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Conspiracy Theory? The Ethical Paradox of “Big is Bad”

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I. Introduction.¹

The late 1950s and early 1960s elicit fond memories amongst today's baby boomers, who annoy successor generations with their embellished reflections on the "good ol' days." A dawning of America they would say, as the store fronts of a plethora of thriving middle class towns struck a seemingly perfect balance between small business and retail juggernauts the likes of F.W. Woolworth Company, J.C. Penny, Sears, Roebuck & Company and Montgomery Ward. The local banker was the pillar of the community, the family doctor kept everyone well and the local dentist filled teeth – quite a few of them it would seem. More importantly, there was simply no problem, legal or personal, too big for that iconic lawyer in the small Main Street office.

It was a time of optimism and a "can do" attitude, as the American business machine that would eventually be disparaged as "big" was creating jobs and building chrome-laden cars and trucks, washers and dryers, televisions and radios and countless other contraptions that would bring convenience to everyday life. Ethics and professionalism were a given, as reputations mattered in these communities where everyone knew everyone else. For the first and last time in this article it might be said that big was good, *or at least not presumed bad*.

What happened? Could it simply be that business itself changed, becoming more detached from the public as it grew larger and more complex? Perhaps the world evolved, with big business falling out of favor with inevitable shifts in pop culture and politics? Maybe the economic growth inspired by big business highlighted a societal divide between haves and have nots? While historians and sociologists sort this out, one thing seems certain. Big is now often seen as bad, and it is paradoxical that these same institutions that have provided the economic foundation for society today lie victim to conspiracy theories and a distrusting public.

This article will explore the presumption that big is bad, considering contributing factors; members of the "bad big" club, including the practice of law; ethical challenges facing the bigs; and ways in which ethics and professionalism might pave the way to making big less bad.

II. How Bad Can Big Really Be?

1. ANATOMY OF A CONSPIRACY THEORY.

A conspiracy theory has been described as a belief that some covert but influential organization is responsible for a circumstance or event.² Conspiracy theories cover a wide range of subject matter dating back to biblical times. Those involving "meddling foreigners" have been hailed as a favorite pastime in the United States.³ For example, one contends that the

¹ The author would like to thank Vickie Graham, Kristin Parkinson and Mary Waters at Noble Energy, Inc. for their assistance in the preparation of this article. The views expressed herein are those of the author, not of Noble Energy, and no attempt is made to render legal advice.

² Conspiracy theory, OXFORDDICTIONARIES.COM, Oxford University Press (2017), https://en.oxforddictionaries.com/definition/conspiracy_theory.

³ See Maggie Koerth-Baker, *Why Rational People Buy Into Conspiracy Theories*, N.Y. TIMES MAG., May 21, 2013.

American Civil War was started by Britain in an effort to reclaim the country.⁴ The 2016 presidential campaign and its progeny highlighted modern day frustrations with the big and powerful⁵ and spawned a number of conspiracy theories including election tampering by those meddling Russians.⁶ To be fair, not all conspiracy theories are untrue, but they nonetheless often produce hypotheses that contradict the prevailing understanding of history or simple facts.⁷

Conspiracy theories have been said to take root in moments of powerlessness and uncertainty, with one's brain kicking into analytical overdrive in a coherent and understandable narrative.⁸ The term has been dissected by type and geographic origin.⁹ A popular type, the "enemy above" conspiracy theory, is often raised in connection with big business and premised on powerful people manipulating the system for their own gain.¹⁰ One variation, the "false flag" conspiracy theory, suggests that covert operations conducted by governments, corporations and other big organizations are designed to appear as if they are being carried out by other entities.¹¹

2. CORPORATE SCANDALS.

Corporate scandals fuel negative sentiment toward big business, making it more vulnerable to conspiracy theories. They have plagued individual companies and entire industries, tarnishing reputations and brands, spawning investigations and litigation, prompting corrective legislation and regulation and reinforcing a stereotype of a bad big that sees itself above the law. In most cases corporate scandals have involved ethical concerns, like corruption, bribery, records falsification, spying and espionage.¹²

The United States ("U.S.") Foreign Corrupt Practices Act of 1977¹³ and United Kingdom Bribery Act of 2010¹⁴ are good examples of legislative responses to corporate scandals or perceived unethical conduct, and were enacted to address concerns over the bribery of foreign

⁴ Quinton, *Top 100 Conspiracy Theories of All Time*, TRUTH CONTROL BLOG (Apr. 24, 2013), <http://www.truthcontrol.com/articles/top-100-conspiracy-theories-all-time>.

⁵ See, e.g., Interview by David Greene with Senator Bernie Sanders, Nat'l Pub. Radio (Jan. 6, 2017), <http://www.npr.org/templates/transcript/transcript.php?storyId=508385203> ("Who do you think will make the decisions if the American people are not involved at the grassroots level? It will be insurance companies, it will be Wall Street, it will be drug companies, it will be fossil fuels. I don't want to break the bad news to you, but in fact these large corporate interests have enormous legislative and political power in this country.").

⁶ Adam Entous & Ellen Nakashima, *FBI in agreement with CIA that Russia aimed to help Trump win White House*, WASH. POST, Dec. 16, 2016, 2016 WLNR 38583014.

⁷ Conspiracy theory, https://en.wikipedia.org/w/index.php?title=Conspiracy_theory&oldid=758282451 (last visited Jan. 4, 2017).

⁸ Maggie Koerth-Baker, *Why Rational People Buy Into Conspiracy Theories*, N.Y. TIMES MAG., May 21, 2013, at MM15.

⁹ Conspiracy theory, *supra* note 7 (citing Jesse Walker's historical typology of five types, political scientist Michael Barkun's three types based on breadth and libertarian economist Murray Rothbard's distinction between shallow and deep).

¹⁰ *Id.* (citing Jesse Walker's historical typology of five types).

¹¹ False flag, https://en.wikipedia.org/w/index.php?title=False_flag&oldid=764163728 (last visited Jan. 31, 2017).

¹² Syed Balkhi, *25 Biggest Corporate Scandals Ever*, list25.com (Apr. 8, 2013), <http://list25.com/25-biggest-corporate-scandals-ever/>.

¹³ 15 U.S.C. § 78m (accounting provisions for issuers) and 15 U.S.C. §§ 78dd-1, 78dd-2, 78dd-3 (anti-bribery provisions for issuers, domestic concerns and other persons).

¹⁴ The Bribery Act, 2010, c. 23 (U.K.).

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