

*Icarus in the Boardroom: The Fundamental Flaws in Corporate America and Where They Came From.* By *David Skeel*. New York: Oxford University Press, 2005. viii + 250 pp. Index, notes. Cloth, \$25.00. ISBN: 0-195-17471-2.

Reviewed by Sanford M. Jacoby

*Icarus in the Boardroom* is an overview of corporate scandals in the United States from the Gilded Age to the Enron debacles of our era. The author is a law professor and an expert on the history of bankruptcy law. The writing is deft, insightful, and humorous. The virtue of the book is that it covers a lot of ground quickly, making it an excellent introduction for the general reader or student.

David Skeel argues that there is a consistent pattern to scandals in different eras. Crises begin when companies take on excessive risk, which is facilitated by competition and by corporate size and complexity. Second, crises elicit regulation that seeks to reduce risk, either directly or through policies to limit competition and complexity. Third, business responds to regulation either by ignoring it or by lobbying for rollbacks that eventually set the whole cycle in motion again.

In Chapters One and Two, Skeel applies this model to the collapse of Jay Cooke's railroad empire. He analyzes the reaction of courts and legislatures not only to the 1873 crisis but more generally to large corporations and to powerful financiers like J. P. Morgan (who Skeel compares to Michael Milken). In Chapter Three, he retells the story of utility magnate Samuel Insull, whose holding-company shenanigans, abetted by Wall Street, were an oft-cited justification for New Deal securities legislation. All this is accomplished in a mere ninety pages, omitting a variety of debates—comparative and historical—that would require a more detailed and nuanced treatment.

The narrative jumps to the 1970s and 1980s in Chapter Four, where Skeel recounts the rise of hostile merger-and-acquisition activity. He analyzes why M&As became prevalent in those years, stressing factors both familiar (junk bonds) and less conventional (tax law and antitrust enforcement). The changes of the 1980s were the prologue to the excesses of the 1990s that are discussed in Chapter Five. Here we encounter a new generation of corporate Icaruses (Skeel focuses on Enron and

WorldCom), who, like their Gilded Age predecessors, combined financial legerdemain and political influence peddling.

Chapters Six and Seven examine the regulatory aftermath of the most recent wave of corporate scandals. Skeel is in his *métier* here as he analyzes the pros and cons of the Sarbanes-Oxley Act. Of concern to Skeel is the lack of legislative attention to competition policy (he thinks deregulation has been oversold) and to corporate complexity (too many opportunities remain for gaming the system by taking advantage of valuation uncertainties and offshore transactions). He recommends that companies with significant exposure to derivatives should, like the financial institutions they increasingly resemble, be required to hold reserve capital to protect against the risk that their derivatives might unravel.

My main concern has to do with the book's failure to explain how the financial and nonfinancial sectors are related. All the Icaruses in this book damaged their companies via the capital markets—not by selling snake oil—yet the reason for this linkage is never explained. Indeed, the United States seems particularly prone to this type of failure. The fault may lie with the American preference for the shareholder-value model, which causes excessive attention to share price in executive decision-making and reward. Or it may have something to do with the predominance in the United States of dispersed ownership, which, as Adolf Berle and Gardiner Means well understood, leaves the corporation prone to ineffectual monitoring. Of course, bloc holding doesn't preclude ethical lapses, although it causes them to occur in different ways. As the joke has it, Japanese executives steal for the company while American executives steal for themselves.

A related quibble has to do with the book's characterization of corporate crises as events triggered not by speculative bubbles but by corporate risk-taking. It is Insull, not Wall Street, who is pivotal in Skeel's story of excess in the 1920s. Yet Wall Street helped to create the speculative, avaricious climate that allowed men like Insull to thrive, a fact well understood by the New Deal regulators. In similar fashion, Skeel emphasizes that the burst of the Internet bubble occurred in 2000, a year before Enron, and was unrelated to the events we associate with Enron's demise. Yet the problems that plagued Silicon Valley—stock fever, duplicitous financial analysts, overinvestment due to Wall Street

hype—also figured in several of the subsequent big-company crashes like Enron’s. Bubbles are related to excessive risk-taking and malfeasance, but it takes failure on a massive scale before reform is initiated in the United States.

Skeel’s history of American corporate governance is accessible yet sophisticated, a combination that is increasingly rare these days. Historians can benefit from reading the chapters on events since 1980, which are an excellent summary of a complicated period.

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