



Pyrrhic Victory: Dick Grasso's resignation

Giving back some \$48 Million in deferred compensation is not what it used to be. Despite his magnanimity, Dick Grasso finally had to step down as the CEO of the New York Stock Exchange. Giving back the bucks wasn't enough. That would seem to be a victory for the forces of corporate governance. Before cheering, however, we should step back and ask some hard questions about whose victory it was and who could be the real losers?

It will be hard to generate sympathy for Grasso, despite more than 35 years of loyal service to his company and his exemplary behavior in the trying days after 9-11. Certainly not everyone gets to earn between 140 and 200 million for his time served---perhaps with the exception of some outstanding athletes or entertainers whose services are also contracted by private firms! But while we may gasp at the remuneration of such public figures, no one accuses them of ripping off the system. It seems like a neat trick to get to play a game and be rewarded so handsomely, but envy is different from rage.

Nearly everyone, however, was appalled to learn of the compensation package Grasso negotiated with his private employer, the New York Stock Exchange. Indeed, coming after the stories of lugubrious compensation paid to some of the nefarious corporate leaders that we learned about after the Great Bust, Mr. Grasso seemed to have unwittingly joined a club with rather bad manners, if not bad ethics. When you think about it, however, he committed no crime. The NYSE is a voluntary association. One pays to join for the rights of trading stock on the exchange. Members are subject to the Club Rules. No one with the geetus is excluded from membership as long as he complies with the rules. And, who, we should ask, are the victims?

Of course, the likely defense of those who called for Grasso's resignation was that the NYSE also had some regulatory functions. But doesn't every club have a set of rules to govern its members? As long as those rules don't contravene public law, presumably any club can set its own rules. Ah, then, it wasn't the rules. It was the lack of public disclosure over how the rules were enforced and indeed, and perhaps full disclosure of the private club's rules?

Here, we have entered into the land of Fairness. Fairness is the single standard applied to nearly all public policy issues these days. It isn't an issue of Law. It is an issue of Fairness, a rather elastic ruler in contemporary society now applied to virtually all social organisms in society, public and private.. Fairness is what the public thinks Fairness ought to be, never mind that the standard can change or that it is really not subject to protections we normally think of as part of our basic legal structure.

Timing is everything. When the SEC made a fuss over the disclosure policies of the NYSE, out came the stories of Grasso's rich compensation package. While it will be hard to hold a tea and sympathy party for Dick Grasso, what was his crime? Poor judgment, no doubt. Had he deferred all of the compensation, would he have been sliced up so neatly by the knives of public moralists who run public pension funds or the journalists who are society's Jeremiah's or the Congressmen and Congresswomen who never fail to flay the flesh of the Unseemly? His crime was poor timing. He was caught in the backwash of the many corporate governance scandals of the Bust, and perhaps even more, by the absence of resolution of those scandals.

A more serious issue is emerging, however. Our society is in danger of substituting political correctness for the rule of law. That is a very dangerous passion indeed. In part, the lack of prosecution for some of the most egregious corporate behavior during the boom is one source of our current moral passions. The Enron crew has not been taken out for hanging, and the former CEO of WorldCom is still out on bail, not yet convicted of anything. In these cases, as in others that accompanied the Boom and Bust now past, there were real crimes



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and real victims. Slow Justice is not Justice at all. The public has a right to be angry, but thoughtful people can only be worried by our tendency to substitute private notions of public morality for the rule of law.

Why the Feds have not made their cases against corporate miscreants clear to the Courts, we do not know. The timing of the Attorney General on this matter is certainly worse than that of Mr. Grasso. True it is that the charged are innocent until proven guilty, but that presumes that they have been charged. In the Enron case, many, at the highest corporate level remain to be charged. This is not a wise course, in our view. It breeds contempt for the law by the public, because the public perceives there is one law for the drug dealer and a different kind of law for the abusers of private equity holders. A judicial process that becomes contemptible in the eyes of the public is dangerous to any society said to be to be governed by the rule of law.

Slow justice has allowed States to intervene in what are clearly national domains. Consequently, the Attorney General of the State of New York entered into the issues of various kinds of fraud that seemed to be part and parcel of the Securities Industry during the recent Boom. One can only admire the political mileage generated for A.G. Spitzer as he forced a settlement on rambunctious Wall Street firms, but where was the SEC in all of this? Was it merely slow, or was it non-attentive? This cannot but have lead to the most outlandish political grandstanding. The fault again lies with the Fed's who dilly-dallied much too long and got caught behind the curve. Again, however, the remedy is speedy Justice not dilatory Justice.

This latest contretemps about appropriate levels of compensation extends the dangerous tendencies toward political correctness that now run amok in American life. Process has taken a backseat to Content. What really protects individuals in society from public morality is the law. Minorities should be very careful when a foundation stone like this one is shattered. This is a nation of many minorities, of race, culture, and economic, political and religious views. One man's meat is indeed another's poison, but we have been careful by and large to distinguish views from acts, sentiments from transgressions. At least, until recent times. The danger to the true principles of the Republic arise from both Right and Left. The descent into Mobocracy is barely noticeable until society attempts to clamber back to good laws, carefully enforced.

I do not know when we should date the beginning of this dangerous vision of how society should be run. Maybe it was the Bork affair? Maybe it was the political crucifixion of the late Senator Tower. Certainly it was evident in the rancor that accompanied the Clinton Impeachment hearings, and the California Recall, while apparently legal, has overtones that reek of substituting Content over Process. Californians may indeed feel they are now poorly governed, but the damages done to the budget or the electric power system in California have many unindicted, co-conspirators now residing in the California Assembly and Senate. The expenditure and tax bills required each of those institutions to sign on the dotted line, and whoever wins the Recall, they will still be there. America has crossed its Rubicon by failing to enforce its own statutes promptly and predictably. It has allowed Political Correctness to trample liberty and we will all be the worse off for it.

Some economists have wisely observed that the optimum amount of crime is not zero. That is a quaint way of recognizing that there are both costs and benefits when resources are devoted to bringing down the crime rate. Detection, capture and swift and sure punishment work to retard criminal activity, but they will not eliminate it. We were evidently lax in many areas of corporate governance in recent years. Corporate leaders who noticed this and had ulterior motives, took advantage of that laxity. There were plenty of incentives. Society needed to apply some strong responses earlier in the game. Had that been done, arguably, we would have considerably less white-collar crime. But we would not have escaped all of it because to do that would have cost society an inordinate amount of resources. What is lacking is enforcement of existing law.

Now, however, we have gone down the road that uses Political Correctness as an arbiter of corporate behavior. This is a poor way to treat the problem because there is no accepted Constitution of Political Correctness. A step back is now needed and it must be accompanied by swift and sure judicial capture and



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punishment. Grasso may be gone, but our recent problems have not departed with him.