

## Book Review

Harry Glasbeek

*Class Privilege: How Law Shelters Shareholders and Coddles Capitalism*

Toronto, Canada: Between the Lines Press, 2017.

Reviewed by Howard A. Doughty

Not all books reveal themselves on their covers, but some at least give solid hints about their content in their subtitles. So, it is not hard to learn that Harry Glasbeek, Professor Emeritus and Senior Scholar at Osgoode Hall Law School, York University, is not a fan of modern, limited liability corporations. A previous book's subtitle was *Corporate Crime, Corporate Law, and the Perversion of Democracy*. That was pretty clear. This one indicates that it will tell us how the law enables the corporations in the nefarious pursuit of irresponsibility and greed. If nothing else, Glasbeek's mission is consistent and transparent.

Harry Glasbeek is not just a critic of contemporary business. He is also a formidable scholar with an exceptional legal mind, a unapologetic political perspective and clear conscience guided by a desire to liberate people ideologically and economically from being "penned in and marching along capitalism's road to serfdom." His message might not be to everyone's liking, but he should not be ignored, even (or especially) by those who regard the institutions and practices of the major institutions of production and distribution to be ethically legitimate, morally defensible, economically beneficial and historically inevitable.

### I

The "liberation" of which Glasbeek writes begins with the explanation that corporations don't even exist—not "really," for they are "legal fictions." The law, of course, is filled with legal fictions. Some might argue persuasively that "the law" consists of little else.

<p>"When I use a word," Humpty Dumpty said, in rather a scornful tone, "it means just what I choose it to mean—neither more nor less." "The question is," said Alice, "whether you can make words mean so many different things." "The question is," said Humpty Dumpty, "which is to be master—that's all." — Lewis Carroll</p>
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Legal fictions are not "lies" as much as they are "metaphors." They are "conceits of the legal imagination" which, according to the classic lectures of Lon L. Fuller (1930, p. 363), often "take the form of pretenses as obvious and guileless as the 'let's play' of children." They disguise or obscure complexities in convenient language that allows the law to function despite the absence of reference to whatever might be meant by "objective reality." So, for example, terms such as "constructive dismissal" or "vicarious responsibility" are employed to make one

thing seem like another. And, of course, there are large classes of essential legal concepts that refer to “no thing.” Words such as “rights” and “duties” are tremendously important; but, if they do not quite descend to the level of Humpty Dumpty whose hyper-relativistic and boundlessly elastic philosophy of language boiled down to the statement “that word means whatever we choose them to mean,” neither does it rise to anything akin to scientific precision.

In *Class Privilege*, Glasbeek turns his critical eye to the single most important legal fiction in late capitalism, the corporation. He is especially concerned with the way in which corporations work within the law and under the law to permit their owners to avoid responsibility for their thousands of crimes from minor regulatory misdemeanors to something approaching (or exceeding) fraud and criminal negligence causing death.

Corporations are not individuals or even aggregates of individuals; they are aggregates of parts of individuals. – Gregory Bateson
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In making his claim that corruption and criminality are not exceptional and sensational deviations from corporate norms, but are endemic to and normalized within the structure of corporations themselves, Glasbeek cites specific cases and is not afraid to name names: Westray Mining Corporation, Bre-X, The Royal Bank of Scotland, Metron Construction and the Montreal, Maine and Atlantic Railway are among those businesses discussed as striking examples, but they are cited as exceptionally egregious examples, but not as egregious exceptions to the rules.

## II

Now, whether as investors, citizens, public policy specialists, government regulators, social workers, educators, students, scientists or health care professionals, it should come as no surprise to us that there is a great and growing gap between the far-famed 1% (or 0.001%) who own the largest part of both national and global assets and control the cash flow following from domestic and international business and the rest of us. Corporations have either a direct or an indirect effect on all aspects of our lives and work. As a consequence, it is common enough to grouse and to hear others grumble about the ubiquitous bogeyman, the corporation and such associated notions as the corporate culture, the corporate economy and corporate influence on legislation, public policy and administration as well as business, investment and tax law.

To be frank, however, when most of us gripe about the domination of the economy by big business, excessive profits, unjustifiable executive salaries, inflated bonuses, enhanced stock options, elaborate price-fixing schemes, tax evasion scams and the entire inventory of managerial malfeasance including exploitative arrangements with resource providers and inhumane working conditions in “third-world” mines and manufacturing “sweat shops,” we really don’t know what we’re talking about. That is, we may have an emotional awareness, an almost visceral understanding and a sustained moral outrage, but we are only dimly aware of both the overarching structures and the intricate technicalities that comprise the devils in the details of corporate organization.

It is in the clear, down-to-earth and intermittently witty presentation of what might once have been thought to be dry and boring aspects of corporate life that Glasbeek engages even the most suspicious sceptic. The fact is that he writes gracefully even when telling true stories of devastating injustices, ruthless exploitation and impenitent evil ... yes, “evil,” for Glasbeek’s narrative not only illustrates that the civil and criminal offences committed by corporations are calculated, consciously carried out and committed with virtual impunity, but also explains in readable, understandable language exactly how this is done. He almost matter-of-factly presents lists of corporate offences that are “just plain evil incarnate and cause horrible hurt and damage.” His passion, however, is fully controlled as he draws back the curtain of obfuscation to show how deliberately some of the wealthiest contemporary corporations have despoiled the environment and wantonly killed employees and customers alike with callous indifference or worse.

### III

If this seems overwrought, overheated, too obviously unfair, I suggest thinking seriously about the other main theme in *Class Privilege*. In addition to providing a sound understanding of the elements of corporate law, Glasbeek places this discussion firmly in the context of corporate capitalism as a hegemonic economic system. After all, regardless of our personal political preferences, it can hardly be denied that rival systems are in place. The so-called “communism” that appeared as an apparent adversary from 1945 until 1991 has plainly collapsed. Social democratic options—most evidently successful in Scandinavia and parts of Western Europe—remain in place, but are under pressure to moderate their “mixed economy/welfare state” commitments, and even “third-world” economies in former colonies seem to have largely abandoned such ideals as the once aspirational “African socialism” as a distinctive approach to the political economy of government and business.

<p>The legal architecture of the Anglo-American corporation ensures crimes can be and will be committed on behalf of the rich. This corporate veil is woven to hide the rich from our gaze — behind this veil they do us harm and render our numerical majority relatively impotent.</p> <p style="text-align: right;">– Harry Glasbeek</p>
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If he wanted to be stylish, *Class Privilege* might have been presented as an “intersectional” account in which the symbolic domain of corporate law and the material domain of corporate economics could be seen, almost graphically, as mirroring and mutually supporting each other. They could also be considered the soft and the hard sides of the coinage of corporate control. Such a presentation could be offered in language that was just as sterile as any first-year business law or best-selling undergraduate macroeconomic textbook. An effort could be made to appear objective and even scientific, to adopt a dispassionate voice and to hold normative judgements at a distance. Untainted by worries about right and wrong, good and evil, health and disease applied to whole systems, dispassionate language could be used to describe dominant actors or wretched victims. Glasbeek does not, however, allow himself the luxury of evasiveness and the deception of objectivity. Instead, he plunges ahead into the world as it is, unafraid of deploying moral and ethical reasoning and coming up with assessments that are less about specific instances of bad behaviour and more about the tilt toward bad behaviour that is endemic

in corporate arrangements themselves. Laudably, however, he is meticulous about ensuring that his readers get a firm understanding of what he is being judgemental about.

#### IV

Now, depending on your interests and background, an exploration of economics might be as daunting as the law. Indeed, for many people, legal and economic issues are equally intimidating and passively experienced more than they are understood. So, binding the legal arrangements of corporate control and the economic system in which corporations are established and compete for market share and, ultimately, for market domination, is not seemingly for the faint of heart or the merely unschooled. Once again, however, Glasbeek's extraordinary common sense and common touch comes to the rescue—without succumbing to the temptation to be patronizing and without missing any important part of the story.

“And remember, folks, at General Electric, progress is our most important product.” – Ronald Reagan, host of CBS Television's GE Theatre, 1954-1962.

In presenting his argument, Glasbeek cleverly and completely exposes the imaginary ideological clothing of the ersatz corporate royalty and shows how the real mechanisms of modern market society work to concentrate capital. He explains that our current institutions, practices and ideologies are actually perversions of what classical economists such as Adam Smith and David Ricardo had in mind when they championed free markets, free enterprise, free labour and free trade. The early liberals sought, as both intellectual and practical projects, to overcome the restraints of late feudalism and mercantilism. Classical liberalism, however, ultimately succeeded only in replacing an inherited, land-based, agricultural aristocracy with far more powerful structure of massive and technologically sophisticated global financial, commercial, manufacturing and resource exploiting enterprises. Glasbeek also dismantles the received wisdom in the form of the distorted theory that convinces so many of us that the current political economy is both a dispenser of rough justice (but justice nonetheless) today, but also is essential for future prosperity. And, finally, the belief that, however warranted particular criticisms might be, the visible path of progress is unavoidable, irreversible, inevitable and incontrovertible.

#### V

You don't, of course, need to be much of an economic historian to recognize the phrase, “the road to serfdom.” It was made famous by F. A. Hayek (1944/2007) who antedated Milton Friedman and the market enthusiasts at the University of Chicago and provided the intellectual base for the neoliberal doctrines that have dominated Western and, increasingly, global economic thought at least since Ronald Reagan and Margaret Thatcher presided over a large part of the political economy of the world. Glasbeek, of course, holds a very different and virtually reverse position.

While for most of us, the seemingly arcane discipline of Economics is a formidable business, what Thomas Carlyle originally called the “dismal science” in a genuinely horrific

defence of slavery and other abominations (Dixon, 1999; Mill & Carlyle, 2010) can be only a little less disturbing when confronted with the cryptic concepts, the econometric analyses and the almost inevitably erroneous predictions and impenetrable explanations that regularly crop up on the business pages of top-tier business magazines and newspapers—never mind the professional papers at academic conferences and the reports from the depths of Departments of Finance and international regulatory organizations such as the International Monetary Fund, the World Bank and the World Trade Organization—seem dense, impenetrable and altogether unrelated to the price of lettuce or tennis balls.

Children often invent invisible friends to take the blame when they misbehave. But kids grow up and, as they mature, they are taught to take responsibility for their own conduct. Not so for the titans of capitalism who continue to blame their ‘invisible friend’ (i.e. the corporation) who commits crimes on their behalf.  
– Harry Glasbeek

Even more daunting, however, are the deliberations of lawyers and law makers when it comes to discussions about the business corporation. While most business executives and experts in manufacturing, finance, trade and commerce might be loath to admit it, the idea of a business corporation appalled the classical economists such as Adam Smith, who saw the limited liability corporation as anathema to his ideal of a free market, free enterprise and the guidance of his far-famed “invisible hand.” What he might have thought of the United States Supreme Court’s finding that corporations are the equivalent of people, of individual citizens with all the rights appertaining thereto is, of course, anybody’s guess but I wager that he would not have been pleased, amused or much short of apoplectic. Harry Glasbeek isn’t keen on them either.

From Exxon Mobil’s despoliation by ExxonMobil of the pristine Alaska to the preventable deaths caused by Firestone’s steel-belted radial tires in the 1970s to the ongoing activities of major firms in agricultural chemicals, pharmaceuticals and manufactured goods of all descriptions, Glasbeek argues that corporations are “legally designed as a criminogenic creature – in other words, prone to compulsive criminal behaviour.”

Existing business regulations, he explains, may penalize offenders with minor fines that are built into the cost of doing business, but rarely criminalize them and even more rarely hold owners and managers criminally accountable for acts that would result in harsh penalties if performed by individual citizens. As Glasbeek has explained, “the idea is that corporate offences are not real crimes, but ‘overly aggressive behaviour’ — a natural side effect of being a competitive market actor that generates the wealth we all share. Such offences, so the thinking goes, are of a lesser order and should not stigmatize violators.”

## VI

The perennial question, of course, is what is to be done and how might governments be persuaded to do it?

At least in the Anglo-American democracies, it has been plain that neoliberal ideology has dominated governments regardless of whether the party in power has branded itself as “progressive” or “populist,” mildly leftish or radically right. Ronald Reagan’s other main dictum, “government is not the solution to our problem; government is the problem,” has held sway,” may not always be put in such bald terms (Barack Obama was content to reveal that he was a “free market kind of guy), but from the enthusiasm for the fad of the “new public management” and its transformation of “citizens” into “customers,” there can be little doubt of the apparent trends. Moreover, as long as even the most liberal-sounding governments are prepared to defer to the current American president, the idea of a more robust, interventionist public sector seems remote.

Ford made a Pinto car that exploded on touch. It had known this could happen, but preferred not to cut into its profits by recalling the car – paying damages to the burnt victims was cheaper. No-one was ever convicted for these deaths by immolation.  
– Harry Glasbeek

Glasbeek, however, is not deterred. He has referenced initiatives in the United Kingdom and Australia that have at least taken notice of corporate criminality, though remarkably little has resulted but, as he has acknowledged, “these events are now seen as more than just a regulatory peccadillo. But,” he adds, the protected rapaciousness of the wealth-owning class still hides behind the corporate veil.”

This, of course, is only to be expected since it is the prime and, perhaps, the only job of corporate managers to maximize the wealth of their employers and to protect their shareholders from criminal liability. In *Class Privilege*, Glasbeek presents a valid argument for applying the criminal law to shareholders for the actions taken by corporations on their behalf. He also applauds the efforts of environmental, social justice, and health and safety activists who are lobbying (albeit without extraordinary success) for their respective governments to bring the corporate sector under common control.

Glasbeek concludes his contribution with the admonition that “there is a new alternative.” He admits that his hope for the future might “sound a little fanciful,” but he is convinced that bringing the social and ecological consequences of unfettered corporatism to light will make political opposition grow to the point where even existing political parties will be compelled to do more than tout “sunny ways” and to promise “change we can believe in.” Of course, any effective change is unlikely as long as the American leadership remains uncontested, but that, too, shall pass. Meanwhile, activists and grass-roots organizations will be encouraged and empowered and even mainstream people of no discernible radical or even progressive ideology may find Glasbeek’s cogent explanation not of what goes on, but of why it is permitted to go on will have some effect upon the minds of citizens, if not the consciences of corporations.

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