerous mega companies and extremely wealthy individuals who govern and invest in North American

companies and financial markets—a nod of approval for the North American capitalist market system. Yet, the main objective of modern capitalism seems at odds with ethic systems considerations in terms of increased pressures to reach and maintain higher and higher company profit margins and individual wealth. Consequently, based on such conflicting goals (*i.e.*, profits versus corporate ethics) we have seen results in which the capitalist market system suffers catastrophes such as Enron. In the wake of our current government forced corporate ethics and morality focused market structure, the biggest question is how to balance the academic development, if possible, of ethic systems training of business managers and lawyers and still accomplish the goal of hefty company and individual profit margins?

The answer, although on the one hand seemingly simple and altruistic in some respects, and on the other hand savagely complex, lies in reorienting and focusing ethic systems understandings, beliefs, values and teachings to fit the goal of today's and tomorrow's business and legal leaders. One such focus involves examining the serious harm that corporate scandals cause to the entire capitalist market system by endangering the very structure of the system itself. Thus, the answer is an analysis in economic observation and theory coupled with fresh perspectives and models of ethic systems pedagogy.

If notions are true that economic efficiency and gross profit margins control North America's bottom-line corporate culture, then a reasonable and serious focus on such bottom-line considerations should encourage corporate and legal leaders to understand that their acts and decisions significantly affect the underlying capitalist market system because of its intricate frailties and sensitivities. Such decision-making concerns are

crucial in maintaining a viable avenue (*i.e.*, capitalist market system) for companies, shareholders and corporate decision-makers to enjoy a substantial measurement of wealth and livelihood. As we will discuss, *infra*, government regulation (*e.g.*, the Sarbanes-Oxley Act) can only go so far toward sustaining a capitalist market system. Ultimately, government market interventions burden the market system causing it to operate at inefficient levels. Consequently, corporate leaders (*i.e.*, managers and lawyers) must seriously consider economic implications of both ethical and unethical behavior regarding a capitalist market system. Such considerations begin with proper ethic systems pedagogical formulations concerning business and legal decisions regarding corporate accountability.

The combination of ethic systems teaching centered on understanding basic economic principles, legal rules, business protocol concerns and examinations steep in philosophical (religious) and/or historical designs will carefully promote business leaders and their advisors toward reasoned thinking regarding future business decisions. Such reasoned thinking begins when these future leaders are students, and will hopefully continue into future work environments. The long-run benefit offers corporate environments the best platform toward sustaining the North American capitalist market system, as well as generating economic efficiency regarding the accumulation of company and private wealth.

To this end, this article suggests that sound economic understandings of a capitalist market system encourages profit maximization *and* focuses on business leaders' and business clients' (company and shareholders) needs and/or goals to reach such ends. This is the case even more so where one learns such economic understanding from the

perspective of business ethics and legal professional responsibility involving numerous considerations (*e.g.*, religion, philosophy, etc.) The hope, then, is that such in-depth understandings will catapult ethic systems pedagogy beyond general notions of rule based ethics concepts and mere business behavior nomenclature concerning *what is good or bad?*<sup>1</sup>

To accomplish the aforementioned tasks, this article presents four parts to examine and answer various questions related to the *how to* develop business managers and lawyers with sound ethic systems training and understandings. Section I offers an economic analysis of how corporate misconduct shapes and can ultimately lead to the destruction of a capitalist market system. Section II offers a legal and economic analysis of the effectiveness of government interventions concerning attempts toward remedying and deterring corporate scandals by mainly examining the practical application of the Sarbanes-Oxley Act and its implementation over the past seven years versus a proposed *laissez faire* market approach. Section III reviews current business and law school ethic systems pedagogical approaches and discusses alternative measures for preventing corporate misconduct by asserting reformations of professional curriculum concerning business and law schools ethics courses through implementing an ethic systems pedagogy geared toward insetting more appreciative understandings of ethic systems from an economic discourse. Section IV presents a discussion summary of the presentation by reviewing the economic and ethic systems pedagogical theories advocated throughout the article.

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<sup>1</sup> For a good overview of ethic systems and their complexities, *see* Scott B. Rae, MORAL CHOICES: AN INTRODUCTION TO ETHICS (2d ed. Zondervan Publishing House 2000).

## I. An Economic Analysis

Certain preliminary matters are unavoidable when it comes to focusing an economic analysis—especially where the economic theory forms the basis of an underlying assertion concerning market ethics and dynamics. In our first two sections, the goal is simply to set forth economic theories concerning market reactions to corporate scandals and to paint a picture of the likely short-term and long-term effects such scandals have on a capitalist market system.

### A. *The Economics of Corporate Misconduct*

Investors, consumers, stakeholders and corporate shareholders react to market information in a capitalist market system. Such reactions tend to induce a great influence on, *inter alia*, business operations and market perceptions.<sup>2</sup> The results can range from that of a mixed market condition of ups and downs in profits and returns on investments to a market reaping prolonged minimal returns on investments, or worst, prolonged and dismal losses.<sup>3</sup> In this light, certainly negative investor attitudes influence market economic strength for a turn for the worst when widespread news of corporate scandals dominate the market landscape. Corporate scandals are basically negative news and/or information concerning financial markets. In the severest sense, then, based on such market news or information, corporate misconduct is instrumental in quickly decaying not only investor confidence but also consumer confidence in U.S. financial and

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<sup>2</sup> See *Mirant N.Y., Inc. v. Town of Stony Point Assessor*, No. 4357/00, 2006 WL 2559525, at \* 5 n.44 (N.Y. Sup. Aug. 28, 2006), a property tax case generating in the Northern District of Texas (Fort Worth, Texas) and decided in conjunction with a New York appellate court proceeding, addressing tax assessment concerns related to a regulated utility provider by discussing market regulations and corporate misconduct. As part of the court's reasoning in its opinion to render a decision, the court noted market fallout from the Enron scandal as “. . . a cascading collapse in public confidence [that resulted in] trillions of dollars in stock values [vanishing, which led to the need for individuals to acquire] second jobs, [postpone]

manufacturing markets.<sup>4</sup> The remnant and future shock waves from corporate scandals such as Enron and WorldCom will offer lasting negative affects on U.S. corporate culture. From a purely economic perspective, information discovered, and continuing to evolve concerning legal solutions (e.g., jail sentencing) regarding illegal and corporate misconduct has been a financial disaster to companies and individuals on a global scale, arguably, retarding the U.S. capitalist market system in the short-run.<sup>5</sup> The U.S. capitalist system cannot continue to withstand the increasingly tawdry and foolish behavior demonstrated by an alarmingly rising number of greedy corporate leaders who illegally achieve bottom-line profits linked to individual gain.<sup>6</sup>

Although such behavior seems to be waning, it appears that desensitized investors increasingly possess the sentiment of “oh well, business as usual” regarding corporate

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retirements, [loss of] homes, [suspend] educations[,] and shattered dreams” (quoting KURT EICHENWALD, *CONSPIRACY OF FOOLS* \_\_\_\_ (Broadway Books 2005).

<sup>3</sup> *Id.*

<sup>4</sup> See *Enron Corp. Sec., Derivative & ERISA Litig. v. Enron Corp.*, 235 F. Supp. 549, 594 n.33 (S.D. Tex. 2002) (quoting Gretchen Morgenson, *Market Watch: Rebound From Ruin, If Not From Distrust*, N.Y. TIMES, September 8, 2002, at Section 3 (Money and Business) page 1 (in discussing the serious affects of corporate scandals on the U.S. capitalist market structure, author notes “[concerning investors’ perceptions of the U.S. market system, the] . . . greater risk to [U.S.] continued prosperity and economic strength comes from within [U.S.] shores . . . . The risk emanates from people in positions of power at corporations who cheat . . . shareholders . . . [and] lie to investors . . . before their [behaviors in corporate misconduct] are exposed.”

<sup>5</sup> See Larry D. Thompson, *The Corporate Scandals, Why They Happened And Why They May Not Happen Again*, Chautauqua Institution Lecture, at <http://www.brookings.edu/views/speeches/thompson/20040713.htm> (last visited July 25, 2007), commentator in discussing government interventions concerning recent corporate scandals notes the slow down in U.S. markets that result from corporate misconduct, “Consider where we were just two short years ago — July 2002. By July of 2002 we had experienced the bankruptcies of several large public companies, including Enron, World Com and Adelphia. Our financial markets were shaken, and there was seemingly nightly news of alleged criminal conduct at the highest levels in some American corporations. As a government official at the time, it was a real time of crisis. I truly believed our capitalist system was in peril. I observed that many people had simply lost confidence in business. Consider the following Gallop poll taken in July 2002 that surveyed what occupations people trusted. At the top of the list were teachers. 84% of those surveyed said they would trust teachers, and people who run small businesses were at 75%. At the bottom of the list were CEOs of large corporations at 23%. The CEOs were just ahead of managers of HMOs at 20% and car dealers at 15%. Interesting, the CEOs scored worse in the poll than lawyers and government officials.”

<sup>6</sup> See *supra* text accompanying note 4.

misconduct. This type of sentiment is an alarming market development.<sup>7</sup> Moreover, such dispassionate sentiment and apathy by investors toward the market exist despite U.S. graduate level business and law schools providing future corporate and legal leaders with exposure to mandatory business ethics and professional responsibility courses.<sup>8</sup> Graduate institutions tout such courses as strongly revised toward a greater focus on corporate governance concerns.<sup>9</sup> A majority of U.S. business' and law schools' ethics courses intensely admonish students to maintain sound business conduct and protocol when faced with challenging and/or questionable business practices and decisions.<sup>10</sup> Our discussion will propose alternative methods and curriculum for such courses at greater length in Section III. It suffices to note that the results of academic ethic systems training and professional responsibility courses are seemingly less than effective at this juncture in history concerning business leaders and lawyers ethically operating and running companies within the North American capitalist market system.<sup>11</sup>

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<sup>7</sup> Notably, investor and consumer trust of corporate decision-makers is low. *See supra* text accompanying note 5 concerning Gallop poll results.

<sup>8</sup> For a discussion of the development of teaching ethic systems curriculum in business and/or law schools, *see* Ove D. Jakobsen, Knut J. Ims & Kjell Grønhaug, *Faculty Members' Attitudes Towards Ethics at Norwegian Business Schools: An Explorative Study*, 62 J. BUS. ETHICS 299, *passim* (2005); *see also* Rob Atkinson, *Connecting Business Ethics and Legal Ethics for the Common Good: Come, Let Us Reason Together*, 29 J. CORP. L. 469, 474-84 (2004).

<sup>9</sup> *See* Atkinson, *supra* note 8, *passim*.

<sup>10</sup> *See supra* note 8 and accompanying text.

<sup>11</sup> It seems that corporate misconduct continues to occur despite pedagogical overhauls in U.S. business and law school curriculum. While there will never be an eradication of corporate misconduct, the motivating factors behind allowing or deterring such conduct seems to escape the grasp of graduate institutions charged with exploring ethic systems studies with their students. It appears that U.S. corporate culture (social norms), the desire to largely earn profits and avoid penalties, plays a large role in fostering corporate misconduct despite the global and domestic affects. *See, e.g., In re Vivendi Universal, S.A. Sec. Litig.*, 241 F.R.D. 213, 243-44 (S.D. N.Y. 2007) (recent case involving securities fraud transaction where court discusses U.S. market culture as "a global economy [where] acts of corporate misconduct-whether committed in the United States, abroad, or both-may have substantial effects on the United States market."); *see also* Melvin A. Eisenberg, *Corporate Law and Social Norms*, 99 COLUM. L. REV. 1253, 1253-54, 1258-59, 1262-63 and 1268 (1999) (discussing cultural motivations to act toward or refrain from corporate misconduct); *see* Atkinson, *supra* note 8, *passim*.

Perhaps an argument exists that U.S. institutions of higher learning should do more to emphasize the point that leaders of companies in a capitalist market system must act with honor and integrity versus greed for the overall survival of the market system.<sup>12</sup> Still, *basic* theoretical discussions concerning ethic systems understandings may not be enough to emphasize the devastating affect that corporate misconduct can have on a capitalist market system. An economic analysis of such behavior, however, offers instructive insight into the overall affects of corporate misconduct on a capitalist market system. Such affects include negative long-run positions of market inefficiency, decreases in company profits, and decreases in shareholder returns and the personal wealth of individual managers. This is the case even where there are substantial short-term company, individual and market gains.

### 1. Market Credibility Strains

In a capitalist market system investor and consumer confidence regarding market reputation is unequivocally a key factor to sustaining market structure.<sup>13</sup> Without investor and consumer market confidence, sustained market efficiency is unattainable and ultimately a capitalist market system's survival is at stake where shareholder return,

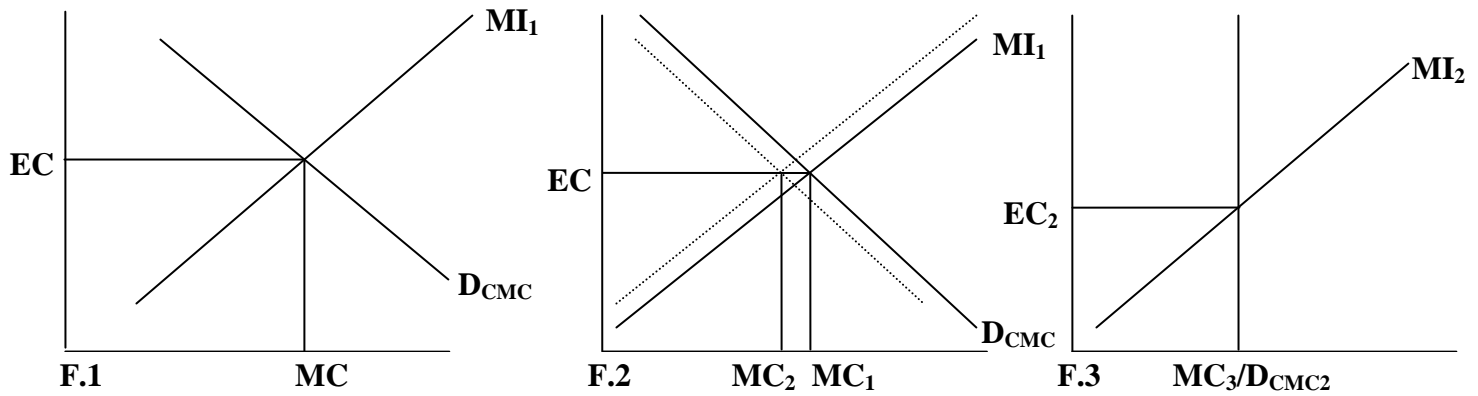
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<sup>12</sup> See Irwin M. Stelzer, *The Corporate Scandals and American Capitalism*, 154 J. PUB. INT. 19, 21 (2004) asserting that “[t]he most important issue facing . . . public policy responses to troubling corporate behavior has little to do with the specific practices uncovered . . . . [, but] [w]hat’s ultimately at stake [concerning] . . . the healthy functioning of the capital markets . . . and the . . . [acceptance] of capitalism [as a market system within North America and/or the United States.]”, *emphasis added*; see also John Plender, *Restoring Trust After the Bubble*, 38 BUS. ECON. 21, *passim* (2003), discussing the ability of U.S. capital markets to rebound from corporate scandals only by re-establishing market trust by investors and consumers.

<sup>13</sup> See Eisenberg, *supra* note 11 at 1274 in discussing corporate/cultural norms and the performance of economic systems regarding investor and consumer market trust. Article notes that the assertion that “[o]verall economic performance depends on transaction costs, and these mainly reflect the level of trust in the econom[ic] [system]. An effective culture has a strong moral content.” \* \* \* “[T]he success of an economy depends on the quality of its culture” (quoting Mark Casson, *The Economics of Business Culture: Game Theory, Transaction Costs, and Economic Performance* 3 (1991)).

company profits and the carrot of potential individual wealth are absent.<sup>14</sup> Thus, repetitive corporate scandals and associated corporate misconduct impose paroxysmal stresses and strains on a capitalist market system that eventually may well lead to uncorrectable market fatigue, which results in the overall destruction of the market system.

***ECONOMIC GRAPHS REGARDING MARKET REPUTATION ANALYSIS AND CORPORATE SCANDALS***



a. Market reputation

As we noted, market reputation drives a capitalist market system. As an economic concern, this key factor in a capitalist market system offers a telling life function that controls market profits and operation. **F.1-F.3** illustrate the drastic consequences that corporate scandals and associated corporate misconduct can have on investor and consumer confidence in a capitalist market system.<sup>15</sup> **F.1** demonstrates a market that

<sup>14</sup> For discussions of personal wealth motivations regarding capitalist market systems, see Michael R. Lissack & Kurt A. Richardson, *Models Without Morals: Toward the Ethical Use of Business Models*, 5 EMERGENCE 72, *passim* (2003) (discussing self-motivations and ethic systems regarding corporate/capitalist market system structure); see also Jeffery D. Smith, *Moral Markets and Moral Managers Revisited*, 61 J. BUS. ETHICS 129, 130-31 (2005).

<sup>15</sup> **EC**=Ethical Conduct, **MI**=Market Integrity, **D<sub>CMC</sub>**=Consumer Market Confidence and **MC**=Market Confidence. At **F.1**, the market is normal. That is to say an optimal balance exists at **EC** and **MC**—**D<sub>CMC</sub>** and **MI**

enjoys a stable reputation with no material lack of investor and consumer confidence. **F.2**, however, demonstrates a transition period where corporate scandals and associated corporate misconduct have occurred, or perceived to be occurring, and caused investors to lose money and companies to operate inefficiently.<sup>16</sup> Consequently, a dismal market condition evolves at **F.3**. At **F.3**, a first step toward a worst-case scenario, investors and consumers form negative opinions toward the market system and structure, which leads to inelastic attitudes demonstrated by a lack of investor and consumer confidence regarding market integrity.<sup>17</sup> Further, market conditions at **F.3** demonstrate a slow or “bear” market with a difficult recovery period.<sup>18</sup> When an **F.3** market occurs, it requires large amounts of time, money and almost inevitably government intervention, such as the Sarbanes-Oxley Act, to remedy investors’ and consumers’ lack of confidence in the market system.<sup>19</sup> Over the past several years, U.S. financial and manufacturing markets demonstrated similar conditions depicted at **F.3**.

Although, some may argue against the notion of how drastic or not so drastic and close to form of **F.3** that U.S. financial and manufacturing markets currently operate. Still, undoubtedly, recent opinions and perceptions weigh heavily toward affirming that

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are at equilibrium. At **F.2**, corporate misconduct has occurred causing the market balance of **EC** and **MC** to shift downward into lower scales—**D<sub>CMC</sub>** and **MI** are at odds. Finally, **F.3** occurs where the prolonged affects of corporate misconduct has seriously lowered **EC**, and no matter how high or increased **MI** becomes in scale, a harmful lack of consumer confidence in the market system has resulted in a completely inelastic market at **MC<sub>3</sub>/D<sub>CMC2</sub>**. For a discussion on market elasticity concerning economic theory and similar elasticities of supply and demand economic models as presented in this analysis see ROBERT S. PINDYCK AND DANIEL L. RUBINFELD, MICROECONOMICS 30-44 (5th ed. Prentice-Hall 2001) (1995).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> For an in-depth economic discussion regarding government interventions concerning free market failures, see PINDYCK AND RUBINFELD, *supra* note 15 at 288-320.

there exists a close link between negative market conditions demonstrated by **F.3** in relation to corporate misconduct and scandals.<sup>20</sup>

b. What's the point of doing business in a suspect market?

There is a decisive division of thought amongst classical economist and neo-classical economist concerning duty regarding business ethics and duty regarding market efficiency and profit responsibility.<sup>21</sup> Notably, classical economic thought, such as that memorialized by Adam Smith, reasons that there exists a duty concerning morality regarding the individual and market responsibility.<sup>22</sup> That is to say that the individual ought to be conscious regarding his or her actions in relation to market consequences.<sup>23</sup> This thought is quite far shifting and converse to neo-classical economic thought, which reasons that profit motivations are the driving economic factor and chief responsibility of a capitalist market system.<sup>24</sup>

Noted economist Milton Friedman promoted such economic thought and he and his successors in neo-classical school of economic philosophy developed the duty of profit

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<sup>20</sup> See *supra* notes 2-5 and accompanying text.

<sup>21</sup> See Jakobsen, Ims and Grønhaug, *supra* note 8 at 300-304; see also Radu Vranceanu, *The Ethical Dimension of Economic Choices*, 14 BUS. ETHICS: EUR. REV. 94, 99-105 (2005).

<sup>22</sup> See Jakobsen, Ims and Grønhaug, *supra* note 8 at 301 (citing ADAM SMITH, *THE THEORY OF MORAL SENTIMENTS* (D.D. Raphael and A.L. Macfie ed., Oxford University Press 1976) and ADAM SMITH, *AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS* (E. Cannan ed., 5th ed. Chicago Press 1976) (1776) in discussing classical economic thought contrasts to neo-classical economic thought regarding business ethics and market decision-maker responsibility).

<sup>23</sup> Discourses in ethic systems education concerning religion bear insight to this statement. For example, in Christian thought (Catholic and Protestant), commentators note that where individuals consider standards (guides or moral evaluations), here economic considerations serve as standards, in relation to their acts that a moral theology bears fruit—say a “common good,” which directs motivations and outcomes. See, e.g., Joseph L. Allen, *LOVE AND CONFLICT: A COVENANTAL MODEL OF CHRISTIAN ETHICS* (Abingdon 1984), *passim*; Charles E. Curran, *THE CATHOLIC MORAL TRADITION TODAY* (Georgetown University Press 1999), *passim*; Stanley Hauerwas, *THE PEACEABLE KINGDOM: A PRIMER IN CHRISTIAN ETHICS* (2d ed. SCM Press 2003), *passim*; David Hollenbach, *THE COMMON GOOD AND CHRISTIAN ETHICS* (Cambridge University Press 2002), *passim*.

<sup>24</sup> See *supra* notes 21-22 and accompanying text.

during the 1960s.<sup>25</sup> Again, neo-classical economists suggest that there does not exist an affirmative duty towards ethical behavior in a capitalist market system, rather the main function and *only* duty of corporate managers in such a system is that of efficiently securing the greatest profit for shareholders within the legal restraints of the law.<sup>26</sup> Such course of thought concerning ethic systems pedagogy is problematic for the business and law student headed toward corporate leadership. This is so especially because of the relationship between business and legal professionals. On the one hand, the business leader understands business ethics chiefly as regarding profits guided by minimal legal standards.<sup>27</sup> On the other hand, the lawyer understands professional ethics by numerous rules inclusive of professional standards of conduct, which require a highly informed representation of the client.<sup>28</sup> Such countering ideologies are on their face schizophrenic. The client or business leader desires to make as much profit as possible following the bear minimum restraints of the law. The lawyer desires to protect the interests of the client by maximizing legal protections (*i.e.*, to follow the full extent of the law) and knowledge favorable to the client. Yet, if one party operates at the minimal level of the

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<sup>25</sup> See Jakobsen, Ims and Grønhaug, *supra* note 8 at 300-304 (citing MILTON FRIEDMAN, CAPITALISM AND FREEDOM PHOENIX BOOKS (Chicago Press 1963) and Milton Friedman, *The Social Responsibility of Business is to Increase Profits*, N.Y. TIMES MAG. (1970), discussing neo-classical economic thought contrasts to classical economic thought regarding business ethics and market decision-maker responsibility).

<sup>26</sup> See *supra* note 25 and accompanying text.

<sup>27</sup> See Atkinson, *supra* note 8 at 474-491 and 510-523.

<sup>28</sup> *Id.*; see American Bar Association Model Rule of Professional Conduct 2.1, which states “In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.” MODEL RULES OF PROF'L CONDUCT R. 2.1 (2007).

law and the other party is bound by legal standards as to fully comply with and enforce the law—a conflict of interest exists.<sup>29</sup>

The most difficult aspect of such conflicting market leadership philosophies becomes the notion that why would anyone desire to participate in a market system that offers risky (above the normal risk) outcomes altered by split business and professional ethics philosophies regarding normative values? In other words, if the decision makers of the market are continually confused regarding what is and what is not ethical (as driven by monetary concerns regarding the business leader and client happiness and professionalism regarding the lawyer), then what assurance does an investor or consumer (safety wise) receive regarding market stability and confidence?

## 2. Capitalist System Philosophy and Market Adjustments

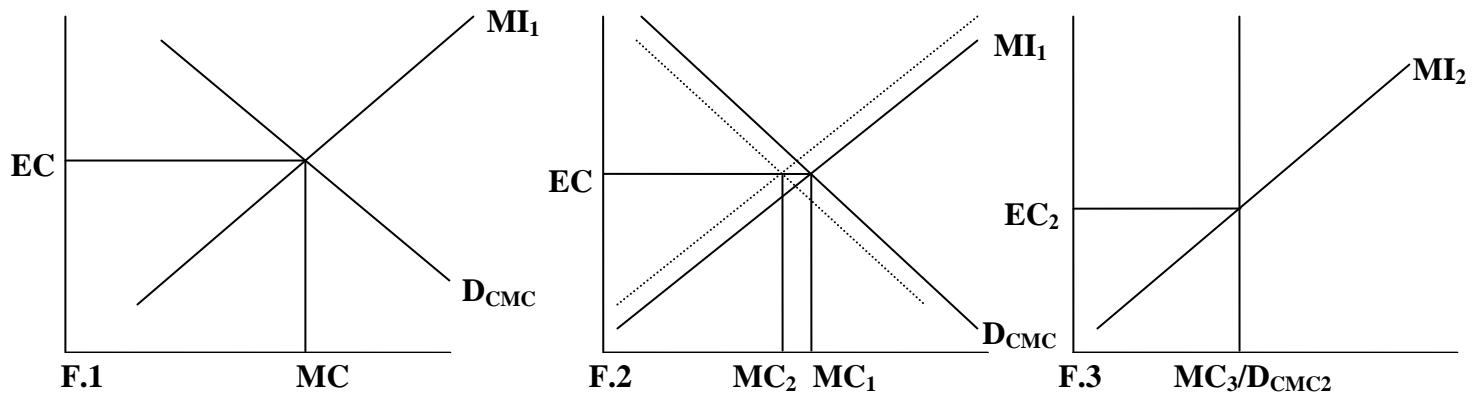
Economic theory demonstrates that the market in and of itself corrects such market failures (*e.g.*, corporate scandals such as accounting fraud).<sup>30</sup> Consider our previous discussion concerning market reputation regarding **F.1** through **F.3**. At **F.2**, we noted a transitioning market during or directly subsequent to a corporate scandal. It is important to understand that the market makes adjustments concerning not only investor (and consumer) confidence regarding the appetite to invest (financially or purchasing products wise) in the market, but also concerning company profits.

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<sup>29</sup> Regarding ethic systems studies, Joseph L. Allen presents an interesting discussion regarding conflicts and handling such. Allen notes that “conflict is an inescapable feature of life [(*e.g.*, conflicts among moral claims, interests of various people and groups, and the struggles over such interests)].” Allen, *supra* note 22 at 9. Allen notes religious standards for dealing with such conflicts. Here, our standard offers economics as a consideration to balance such conflicts.

<sup>30</sup> See *supra* note 19 and accompanying text.

***ECONOMIC GRAPHS REGARDING MARKET  
REPUTATION ANALYSIS AND CORPORATE SCANDALS***



Note the shifting curves from **MI<sub>1</sub>** and **DCMC** also represent supply and demand consequences in the market. As an adjustment, investor and/or consumers desire less of the market as a result of corporate misconduct; consequently, the company associated with such conduct is left producing less and being less of a participant or player in the market.<sup>31</sup>

### 3. Doom and Gloom! The Effects of Corporate Misconduct

The preceding graph regarding market adjustments demonstrates that corporate misconduct has the potential to chill and destroy the North American capitalist market system.<sup>32</sup> Some critics may argue that such a pronouncement is simply a bullish public policy anecdote without any practical merits. Further, economic theory does support the notion that a market will always make adjustments to correct its failures. In response, however, while it is accurate that the market usually corrects itself from inefficiencies, it

<sup>31</sup> See *supra* note 19 and accompanying text.

<sup>32</sup> See *supra* notes 2-5 and accompanying text.

is better to maintain a cognizance that the market will only bear *so much* structural abuse.<sup>33</sup> The fall of communism supports this assertion.

Proponents of communism asserted similar disdain regarding the strength and survival of socialism as a market paradigm. It is also accurate to note that such proponents concerning the notion that communism as a vital social system likely spend their current time developing anecdotal rationales and searching for mathematical theories to explain the practical demise of socialist market systems. In essence, then, while one could argue that the comparison of a socialist market system versus corporate abuse is akin to comparing apples to oranges—the underlying potential result is similar—serious market inefficiencies such as corporate misconduct whether systemic or micro driven exists as catastrophic market shocks.

## II. Government Savior or Hurtful Distraction?

So far we discussed the consequences of corporate misconduct from an economic perspective concerning market corrections based on the premise of maintaining the survival of a capitalist market system. Yet, there are times when the market cannot self remedy certain failures and then intervention by legal methods and government agencies become necessary.<sup>34</sup>

### A. Government Intervention Concerning Corporate Misconduct

As a theoretical note, economic analysis presents a definitively sharp abhorrence regarding the intervention of government solutions concerning market failures.<sup>35</sup>

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<sup>33</sup> See, e.g., *supra* notes 2-5 and accompanying text.

<sup>34</sup> See *supra* note 19 and accompanying text.

<sup>35</sup> See *U.S. v. Syufy Enterprises*, 903 F.2d 659, 663 (9th Cir. 1990) noting the desire for market self corrections in an antitrust suit, the court reasoned that in situations where a market is likely to cure perceived problems aside from barriers that prevent self-correcting market measures that “a court ought to exercise extreme caution because judicial intervention in a competitive situation can *itself* upset the balance

Government market interventions should not occur hastily and should only occur in the direst of circumstances.<sup>36</sup> Such rationales derive from the often high costs that result from intervening government market solutions (*e.g.*, price controls and other regulatory matters).<sup>37</sup> Quite often government market interventions remedy market failures in the short-run, but long-term government market interventions often result in market imbalances that lead to (i) diminished market participation, (ii) higher costs for consumers and even (iii) chilling the participation of some investors who might otherwise desire to participate by investing in the market.<sup>38</sup> All of these pitfalls often result in unintended consequences that spiral from the increased regulatory costs or burdens exacted upon companies by government market solutions; good intentions damning results. Concerning corporate misconduct, the Sarbanes-Oxley act is a governmental market intervention that currently occupies a hot debate regarding affirmatives and negatives of the preceding economic assertions concerning governmental market interventions.

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of market forces, bringing about the very ills [that such governmental intervention] were meant to prevent (citing ROBERT COASE, *THE FIRM, THE MARKET, AND THE LAW* 117-19 (1988) and RICHARD POSNER, *ECONOMIC ANALYSIS OF LAW* 324-25, 389-32 (3d ed. 1986)), *emphasis added*. Moreover, the court noted that “competition, not government intervention, is the touchstone of a healthy, vigorous economy . . . .” *Id.* at 663-64; *cf.* Gerald P. O’Driscoll Jr. and Lee Hoskins, *The Case for Market-Based Regulation*, 26 *CATO J.* 469 (2006) (discussing market-based regulation efficiency, *e.g.*, “private property rights and profit-seeking behavior” versus government intervention solutions); *but see* Matthias Benz and Bruno S. Frey, *Corporate Governance: What Can We Learn From Public Governance?*, 32 *ACAD. MGMT. REV.* 92 (2007) (discussing insights that private firms can learn from public governance).

<sup>36</sup> *Syufy Enterprises*, 903 F.2d at 663-64; O’Driscoll and Hoskins, *supra* note 35, *passim*; *see supra* note 19.

<sup>37</sup> *See* George W. Dent, Jr., *Corporate Governance: Still Broke, No Fix in Sight*, 31 *J. CORP. L.* 39, 60 (2005), discussing the costs associated with complying with the Sarbanes-Oxley Act (government intervention tool) noting, *inter alia*, out-of-pocket costs for higher auditing fees, rise in D&O insurance, smaller public companies forced to go private and foreign companies adverse to participating in U.S. stock exchanges.

<sup>38</sup> *Id.*; *see also* Nathan Wilda, *David Pays for Goliath’s Mistakes: The Costly Effect Sarbanes-Oxley Has on Small Companies*, 38 *J. MARSHALL L. REV.* 671, 686-87 (2004), discussing small company cost factors derived from the Sarbanes-Oxley Act compliance that push such companies from public to private entities. It is important to recognize that the less publicly traded companies in the market the less opportunity one has to chase and perhaps succeed in the “American dream” of wealth prosperity and affluence.

## 1. Sarbanes-Oxley Act

The Sarbanes-Oxley Act (the “Act”) passed into law in 2002 as a response to the slew of corporate scandals prior to and leading to the Act's creation. There are volumes of legal, economic and social critiques that praise or condemn the Act.<sup>39</sup> The scope of this article, however, is not to occupy and add to the continually growing army of such writings. Yet, a brief overview of the Act follows to help transition our discussion from that of economic analysis toward the benefit of revised business and professional ethics pedagogy.

### a. History and Purpose of the Act

We stated that certain market failures (unfavorable conditions) lead to government intervention. Certainly, a condition(s) that creates a serious undermine of investor and consumer confidence in a market system qualifies as such a failure. The Act serves as a means to galvanize and strengthen the loss of market confidence resulting from early twenty-first century corporate scandals.<sup>40</sup> The Act sets forth certain punitive measures and audit procedural goals to curb corporate misconduct and remedy faulty market

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<sup>39</sup> See Wilda, *supra* note 38; see also Dent, *supra* note 37; see Patrick W. Fitzgerald, Maxim Sytch, Stephanie Arnoldin, Zephania Zimpleman Thompson, *Towards Understanding Sarbanes-Oxley and Business and Financial Ethics Requirements in a Post-Enron World*, 60 CONSUMER FIN. L. Q. REP. 64 (2006) (article discusses the provisions, pros, cons and usefulness of the Sarbanes-Oxley Act); *Dynegy, Inc. Sec. Litig. v. Dynegy, Inc.*, 339 F. Supp.2d 804, 887-888 (S.D. Tex. 2004) (discussing enactment and purpose of the Sarbanes-Oxley Act); Lawrence A. Cunningham, *The Sarbanes-Oxley Yawn: Heavy Rhetoric, Light Reform (and it Just Might Work)*, 35 Conn. L. Rev. 915, 941-982 (2003) (article discusses the provisions, pros, cons and usefulness of the Sarbanes-Oxley Act); cf. Joann S. Lublin and Kara Scannell, *Market Place: Critics See Some Good From Sarbanes-Oxley (As Law Turns Five, They Say It's Too Costly, But It Exposes Problems Before they Explode)*, WALL ST. J., July 30, 2007, at B1 (article discusses the benefits of the Sarbanes-Oxley Act despite the costs imposed on companies concerning compliance measures).

<sup>40</sup> See *supra* notes 37-39.

environments concerning accounting methods that lead to harmful market effects based on unethical corporate.<sup>41</sup>

b. Performance of the Act

In its five year working history, the Act draws negative and positive critiques. Most of the positive praises involve the notion that the Act creates more efficient and ethical companies by allowing corporate leaders to spear off trouble before major concerns arise.<sup>42</sup> The negatives of the Act, however, involve mounting costs on businesses in implementing and maintaining the Act's accounting and business ethics protocol.<sup>43</sup>

i. Pros

It is difficult to ignore the Act's benefits.<sup>44</sup> In major concern, the Act serves to repair serious assaults and damage to investor and consumer confidence regarding market credibility resulting from the rapid fire succession of corporate scandals and enormous occurrences of corporate misconduct before the Act.<sup>45</sup> Consequently, the Act fits the perfect characterization of a government market intervention to curb a serious market failure.<sup>46</sup> But there are costs.

ii. Cons

Commentators argue that the Act exists as a monument of a rash and hasty government decision to intervene and fix a market problem (in the short-run) that could easily have corrected itself.<sup>47</sup> Moreover, the high costs associated with abiding by the Act's provisions remain problematic for smaller public companies and even serves as a

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<sup>41</sup> See *supra* notes 37-39.

<sup>42</sup> See Lublin and Scannell, *supra* note 39.

<sup>43</sup> See *supra* notes 37-39.

<sup>44</sup> See Lublin and Scannell, *supra* note 39.

<sup>45</sup> See *supra* notes 37-39.

<sup>46</sup> See, e.g., PINDYCK AND RUBINFELD, *supra* note 19 at 288-320; see also *Syufy Enterprises*, 903 F.2d at 663.

catalyst for more and more public companies (large and small) to go private.<sup>48</sup> Such negative impacts of the Act, although unintended, create a less than efficient market structure, which affords individuals lesser opportunities to realize wealth from the market system.<sup>49</sup> A brief second economic analysis concerning the inefficiencies of government market intervention follows.

## 2. Government Intervention via the Act Versus a Course of *Laissez Faire*

We noted that from an economic perspective, only in the severest circumstance should a market's government body intervene to assist or correct market failures.<sup>50</sup> The problem with government intervention to correct market failures is that artificial constraints or inflators influence markets versus real market indicators.<sup>51</sup> This situation causes a litany of undesirable results that cannot be easily remedied once the government's hand encroaches on the invisible or a *laissez faire* ("hands off") market approach.

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<sup>47</sup> See Wilda, *supra* note 39.

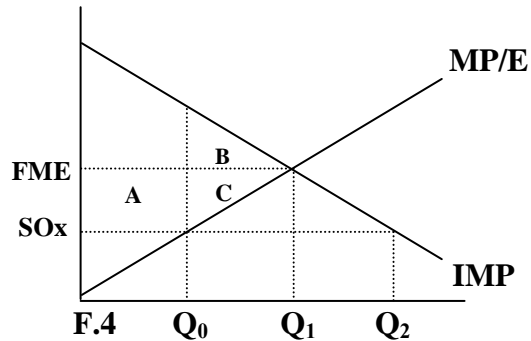
<sup>48</sup> *Id.*; see also Dent, *supra* note 37.

<sup>49</sup> See *supra* note 19.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

***ECONOMIC GRAPH REGARDING GOVERNMENT MARKET  
INTERVENTIONS AND CORPORATE SCANDALS***



**F.4**<sup>52</sup> demonstrates the consequences of government intervention regarding regulating corporate ethics as mandated by the Act. **F.4** presents a market suffering with increased operating costs by producers as a result of governmental restraints at **SOx**. Initially, the market is in Investor Market Participation (**IMP**) and Market Participation/Entrant (**MP/E**) equilibrium. That is to say that investor confidence is steady for the market and market producers freely decide the ethical considerations concerning business operations and finances (**FME**). Yet, where serious corporate scandals occur, recalling the earlier illustrations of **F.1-F.3**, government intervention may

<sup>52</sup> **FME**=Free Market Ethical Choices, **SOx**=Government Induced Ethical Choices, **MP/E**=Market Participants Ethics and **IP**=Investor Market Participation. At **F.4**, the market is experiencing a government intervention based on corporate misconduct and scandal. Ordinarily, producers would enjoy the freedom of unrestrained ability to make ethical decisions and use resources in production that go along with **MP/E** and **Q<sub>1</sub>** (production quantity of business concern). Yet, a market failure concerning corporate misconduct caused a problem in investor/consumer confidence. Thus, the government intervenes with **SOx** to induce restraints on market ethics decision-making policy by implementing government regulatory policies. Problematic, is the fact that at **SOx** (although market integrity and confidence are high) investors desire to invest in the market at **Q<sub>2</sub>** output. Yet, producers cannot steer the corporation to the level of profits required to reach **Q<sub>2</sub>**, producers suffer resource confinements at **Q<sub>0</sub>**. Ultimately, producers and consumers are unfulfilled by the **SOx** intervention in terms of market expectations. See PINDYCK AND RUBINFELD, *supra* note 19 at 288-320, which serves as a more in-depth discussion of problems associated with government intervention in competitive markets and provides similar models from which this specific economic model derives.

also occur (a fact concerning current North American financial and manufacturing markets).

At **SOx**, the government restricts the natural market freedom regarding a company's decision-makers' ability to independently structure business ethics procedures concerning auditing concerns and to make decisions regarding financial reporting formalities. Consequently, greater costs exist for producers and the entrance of market participants scales back from **Q<sub>1</sub>** to **Q<sub>0</sub>**.<sup>53</sup> Moreover, investors desire to participate in the market at **Q<sub>2</sub>** because of the increased security from government oversight— unquestionably a benefit and consequence at **SOx** (stronger market confidence exists)— but the market will not allow such investor participation.

The cost of such intervention concerning market producers, however, is the difference between the rectangle of area **A** and that of triangles **B** and **C**.<sup>54</sup> Again, the investor confidence is soaring at this stage, but there are fewer opportunities regarding market participants and entrants. Thus, it is not possible for producers and investors to attain the profits or investment opportunities represented at **Q<sub>2</sub>** while position **SOx**

<sup>53</sup> See PINDYCK AND RUBINFELD, *supra* note 19 at 292-93. Consider the following simple illustration. If we note that the area of rectangle **A** is \$2 billion (BB) from **SOx** to **FME** and total company resources are \$5BB in this area, then  $A = (\$5BB) \times (\$1 \text{ BB/difference of } SOx \text{ to } FME) = \$5BB$ ,  $B = (1/2) \times (\$2BB \text{ (FME)}) \times (.5)$  (say the amount at **Q<sub>0</sub>** and **IMP** intersect (arbitrarily, \$500 million (MM))) = \$500 MM, finally,  $C = (1/2) \times (\$2BB \text{ (FME)}) \times (\$1BB \text{ (SOx)}) = \$1BB$ . Note that the area of a triangle is half its height times its base. The results illustrate that where **SOx** exists as a governmental corporate ethics regulation policy, investors enjoy a surplus or added market confidence of **\$4.5 BB** and desire to participate in the market ( $A (\$5BB) - B (\$500MM) = \$4.5 BB$ ). Yet, companies suffer added compliance cost burdens from **SOx** of **-\$6BB** ( $-A (\$5BB) - C (\$1BB) = -\$6BB$ ). The deadweight loss, *infra* note 54, is **-\$1.5BB** ( $-B (\$500MM) - C (\$1BB) = -\$1.5BB$ ). Thus, **SOx** makes the market inefficient as desired participation is a billion and a half (**Q<sub>2</sub>**) short of where the market might naturally allow such participation.

<sup>54</sup> See PINDYCK AND RUBINFELD, *supra* note 19 at 292. This is characterized as “deadweight loss,” which is the result of government regulated ethics policies that result in a net loss of total resources (surplus) used by businesses to implement **SOx** regulations. Here, investors desire to participate in the market at **Q<sub>2</sub>**, but it is not possible while producers are hampered with the corporate ethics regulatory concerns.

remains. This reflects the inefficiency of government intervention policies regarding a free market system.

As long as such government market intervention continues, in this case the Act, the market system will suffer an inefficient restraint. Though investor confidence may soar, the cost of the evolving market (*e.g.*, compliance costs, public companies going private, and a lack of new producers to the market) is too high. Effectively, the market structure, although saved in the short-run, suffers long-run shocks that become enormous and difficult to remedy. It stands to reason then that corporate misconduct, in the first instance, is disastrous and governmental intervention to remedy such market failures, in the second instance, only adds to the problem.

### **III. Correcting Business Misconduct Through Alternative Deterrents Regarding Ethic Systems Pedagogy**

Thus far, our discussion focused on economic theory, consequences and models concerning corporate misconduct. We now turn the discussion toward considerations in ethic systems pedagogy regarding corporate responsibility and decision-making.

There are two underlying observations from our economic analysis concerning business ethics. First, there exists an opportunity to allow corporate leaders to make ethical choices that fit into the paradigm of maximizing profits for shareholders. Second, such an opportunity allows the market to regulate itself outside of government restraints (*i.e.*, Sarbanes-Oxley type laws). The road to such opportunities concerning North American businesses, however, begins where business leaders and lawyers understand that the goals of profit maximization and client representation exist on the fragile platform of sustaining a capitalist market system. That is to say, without the current

market system, deductive reasoning asserts that there can be neither profit maximization nor clients to serve. Enter in ethic systems pedagogy that utilizes notions of economic theory concerning market preservation toward assisting business leaders and lawyers in making ethical choices and analyses concerning decision-making processes.

*A. Law School and Business School Ethic Courses*

A good starting point for our ethic systems portion of the presentation begins by making the argument that U.S. business and law schools should incorporate fresh and in-depth principles of macro and microeconomics, as well as philosophical and/or religious based ethic systems components into segments of their business ethics and professional responsibility courses. Such components may help guide future business leaders and lawyers toward decisions and behavior that result in sustaining the North American capitalist market system. One can strongly assert that such ethic systems pedagogical segments and/or economic models will appreciably serve to rouse, and in some instances refresh, the minds of graduate students and future market leaders concerning the potentially destructive affects of corporate misconduct on a capitalist market system. More importantly, foundations in ethic systems understandings allows for greater opportunities toward profit maximization concerning corporations and individual wealth in the long-run and, concerning lawyers, greater professional and morally cognizant representation of clients.

Business ethics and professional responsibility courses in graduate management and law school programs often take the educational role of informing students of legal rules, statutes, case law guidance and/or regulatory pronouncements.<sup>55</sup> Most business and

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<sup>55</sup> See Atkinson, *supra* note 8 at 474-78.

professional ethics education methods consists of one or two business law classes for management students and usually, a single professional responsibility course (albeit a marginal hours course, *e.g.*, two-hour course credits) taught near the end of the law school education. Curiously, one may inquire as to, one, how did this style of ethic systems education concerning managers and lawyers develop and, two, is the method of ethic systems education enough in light of recent corporate North American scandals and regulatory enactments?

### 1. Historical Observations

Ethic systems understandings regarding business education largely followed philosophical and religious teachings in the 1950s.<sup>56</sup> As legal cases and regulations, such as products liability concerns and environmental laws, *e.g.*, the Clean Air Act, began to dominate business environments in the 1960s, more formal ethic systems pedagogy developed.<sup>57</sup> During the 1970s ethic systems education regarding business took on a formal curriculum life in North American Colleges and Universities—thus the birth of the study in academic ethic systems arrived concerning the business academy.<sup>58</sup>

Around the same time as the business ethic systems pedagogy took shape, law schools began introducing mandatory professional responsibility courses in response to ethical misconduct in government involving inappropriate business influences of the legal professional.<sup>59</sup> Thus, one may understand the development of business and legal ethic systems pedagogy from two concerns and methods. First, business ethics derives largely from market regulations and safety concerns as a result of product and environmental

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<sup>56</sup> See O.C. FERRELL, JOHN FRAEDRICH AND LINDA FERRELL, BUSINESS ETHICS: ETHICAL DECISION MAKING AND CASES 9-10 (6th ed. Houghton Mifflin Company 2005).

<sup>57</sup> *Id.* at 11.

<sup>58</sup> *Id.* at 11-12.

laws.<sup>60</sup> Second, legal ethic systems pedagogy results from the chief concern of lawyers desiring to maintain a high standard of professional conduct and provide adequate representation to their clients while negating undue client influences and questionable behavior by lawyers within the legal arena.<sup>61</sup>

Two significantly different concerns regarding business ethics and legal professional responsibility backgrounds appear as a heads and tails argument. As noted earlier in our discussion, business leaders demonstrate a concern for adhering to minimal legal requirements and lawyers desire to maintain professional standards that protect clients by following the maximum or full letter of the law.<sup>62</sup> Problematic, is the fact that on most occasions the minimum standards of the law are gray areas and, in such instances, managers and lawyers participate in a game of chance-ethics and relativity; market conduct becomes individual interpretations concerning morality and ethical choices. Yet, what is right and appropriate for some may not be appropriate for others. In this instance, then, there exist little ethical analyses performed by market decision-makers as opposed to heavily relying on chance-ethical outcomes.

## 2. Reform Observations

Over the last several years, ethic systems pedagogy for business and law school students has taken on the form of practical based ethic systems evaluations and, seemingly, demonstrate a recycling toward the religious and philosophical methods of ethic systems pedagogy of the 1950s. Observations by commentators note that in business schools, future managers are highly influenced by ethic systems pedagogy when

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<sup>59</sup> FERRELL, FRAEDRICH AND FERRELL, *supra* note 56 at 11-12; *see also* Atkinson, *supra* note 8 at 474-78.

<sup>60</sup> *See* FERRELL, FRAEDRICH AND FERRELL, *supra* note 56 at 10-13.

<sup>61</sup> *See* Atkinson, *supra* note 8 at 474-78.

<sup>62</sup> *Id.*

faculty opinions' demonstrate a more adept and positive concern regarding the same.<sup>63</sup> Such demonstrations by business school faculty who are more adept toward promoting concepts in business ethics as a market decision-maker's responsibility and/or resource, more often than not also involve methods in ethic systems pedagogy that offer religious discourse; although likely shaped as a more philosophical concern regarding business responsibility.<sup>64</sup>

Concerning law school professional ethics education, although the bulk of cutting edge curriculum focuses on corporate governance (attempting to answer the question of who the client really is and who runs the company—managers or shareholders), it appears that the vast majority of law school professional ethics courses are standing pat with practical approaches concerning Model Rule reviews and situational fact-pattern challenges. This is so even in the face of so called revised methods of practically exposing students to difficult role playing situations akin to Enron type simulations.

The situation, then, in summary, is that business ethic systems pedagogy demonstrates notions of nostalgia and recycling toward philosophy and moral imperatives regarding market decisions concerning corporate leaders. By contrast, law schools' ethic systems pedagogy focuses heavily on more practical examples and legal theories in rule based ethics through situational role playing models and case study dynamics. These methods of ethic systems pedagogy lead to several questions. First, is it possible for ethic systems teaching to provide the necessary analytical benefit to remedy corporate misconduct where such teaching relies heavily on rules and minimally on philosophy?

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<sup>63</sup> See Jakobsen, Ims and Grønhaug, *supra* note 8 at 300-304.

<sup>64</sup> For discussions regarding religion and philosophical influences concerning ethic systems pedagogy and practice, see William I. Sauser, Jr., *Ethics in Business: Answering the Call*, 58 J. BUS. ETHICS 345 (2005), *passim*; see also FERRELL, FRAEDRICH AND FERRELL, *supra* note 56 at 94-111.

Second, are lawyers truly better suited toward understanding their true client and resisting external influences (*e.g.*, improper client pressure to commit unethical choices) based merely on increased focuses regarding professional ethics case studies and Model Rules applications?

### *B. Teaching Ethic Systems from an Economic and Reasoned Philosophy*

The serious question regarding ethic systems pedagogy, is whether graduate faculty members can teach ethic systems understandings effectively within business and/or law school curriculums? Better stated, can individuals learn moral conduct from understanding ethic systems concepts—even where economics is involved? As some commentators note, discussed *infra*, graduate students are well past their formative years concerning the development of moral standards.<sup>65</sup> Their individual behavior concerning normative, preferential and decision-making standards is well advanced by the time they reach formal management and legal studies.<sup>66</sup> Thus, what is the point of teaching business or professional ethics?

#### 1. Can Ethic Systems Understandings Truly be Taught?

There are studies and suggestions by numerous commentators supporting and debasing the notion that ethic systems understandings as a pedagogical concern holds any useful weight.<sup>67</sup> Most assertions provide that ethic systems pedagogy concerning decision-making is not teachable.<sup>68</sup> The reasoning for such stance revolves around the notion that considerations in right and wrong are intricately individual and mostly

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<sup>65</sup> See FERRELL, FRAEDRICH AND FERRELL, *supra* note 56 at 94-111.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*; but see Scott David Williams & Todd Dewett, *Yes, You Can Teach Business Ethics: A Review and Research Agenda*, 12 J. LEADERSHIP & ORGANIZATIONAL STUD. 109 (2005).

motivated by an individual's fear of being subject to legal penalties and sanctions.<sup>69</sup> Thus, if one is inclined to commit acts that are by nature criminal, unethical and/or self-serving, then the attempt to teach ethic systems understandings is a wasteful cause. Yet, the point of teaching ethic systems understandings based on our economic discussion model is not one that it is necessarily individually focused, but one that relays the message that such ethic systems pedagogy is based on examining societal concerns influenced by individual choices (that includes gains by any measure—altruistic or financial) regarding ethical considerations. If the focus becomes how the individual benefits by respecting the entire collective of society's needs (*i.e.*, maintaining a capitalist market system) then ethic systems pedagogy takes on a personal and philosophical nature with intra- and inter-personal practical implications.

## 2. Client and Mission of Future Corporate Leaders (Today's Student Tomorrow's Benefit or Burden)

The most important mechanic of teaching ethic systems understandings to business and law students is to identify the chief concern regarding the goal, responsibility and obligation that such future leaders will shoulder concerning North American and global business communities. That is to say that ethic systems pedagogy will follow as a strong or weak concern depending on who the client and/or mission are for future corporate leaders.

As a philosophy concern, and perhaps it holds as a fairer statement to say religious concern, ethic systems pedagogy should involve notions of relationship and tasks responsibility concerning individual corporate market decision-makers and the market

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<sup>69</sup> See Eisenberg, *supra* note 11 at 1253.

structure regarding participation (*i.e.*, capitalist market system) regarding society's needs as a whole. As an analogous position, some religious commentators note notions in moral existence concerning religious ethics and obligations involving relational complexities between society and the individual.<sup>70</sup> Joseph Allen is one such commentator. Allen notes that moral existence is "faithfulness to . . . [others] . . . in various relationships (*i.e.*, loyalty, steadfastness, etc.)"<sup>71</sup> In similar fashion, economic considerations exist as a starting point toward moral obligation concerning market decisions made by business leaders and lawyers.

North American business leaders are incumbent to understand that the very market structure in which they participate is the real basis and recognizable manner that allows them to make profits, acquire individual gain and enjoy the life they live. In this sense, then, protection of the capitalist market system's survival becomes an important consideration—even almost on a sacred level if one so chooses to understand the obligation as a religious idea. Likewise, lawyers must realize that the greatest professional representation of corporate clients concerns legally protecting clients' assets. Such representation allows the survival and success of a client's underlying business. Still, the focus is larger and specifically involves market structure preservation. Logically, without a market to conduct business within, clients' interests fall short and may even become non-existent. In such a case, lawyers *also* lose their clients and livelihood.

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<sup>70</sup> Allen, *supra* note 23 at 9

<sup>71</sup> *Id.*

The overarching point here, then, is that notions in ethic systems understandings drive capitalist markets.<sup>72</sup> This is so despite noted cases of some business and neo-economic professors stating otherwise. While the obligation exists to make profits in vast and efficient amounts, business ethics (understood thoroughly) dictates the process and considerations for doing so. Consequently, the assertion that incorporating economic principles into graduate business and law schools' ethic systems pedagogy in light of the preceding economic analyses serves as a favorable method. This is so based on the noted affects of corporate misconduct on a capitalist market system and the inefficiencies of governmental intervention to remedy such market shortcomings. The key is to incorporate economic observations and even philosophical or theoretical religious understandings into ethic systems pedagogy to rouse the awareness of business and law students concerning profit objectives and client representation regarding the affect of decision-making analyses on the overall market system.

Where the business and law student understands that ethical decisions regarding profit motivations and client assistance chiefly involves ensuring that the very capitalist market system in which they participate and earn a living survives, then business and representation concerns become more communal. Business leaders and lawyers become more apt toward applying decisions that not only bring about personal gains, but also sustains others or society's wellbeing *viz* market preservation—which ultimately produces a circle of maintaining overall societal welfare to also ensure self-welfare concerns.

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<sup>72</sup> See supra note 13.

Perhaps this is not the most gentle assessment toward ethic systems pedagogy, but it is a stark reality that demonstrates self-reasoned concerns must exist in conjunction with communal considerations regarding ethical decision-making analyses in a capitalist market system to motivate business leaders and lawyers to support the welfare of others. This notion infers that the motivation of self gain and avoiding legal sanctions are the substantial basic driving factor behind moral business decisions. Nevertheless, learning ethic systems pedagogy becomes appealing where economic methods reveal that individuals can successfully reap mass profits remains and still make ethical choices (responsibility to others) to promote an efficient market. Moreover, such course of action dismisses government intervention, which is almost always inefficient.

In similar fashion, legal ethics education concerning professional responsibility receives added benefits from observing economic analyses regarding professional ethics concerning the law and client representation. Professional responsibility concerns regarding lawyers inevitably generate from understanding appropriate client representation versus improper client influence on lawyers and behavioral shortcomings outside of legal standards. Consequently, in such cases, lawyers routinely fall short regarding professional ethics and decision-making problems by not separating the lawyer's personal gain from the best interest of the client. Most cases involve questionable transactions regarding legally gray areas. With economic analyses concerning capitalist market system sustainability focused on a client's best interest, lawyers will likely be able to identify chief client issues that raise ethical questions and decide ethical solutions toward protecting the very market system that generates clients—and thus also sustains the lawyer's best self-interest.

#### **IV. Summary**

Ethic systems pedagogy in graduate settings concerning future business and legal leaders is not altogether deficient. Certainly, the level of professional expectation from such graduate students represents a core fiber in their ability to head large companies in the North American capitalist system. The problem becomes identifying how to best run such companies for business leaders and how to best represent the corporate decision-makers from the lawyer's perspective. In essence, then, this article presents the case for teaching graduate business and law students the importance of societal ethics regarding the North American capitalist market system. The quest is to respect the very system that allows business persons and lawyers to perform their profession and roles.

This article notably demonstrates that ethic systems understandings and market considerations go hand-in-hand regarding the earning of profits, accumulation of personal wealth and the sustainability of a free market society. As an ethic systems pedagogy concern, economics serves merely as a tool to rouse philosophical and practical considerations toward market-decision makers' understanding that their choices not only affect their personal gain, but also whether there will remain a market structure and system to enjoy such gains. The reality becomes the requirement to protect the market from personal abuses that lead to overall market decay and ultimate destruction. Thus, the economic analyses presented here serves as a means to an end.

Future North American industry decision-makers must understand that business ethics goes beyond rules, profit considerations and compliance issues. Ethic systems pedagogy focusing on economic discourses help explain the importance of considering the overall societal importance of making reasoned business decisions and fulfilling legal

professional representation toward ensuring that the very market in which such decisions occur remains a viable system for current and future participants.