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Enterprise culture and accountancy firms: new masters of the universe

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Abstract

Purpose – This paper aims to argue that enterprise culture is producing negative effects. Companies and major accountancy firms are increasingly willing to increase their profits through indulgence in price fixing, tax avoidance/evasion, bribery, corruption, money laundering and practices that show scant regard for social norms and even laws.

Design/methodology/approach – The paper locates business behaviour within the broader dynamics of capitalism to argue that hunger for higher profits at almost any cost is not constrained by rules, laws and even periodic regulatory action.

Findings – The paper uses publicly available evidence to show that accountancy firms are engaged in anti-social behaviour. Evidence is provided to show that in pursuit of higher profits firms have operated cartels, engaged in tax avoidance/evasion, bribery, corruption and money laundering.

Practical implications – The paper seeks to bring the anti-social activities of accountancy firms under scrutiny and thus extend possibilities of research in social responsibility, ethics, accountability, claims of professionalism, social disorder and crime.

Originality/value – It is rare for accounting scholars to examine predatory practices of accounting firms. It shows that predatory practices affect a variety of arenas and stakeholders.

Keywords Culture, Accounting firms, Bribery, Corruption, Tax planning, Money laundering

Paper type Research paper

Introduction

With the contemporary triumph of enterprise culture and its pursuit of wealth creation, corporations have become the dominant economic, social and political force of our times. At the beginning of the twenty-first century, 51 of the 100 largest economies in the world were corporations, not countries. The five largest companies had combined sales greater than the gross domestic product (GDP) of the poorest 46 nations. The combined sales of the top 200 corporations were bigger than the combined economies of all countries minus the big ten, and accounted for over a quarter of world economic activity (Anderson and Cavanagh, 2000). Such clout has given corporations enormous power and scope for controlling markets, prices, jobs, pensions, news, medicines, food, water, communications, transport and the environment. Yet the power of enterprise culture is not necessarily being used in the wider social interest. With the support of the state, corporations have pursued higher profits by participating in wars, genocide,

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racism, slavery and repression (Black, 2001; Booth *et al.*, 2007; Klein, 2007). In the search for competitive advantage, they seem to be willing to indulge in price-fixing, bribery, corruption, money laundering, tax avoidance/evasion and a variety of anti-social activities that affect the life chances of millions of citizens (Baker, 2005; Gasparino, 2005; Kochan, 2006; Connor, 2007; Christensen, 2007).

The expansion of enterprise culture has been aided by accounting technologies that emphasise private property rights and appropriation of economic surpluses (Johnson, 1972, 1980). Auditing technologies seek to foster trust and encourage the belief that companies are not corrupt and their directors are accountable to a variety of stakeholders. Accountancy firms lubricate the wheels of capitalism through a variety of advisory services to enable capital to advance its interests. Through the provision of such technologies many accountancy firms themselves have become international businesses and significant promoters of enterprise culture. They simultaneously share and shape much of the contemporary entrepreneurial culture. The world of accounting is dominated by just four accountancy firms[1] whose combined global income of US$80 billion (Table I) is exceeded by the GDP[2] of only 54 nation states, giving them enormous clout for influencing regulators and contesting unwelcome policies. In recent years, considerable scholarly attention has focused on the expansion and growth of accountancy firms (Hanlon, 1994; Burrows and Black, 1998; Daly and Schuler, 1998; Grey, 1998; Barrett *et al.*, 2005), but there is little exploration of the darker side of accountancy firms and whether in pursuit of profits their entrepreneurial energies too might be used for anti-social practices, including price-fixing, bribery, corruption, money laundering and tax avoidance/evasion.

The paper seeks to encourage debates about the consequences of the enterprise culture. In particular, it seeks to encourage reflections on some questionable practices by accountancy firms which increase profits, but harm citizens. Such practices are located within the broader dynamics of capitalist societies where corporations use a variety of tactics to increase profits and offer high rewards for their executives. Since accountancy firms are also capitalist organisations they are also likely to have absorbed some of these practices. The paper is divided into three further sections. The next section provides a framework for appreciating how enterprise culture might persuade companies to engage in questionable practices to increase private profits. Some evidence is provided by showing that despite laws and regulatory action, companies continue to engage in price-fixing cartels, tax avoidance/evasion, bribery and corruption and money laundering. The next section focuses on accountancy firms and argues that the enterprise culture also encourages accountancy firms to engage in questionable practices. Some evidence is provided to show that that despite laws and

Firm	Global fees		Operations	
	US$bn	Employees	Countries	Offices
PricewaterhouseCoopers[a]	25.2	147,000	150	766
Deloitte & Touche[b]	20.0	135,000	99	670
Ernst & Young[b]	18.4	114,000	140	700
KPMG[b]	16.9	113,000	148	717
Grant Thornton[a]	2.8	22,000	113	521

Notes: [a] 2007 annual review; [b] 2006 annual reviews; Information as per firm web sites

Table I.
Accountancy firm income and size

regulations, accountancy firms too are engaged in price-fixing cartels, tax avoidance/evasion, bribery and corruption and money laundering. As the jurisdiction external auditing is considered to be informed by professional ethics, this section also provides some evidence to show that this arena is susceptible to predatory practices as well. The final section summarises the paper and discusses its significance and implications for research.

The universe of enterprise culture

The triumph of the West, western ideas and the alleged exhaustion of viable alternatives to liberalism has anointed capitalism as the dominant social, economic and political system of our time (Fukuyama, 1992). Corporations, particularly multinational corporations, are the motor of capitalism. With the active support of the state, dismantling of trade barriers, advances in information technologies and through a variety of networks, corporations have become "the most powerful political forces of our time" (Klein, 2001, p. 339).

Though created through law and numerous social contracts, corporations do not owe allegiance to any nation, community or locality (Bakan, 2003). Elected governments and host communities may be interested in eradicating poverty, promoting education, healthcare and human rights, but corporations may not necessarily share such goals. They are essentially "private" organisations and are required by law to prioritise the welfare of shareholders (capital) above other stakeholders. To legitimise their social power corporations may acknowledge some social responsibilities, but they cannot buck the systemic requirement to increase profits and dividends for the benefit of capital. In this competitive process corporations develop new products, services and niches and also squeeze a variety of stakeholders to achieve higher shareholder value (Kennedy, 2000). This has been accompanied by a variety of strategies to improve corporate earnings through financial engineering, dilution of wages and workers' pension rights (Froud *et al.*, 2006; Mitchell and Sikka, 2006). Corporate executives are also showing willingness to increase profits by operating cartels and by engaging in or facilitating money laundering, tax avoidance/evasion, bribery and corruption (Connor, 2007; Kochan, 2006; Shaxson, 2007; UK Africa All Party Parliamentary Group, 2006). Such practices seem to be part of an "enterprise culture" that persuades many to believe that "bending the rules" for personal gain is a sign of business acumen. Stealing a march on a competitor, at almost any price, to gain financial advantage is considered to be an entrepreneurial skill, especially where competitive pressures link promotion, status, profits, market shares and niches with meeting business targets. With the average tenure of chief executives at major quoted companies at four years, and falling (*The Independent*, 29 December 2006), the temptation is to build high personal financial rewards as soon as possible. The recipients of high rewards are often elevated as role models and their very success in "sailing close to the wind" poses challenges to the social norms which might have constrained predatory behaviour. A UK government report noted that some corporations and their directors have "... cynical disregard of laws and regulations ... cavalier misuse of company monies ... a contempt for truth and common honesty" (UK Department of Trade and Industry, 1997, p. 309).

In principle, predatory practices could be checked by public regulation and enforcement, but such discourses and practices are highly problematic. With increased state dependence on private capital to stimulate economic activity, corporate interests

have become central to contemporary domestic and foreign policymaking and dilute enthusiasm for vigorous regulatory activity. Corporations can dilute threatening policies through lobbying, sponsorship of political parties, prominent politicians, trade association, think-tanks and the media (Broder, 2000). The sheer volume of daily transactions and the related costs of surveillance make regulators selective in their focus and have to assume that corporations will be constrained by laws and social norms. In any case, corporations are able to "capture" regulators because regulators rely on "expert" knowledge and much of this is grounded in the vocabularies and values that privilege corporate interests. Consequently, despite the claimed advances in transparency, accountability and corporate social responsibility, large tracts of business activity remain relatively opaque (Levitt, 2002). For example, company accounts rarely provide any information about the involvement of corporations in anti-social practices, such as money laundering, tax avoidance/evasion, bribery and corruption, or their social consequences (Mitchell *et al.*, 2002).

Anti-social practices have negative effects on ordinary people's quality of life and their access to material and symbolic goods and services, but they rarely have the necessary resources to check corporate power and can easily be silenced by laws of libel (Sampson, 2004). Since corporate power depends on patronage of the state, citizens expect the state to create appropriate regulatory frameworks and make power accountable. As the state's legitimacy depends on mass support it is obliged to be seen to be checking corporate excesses, but this increasingly has to compete with processes that safeguard the long-term well-being of capital. In a world system of nation states, some seek competitive advantage and are either unable or unwilling to check predatory enterprise culture (Baker, 2005). Some lack the political, financial and administrative resources to constrain big business. Neoliberalist ideologies also limit the capacities of the state with claims that robust regulatory activity violates privacy and property rights, stifles innovation, reduces wealth creating opportunities, dilutes economic activities, forces capital to migrate to other less constrained pastures and in the process threatens jobs, social stability and revenues (e.g. taxation) that the state needs for its own survival (Levitt, 2002; Gasparino, 2005). Inevitably, the state's capacity to develop and enforce regulation is constrained by financial and ideological imperatives. The resulting vacuum has created space for a variety of questionable practices that increase corporate profits but also undermine the social fabric and welfare of citizens.

The remainder of this section provides some evidence about the involvement of corporations in cartels, tax avoidance, bribery and corruption and money laundering.

Cartels

In neoliberal ideology "the customer is king" and competition offers choices, but numerous companies have operated price-fixing cartels to reduce consumer choice and earn monopoly rents (Connor, 2007). As a key sponsor of capitalism, the state has enacted a variety of anti-trust laws to persuade corporations that competition and consumer choices are desirable, but this has to compete with pressures to increase profits and personal financial rewards. So a variety of cartels have been operationalised. For example, major UK supermarkets have been fined £260 million for colluding to fix the price of dairy products (UK Office of Fair Trading press release, 20 September 2007). UK retailers Argos and Littlewoods entered into agreements to fix the prices of toys and games (UK Office of Fair Trading press release, 19 February

2003). Of the UK's leading private schools, 50 were found guilty of running an illegal price-fixing cartel to drive up fees (*The Guardian*, 10 November 2005). A total of 15 major US drug companies agreed to pay more than $408 million to settle a lawsuit charging them with "conspiring to illegally fix prices that they charged to thousands of independent pharmacies" (*New York Times*, 10 February 1996). British Airways has admitted that it colluded with Virgin Atlantic over the surcharges added to ticket prices in response to rising oil prices. (UK Office of Fair Trading press release, 1 August 2007 – (www.oft.gov.uk/news/press/2007/113-07; accessed 2 August 2007.). The French regulators fined glamour perfume brands, Chanel, Yves Saint Laurent, Christian Dior and Guerlain for operating a cartel (*Daily Telegraph*, 15 March 2006). Samsung, a major manufacturer of electronic equipment pleaded guilty and was fined US$300 million for participating in an "international conspiracy to fix prices" (US Department of Justice press release, 13 October 2005 www.usdoj.gov/atr/public/press_releases/2005/212002.htm, accessed 14 October 2005). The European Commission fined brewers Heineken, Grolsch and Bavaria nearly €274 million for operating a cartel on the beer market in The Netherlands. (European Commission press release, 18 April 2007). The Commission also fined Otis, KONE, Schindler and ThyssenKrupp for operating cartels for the installation and maintenance of lifts and escalators in Belgium, Germany, Luxembourg and The Netherlands (European Commission press release, 21 February 2007). Eleven companies, including ABB, Alstom, Areva, Fuji Electric, Hitachi Japan, AE Power Systems, Mitsubishi Electric Corporation, Schneider, Siemens, Toshiba and VA Tech "rigged bids for procurement contracts, fixed prices, allocated projects to each other, shared markets and exchanged commercially important and confidential information" (European Commission press release, 24 January 2007). The European Commission has fined five oil and chemical companies, including, Eni and Royal Dutch Shell for fixing the price of synthetic rubber (European Commission press release, 29 November 2006). Seemingly, no part of life is immune from cartels.

The above examples provide a brief glimpse of practices crafted by high-ranking company executives. These may turn profit maximising directors into media stars, but also squeeze customers, usually hitting the poorest the hardest, by forcing them to pay higher prices. Neoliberals also complain that cartels damage free and competitive markets, but companies appear to have a considerable appetite for such practices.

Tax avoidance

The availability of taxation revenues are crucial to any attempt by the state to redistribute wealth, alleviate poverty and provide a variety of public goods covering education, healthcare, security, pensions, public transport, clean water and other services and make a difference to quality of life and even survival. Yet corporations often see tax avoidance schemes as simply another "cost reduction" programme rather than a practice that undermines social solidarity and the development of a just and fair society.

The USA, with extreme levels of income inequalities and with it access to education and healthcare is estimated to be losing over $300 billion of tax revenues each year (US Internal Revenue Service (IRS) press release, 14 February 2006 – www.irs.gov/newsroom/article/0,id = 154496,00.html). Companies use a wide variety of tax avoidance schemes, tax havens and shell companies to avoid taxes and increase their earnings (US Government Accountability Office, 2004a, b). The demise of Enron

and WorldCom provided a glimpse of complex tax avoidance schemes. For example, with advice from Arthur Andersen, Deloitte & Touche, Chase Manhattan, Deutsche Bank, Bankers Trust and several major law firms Enron operated through a labyrinth of 3,500 domestic and foreign subsidiaries and affiliates (US Senate Joint Committee on Taxation, 2003). Many were located in tax havens and enabled the company to structure its transactions to avoid taxes at home and abroad. With advice from KPMG, WorldCom used a variety of strategies to avoid taxes at home and abroad. Transfer pricing techniques alone enabled it to amass $20 billion of revenues on which it paid little or no corporate taxes (US Bankruptcy Court Southern District of New York, 2004).

The culture of tax avoidance is widespread. A government report showed that 61 percent of the US domiciled corporations paid no federal income taxes for the years 1996 to 2000. Nearly 38 percent of the large companies (with more than $250 million in assets or $50 million in revenues) paid no taxes during the five-year period. An estimated 94 percent of corporations reported tax liabilities of less than 5 percent of their income in 2000. Around 71 percent of foreign-controlled corporations paid no taxes on their US income and 89 percent had liabilities of less than 5 percent of their income (UK Africa All Party Parliamentary Group, 20065). Major US companies also avoid paying state taxes (McIntyre and Coo Nguyen, 2005).

The UK Treasury is estimated to be losing between £97 billion and £150 billion of tax revenues, between 8 percent and 12 percent of GDP, each year (Mitchell and Sikka, 2006). The amounts are significant for a country with almost the lowest state pension in Western Europe (Mitchell and Sikka, 2006) and a lamentable record for dealing with child poverty (UNICEF(2007). A government study relating to the 700 biggest companies, reported that 220 companies paid no corporation tax and a further 210 paid less than £10m each in 2005-2006 (National Audit Office, 2007). Around two-thirds of the corporation tax total came from just three industries – banking, insurance and oil and gas. Almost 70 percent of all UK corporation tax in the 2005/2006 financial year was paid by just 50 companies. Alcohol, tobacco, car and real estate sectors contributed only a few hundred million pounds. While there may be perfectly legitimate reasons for lower corporation tax bills, evidence shows that corporate taxes as a percentage of gross domestic product (GDP) have been declining and taxes have been shifted to labour and consumption (Mitchell and Sikka, 2005).

Developing countries may be losing around US$385 billion of tax revenues each year, dwarfing all the loans, donations and foreign aid put together (Cobham, 2005). The loss of such vital non-returnable revenues constrains investment in education, healthcare, clean water or combating disease and has deadly results. While the average life expectancy in Japan, Australia, Switzerland, Sweden and France is over 80 years, in Swaziland it is only 39.6 years (United Nations Department of Economic and Social Affairs, Population Division, 2007). Tax revenues could greatly aid development and quality of life. For example, every $100 million could fund 3.3-10 million insecticide-treated bednets; or treatment for over 600,000 people for one year for HIV/AIDS; or 50-100 million dosages of treatments for malaria; or full immunizations for 4 million children; or water connections for some 250,000 households; or 240 kilometers of two-lane paved road (World Bank, 2007). Yet the thirst for greater corporate profits rarely connects with the consequences for humanity.

Bribery and corruption

Though somewhat contentious to define, bribery and corruption remain major features of the world economy. In general, the practices involve attempts to gain unfair advantage (Shaxson, 2007). A large part of bribery and corruption occurs at the interface between the private and public sectors, between government officials and companies seeking competitive opportunities to earn excessive profits by offering kickbacks and secret commissions to intermediaries. According to international financier George Soros, "international business is generally the main source of corruption" (*Financial Times*, 8 December 1998) and Transparency International adds that "Bribe money often stems from multinationals based in the world's richest countries" (Transparency International, 2007). Bribery and corruption hurt the poor. As a UK legislator put it, the "cost of bribes falls primarily on the poor. When a corrupt contractor from this or some other rich country pays a 15 percent. bribe, he adds that to the price of his contract. His power station or irrigation scheme will cost more, and the little people – those who buy the electricity or the water to irrigate their crops – will pay the price of that bribe. Bribery is a direct transfer of money from the poor to the rich" (Hansard, House of Commons Debates, 25 February 1998, col. 374).

Despite the Organization for Economic Co-operation and Development (OECD) convention on corruption (OECD, 1997), which has been implemented by many countries, the level of corruption and bribery has increased and is estimated to be over US$1 trillion each year (UK Africa All Party Parliamentary Group, 2006). A large amount of corruption and bribery is also associated with the looting of countries by their rulers, a process that frequently carries the fingerprints of corporations. Corrupt "leaders of poor countries skim as much as US$40 billion each year and stash their looted funds overseas" (World Bank press release, 17 September 2007; also see World Bank, 2007). A UK parliamentary report adds that "In many cases western companies and western agents have been guilty of offering and paying bribes to government officials to secure contracts and other advantages. Western banks have been implicated in laundering the proceeds of corruption and western shell companies and trusts have been set up to facilitate this. Western financial experts have also been accused of assisting corrupt officials to launder their illicit funds... numerous cases that demonstrate the role played by foreign companies in Africa in paying bribes, and facilitating other forms of corruption (UK Africa All Party Parliamentary Group, 2006, p 20). China, an emerging economy with large foreign investment, claims to have investigated 24,879 cases of commercial bribery, including the operations of the French supermarket chain Carrefour and Germany-based Siemens, involving 6.16 billion yuan (US$819.15 million) in the first half of 2007 alone (*China Daily*, 19 September 2007). In 2006, World Bank barred 330 companies from participating in its contracts on grounds of corruption (*Financial Times*, 6 August 2006).

Corporations are also involved in corruption in their home countries. The UK Police records suggest that the "single greatest source of corruption in the UK is large public sector contracts and concessions issued to private companies, both of which have increased under privatisation" (Hawley, 2000). The corporate hand in bribery and corruption is sometimes given visibility by regulatory reports. For example, US drug manufacturer Johnson and Johnson admitted that some of its subsidiaries "made improper payments in connection with the sale of medical devices in two small-market countries" (*New York Times*, 13 February 2007; *The Times*, 14 February 2007). The US conglomerate Baker Hughes Incorporated pleaded guilty to three charges of corruption

and was fined $44 million for hiring agents to bribe officials in Nigeria, Angola Indonesia, Russia, Uzbekistan and Kazakhstan. Among other things the company "paid approximately $5.2 million to two agents while knowing that some or all of the money was intended to bribe government officials, specifically officials of State-owned companies, in Kazakhstan" (SEC press release, 26 April 2007 – www.sec.gov/news/press/2007/2007-77.htm). Textron Inc, a US aviation and defence company operating from 32 countries was fined $4.7 million for allegedly paying bribes to win contracts in Iraq. Its "subsidiaries allegedly made illicit payments … to secure 36 contracts in the United Arab Emirates, Bangladesh, Indonesia, Egypt, and India from 2001 to 2005" (SEC press release, 23 August 2007 – www.sec.gov/litigation/litreleases/2007/lr20251.htm); also see US District Court Southern District of Texas, 2007). Two former "Siemens managers have been convicted by a German court of their involvement in paying 6m euros (£4.1m; $8m) in bribes to win [power generation] contracts (BBC, 14 May 2007 – http://news.bbc.co.uk/1/hi/business/6654825.stm).

In principle, the governments could check predatory practices, but often in the pursuit of "national interests" some are reluctant to investigate allegations of bribery (UK Africa All Party Parliamentary Group, 2006). More recently, the UK government abruptly ended its investigation of alleged bribes paid by arms manufacturer BAE Systems to Saudi Arabia officials, through a series of onshore and offshore companies and bank accounts, to secure sales of weapons. The reason advanced was that it might harm exports and cause loss of jobs (*The Guardian*, 15 December 2006; 15 January 2007; 24 April 2007; 9 May 2007; 7 June 2007; 21 September 2007).

Money laundering

In the era of electronic transfers of money and easy mobility of capital, money laundering is considered to be a major challenge as it has the capacity to finance corruption, narcotics, smuggling, theft, crime, private armies, pervert democracy and fuel inequalities. Money laundering is facilitated by banks, financial services companies, multinational corporations, shell companies and networks of business advisers (UK Africa All Party Parliamentary Group, 2006; Financial Action Task Force, 2006). The US government acknowledges that "shell companies are being used to launder as much as $36 billion from the former Soviet Union … and conceal money movements" (US Government Accountability Office, 2006, p. 33).

The World Federation of United Nations Associations estimates that the proceeds of organised crime are around US$2 trillion (*The Guardian*, 12 September 2007) while the World Bank estimates that between US$1 trillion and US$1.6 trillion is lost each year to various illegal activities including corruption, criminal activity such as drugs, counterfeit goods, money, and illegal arms trade and tax evasion (World Bank, 2007). Others estimate that after including the cost of fighting, money laundering is estimated to cost the world economy some US2.5 trillion each year (Kochan, 2006). To combat the threat of money laundering most governments have devised anti-money laundering laws which require banks and financial services entities to implement suitable systems of internal controls and policies to identify their customers and suspicious transactions – sometimes known as "know your customer" (or KYC). Such policies and records can be examined by law enforcement agencies, but are failing as Baker (2005, p. 173) argues that US anti-money laundering efforts "succeed 0.1 percent of the time and fail 99.9 percent of the time". One possibility is that corporate responses to laws may not

necessarily be aligned with broader social interests and corporations may have developed strategies of creative compliance (US Senate Permanent Subcommittee on Investigations, 2004, 2005a).

A US government report noted that "the New York branch of ABN AMRO, a banking institution, did not have anti-money laundering program and had failed to monitor approximately $3.2 billion – involving accounts of US shell companies and institutions in Russian and other former republics of the Soviet Union" (US Government Accountability Office, 2006, p. 31). The case of the US based Riggs Bank[3] provides an insight into the creative compliance strategies that might be developed in pursuit of profits. The bank "disregarded its anti-money laundering (AML) obligations … despite frequent warnings from … regulators, and allowed or, at times, actively facilitated suspicious financial activity" (US Senate Permanent Subcommittee on Investigations, 2004, p. 2). The Committee chairman Senator Carl Levin stated that the "the 'Don't ask, Don't tell policy' at Riggs allowed the bank to pursue profits at the expense of proper controls …Million-dollar cash deposits, offshore shell corporations, suspicious wire transfers, alteration of account names – all the classic signs of money laundering and foreign corruption made their appearance at Riggs Bank"[4].

The Senate Committee report stated that:

> Over the past 25 years, multiple financial institutions operating in the United States, including Riggs Bank, Citigroup, Banco de Chile-United States, Espirito Santo Bank in Miami, and others, enabled [former Chilean dictator] Augusto Pinochet to construct a web of at least 125 U.S. bank and securities accounts, involving millions of dollars, which he used to move funds and transact business. In many cases, these accounts were disguised by using a variant of the Pinochet name, an alias, the name of an offshore entity, or the name of a third party willing to serve as a conduit for Pinochet funds (US Senate Permanent Subcommittee on Investigations, 2005a, p. 7).

The Senate report states that:

> In addition to opening multiple accounts for Mr. Pinochet in the United States and London, Riggs took several actions consistent with helping Mr. Pinochet evade a court order attempting to freeze his bank accounts and escape notice by law enforcement (US Senate Permanent Subcommittee on Investigations, 2004, p. 28).

The Senate report stated that the Riggs bank's files and papers contained:

> … no reference to or acknowledgment of the ongoing controversies and litigation associating Mr. Pinochet with human rights abuses, corruption, arms sales, and drug trafficking. It makes no reference to attachment proceedings that took place the prior year, in which the Bermuda government froze certain assets belonging to Mr. Pinochet pursuant to a Spanish court order – even though … senior Riggs officials obtained a memorandum summarizing those proceedings from outside legal Counsel (US Senate Permanent Subcommittee on Investigations, 2004, p. 147).

The bank's profile did not identify General Pinochet by name and at times he is referred to as "a retired professional, who achieved much success in his career and accumulated wealth during his lifetime for retirement in an orderly way" (p. 25) … with a "High paying position in Public Sector for many years" (p. 26) … whose source of his initial wealth was "profits & dividends from several business[es] family owned" (p. 147) … the source of his current income is "investment income, rental income, and pension fund payments from previous posts" (p. 147).

Accountancy firms

The preceding section explored some aspects of the enterprise culture. It showed that in pursuit of higher profits some corporations indulge in cartels, tax avoidance/evasion, money laundering, bribery and corruption. Some have developed creative compliance strategies. Such practices are partly encouraged by secrecy, poor regulatory environment and the relative absence of any moral constraints. Though accountancy firms distinguish their expert labour from competitors by appealing to claims of professionalism and ethical codes, they too are capitalist organisations whose success is measured by increases in fees and profits. Since making profits by "bending the rules" is a prominent feature of enterprise culture, accountancy firms may also be susceptible to such practices, especially as their "emphasis is very firmly on being commercial and on performing a service for the customer rather than on being public spirited on behalf of either the public or the state" (Hanlon, 1994, p. 150). Employees of major firms are inculcated into prioritising the interests of clients and know that their career progression depends on this (Grey, 1998). In the words of a senior partner, "a firm like ours is a commercial organization and the bottom line is that . . . the individual must contribute to the profitability of the business . . . essentially profitability is based on the ability to serve existing clients well" (Hanlon, 1994, p. 121). Such ideologies may increase profits, but can be socially dysfunctional as evidenced by auditor failures to report frauds by UK media mogul Robert Maxwell. In this case, a senior partner of Coopers & Lybrand had told staff that the "first requirement is to continue to be at the beck and call of RM [Robert Maxwell], his sons and staff, appear when wanted and provide whatever is required" (UK Department of Trade and Industry, 2001, p. 367).

Accountancy firms compete against each other and occupants of adjacent jurisdictions for profit making opportunities. However, it is the state guaranteed market of external auditing that has provided the springboard for commercial expansion of accounting firms. Compared to their competitors, auditing gives the firms an easy access to senior management and sell a wide variety of consultancy services, including advice on executive compensation, executive recruitment, financial engineering, mergers and acquisitions, tax avoidance, trade union busting, printing T-shirts, badges, laying golf courses and even inspection of toilets[5]. Since the late 1970s major firms diversified into a variety of consultancy services to increase their profits (Zeff, 2003a, b). The firms shifted "from providing one-to-one tax advice in response to tax inquiries to also initiating, designing and mass marketing of tax shelter products" (US Senate Permanent Subcommittee on Investigations, 2005b, p. 9). Lynn Turner, SEC chief accountant from 1998-2001, explained that:

> Today they [major firms] are a business firm, and the CEOs and culture at the top of these firms is, "What can we do [to] make our business more profitable[6]?

Reflecting the contemporary enterprise culture, many companies aggressively sought to increase their profits through financial engineering or avoidance of rules and accountancy firms have been in the thick of it.

Any temptation to indulge in predatory practices could be checked by reflections on the possible consequences, but experienced observers claim that accountancy firms have a history of "turning a blind eye on the wholesale abuse by client company directors of [legal] provisions" (Woolf, 1983, p. 112) and "disclosing considerably less than what they actually know" (Woolf, 1986, p. 511). The chairman of Coopers &

Lybrand (now part of PricewaterhouseCoopers) publicly stated that, "there is an industry developing, and we are part of it, in standards avoidance" (*Accountancy Age*, 19 July 1990, p. 1). A partner from a medium-size firm was bold enough to say "No matter what legislation is in place, the accountants and lawyers will find a way around it. Rules are rules, but rules are meant to be broken" (*The Guardian*, 18 March 2004).

Perhaps, the conservatism traditionally associated with accounting firms could dampen the zeal to increase profits through predatory activities, but the steady dilution of auditor liability laws has eroded conservative attitudes. As Stiglitz (2003, p. 136) put it:

> ... there are plenty of carrots encouraging accounting firms to look the other way ... there had been one big stick discouraging them. If things went awry, they could be sued ... In 1995, Congress adopted legislation intended to limit securities litigation ... in doing so, they provided substantial [liability] protection for the auditors. But we may have gone too far: insulated from suits, the accountants are now willing to take more "gambles" ....

The less onerous auditor liability laws have also been introduced in the UK and other countries (Sikka, n.d.).

In principle, the predatory activities of accountancy firms could be checked by regulators, but there are considerable complexities in crafting regulatory structures. In common with other fractions of capital, accountancy firms fund and lobby political parties to secure regulatory concessions (Roberts *et al.*, 2003). They have enjoyed a close and complex relationship with the state and have been able to marginalise issues about their accountability (Sikka and Willmott, 1995). In Anglo-Saxon countries, accounting business has enjoyed self-regulation, albeit in a statutory framework, which has primarily been focused on the state guaranteed markets of auditing and insolvency. The regulatory apparatus has rarely examined the governance of accounting firms, or explored how they negotiate systemic pressures to increase profits (Sikka, 2004). In general, despite their social power, accountancy firms are not even subjected to the disclosure requirements[7] applicable to equivalent companies or public sector bodies. Some may look towards standard setting agencies to provide benchmarks for accountancy firm accountability, but major firms often provide finance and personnel to such agencies and are able to stymie threatening developments (Sikka, 2002; Loft *et al.*, 2006). The burgeoning domestic and international auditing standards are silent on the social obligations of accountancy firms.

Against the background of comparative secrecy, relatively weak liability, accountability, regulatory, moral and ethical pressures, accountancy firms have become key players in the contemporary enterprise culture and have shown a willingness to indulge in questionable practices not only to increase their clients' but also their own profits. The remainder of this section provides some evidence to show that the firms co-operate to operate price fixing cartels and other arrangements to advance their economic interests. This has been accompanied by practices relating to tax avoidance/evasion, bribery and corruption and money laundering. This is also supplemented by evidence relating to the auditing arena to show that questionable practices take place in the accounting firms' traditional jurisdiction as well.

Cartels

There are numerous opportunities for accountancy firm partners to get together whether through their membership of the councils of accountancy bodies, at standard setting bodies, or at government sponsored and social events, and advance their common

interests. In the year 2000, Consob, the Italian Competition Authority fined Arthur Andersen, Coopers & Lybrand (now part of PricewaterhouseCoopers), Deloitte & Touche, KPMG, Price Waterhouse (now part of PricewaterhouseCoopers), Reconta Ernst & Young, the then Big-Six accounting firms, for operating a cartel (www.agcm.it/agcm_eng/COSTAMPA/E_PRESS.NSF/0/991a5848bc88040dc125688f0056851d?OpenDocument). The firms had:

> ... agreements to substantially restrict competition on the auditing services market in Italy ... covered virtually every aspect of competition ... the agreements set the fees for auditing ... rules to be followed when acquiring new clients in order to protect the market positions of each firm. In particular these rules prohibited any form of competition in relation to each audit firm's "client portfolio". By applying these rules, the auditing firms were able to agree, for example, on how to respond to requests for discounts from client companies, and to establish in advance the firm that would be awarded auditing contracts, in many cases making competitive tendering a mere formality. Other agreements were also designed to ensure anti-competitive behaviour by the auditing firms for public tenders and when establishing agreements with the authorities ...

Accountancy firms also form alliances to protect their niches. In November 2005, France introduced legislation restricting the ability of auditing firms to sell non-auditing services to audit clients. It imposed a ban on offering an audit if the client has received other services from the audit firm in the previous two years. This had the potential to enhance auditor independence, but could possibly reduce firm income and was therefore not welcome. So the Big Four firms and Grant Thornton formed an alliance to contest the law with the complaint that "They've taken the rules on auditor independence in the Eighth Directive too far" (*Accountancy Age*, 20 September 2007). The firms are now jointly fighting the French government on the grounds that French law is incompatible with European Union directives and have theatened to take the matter to the European Court of Justice (*The Times*, 28 March 2006; *Accountancy Age*, 4 April 2006; 20 September 2007). Previously, Ernst & Young and PricewaterhouseCoopers combined forces to pressurise the UK government to secure liability concessions in the shape of limited liability partnerships. They had threatened to relocate their UK business to the offshore tax haven of Jersey (Sikka, forthcoming). As the UK government eventually capitulated an Ernst & Young senior partner boasted:

> It was the work that Ernst & Young and Price Waterhouse undertook with the Jersey government ... that concentrated the mind of UK ministers on the structure of professional partnerships ... The idea that two of the biggest accountancy firms plus, conceivably, legal, architectural and engineering and other partnerships, might take flight and register offshore looked like a real threat ... I have no doubt whatsoever that ourselves and Price Waterhouse drove it onto the government's agenda because of the Jersey idea (*Accountancy Age*, 29 March 2001, p. 22).

In competitive markets, producers often poach their competitors' clients and personnel, especially if the competitor is under distress. Accountancy firms freuquently poach key staff from each other, but this policy was suspended while KPMG was under scrutiny. Since late 2003, KPMG had been under regulatory scrutiny in the US for facilitating tax evasion and was fined $456 million (see below). This could have persuaded other firms to poach staff and clients or engage in competitive practices to win new clients, but the three largest accounting firms, apparently all independent of each other, "ordered their

partners not to poach clients or personnel from KPMG while it remains under investigation" (*Daily Telegraph*, 24 August 2005). This policy could have been driven by their self-interest as the demise of KPMG may have persuaded regulators to break-up the remaining Big three firms to enhance competition.

Accountancy firm partners frequently earn fees by acting as expert witnesses in court cases. The same expertise could also be used to advance cases of negligence and fraud brought against major firms. The New Zealand case of *Wilson Neill* v. *Deloitte* – High Court, Auckland, CP 585/97, 13 November 1998 revealed that "The major accounting firms have in place a protocol agreement promising that none will give evidence criticising the professional competence of other Chartered Accountants" (reported in the (New Zealand) *Chartered Accountants' Journal*, April 1999, p. 70). The case against Deloitte was dismissed because of insufficient evidence of negligence.

Tax avoidance

Commentators say that there are "armies of accountants in the City of London [are] trained in the dark arts of tax minimisation" (*The Daily Telegraph*, 2 September 2007). UK legislators claim that "Britain's corporation tax revenues are under relentless attack from several multinational companies and the global accountancy firms' mass production of tax avoidance" (Hansard, House of Commons Debates, 3 February 2005, col. 992). US legislators have expressed concern that the "sale of potentially abusive and illegal tax shelters has become a lucrative business in the United States, and some professional firms such as accounting firms … are major participants" (US Senate Permanent Subcommittee on Investigations, 2003, p. 4).

A US government study reported that accountancy firms, in their capacity as auditors, are major sellers of tax avoidance schemes, some of which turn out to be abusive (US Government Accountability Office, 2005). An insight into the role of accountancy firms in designing and marketing abusive tax avoidance schemes was provided by a report by the US Senate Committee on Permanent Investigations (US Senate Permanent Subcommittee on Investigations, 2003) on the operations of KPMG. The Senate inquiry found that KPMG created a "Tax Innovation Center" which was treated as a profit centre and its staff were subjected to periodic performance assessments to increase revenues. It also had a "Tax Services Idea Bank" which encouraged staff to submit new ideas for tax avoidance schemes, together with an estimate of the revenue potential and key client targets. The Center "maintained an inventory of over 500 'active tax products' designed to be offered to multiple clients for a fee … [its aim was] to become an industry leader in producing generic tax products" (US Senate Permanent Subcommittee on Investigations, 2003, p. 2, 25). The Senate report estimated that as much as $85 billion may have been lost because of abusive and questionable tax shelters (p. 21).

The Senate report stated that:

> None of the transactions examined by the Subcommittee derived from a request by a specific corporation or individual for tax planning advice on how to structure a specific business transaction in a tax-efficient way; rather all of the transactions examined by the Subcommittee involved generic tax products that had been affirmatively developed by a firm and then vigorously marketed to numerous, in some cases thousands, of potential buyers (US Senate Permanent Subcommittee on Investigations, 2003, p. 2).

The Senate hearings found that KPMG used:

> ... aggressive marketing tactics to sell its generic tax products, including by turning tax professionals into tax product salespersons, pressuring its tax professionals to meet revenue targets, using telemarketing to find clients, using confidential client tax data to identify potential buyers, targeting its own audit clients for sales pitches, and using tax opinion letters and insurance policies as marketing tools (US Senate Permanent Subcommittee on Investigations, 2003, p. 4).

KPMG personnel were trained in cold-calling techniques, instructed to "respond aggressively at every opportunity" (US Senate Permanent Subcommittee on Investigations, 2003, p.50) and disarm sceptical clients with the claims that "many of the [KPMG] specialists are ex-IRS employees ... Many sophisticated clients have implemented the strategy in conjunction with their outside counsel" (US Senate Permanent Subcommittee on Investigations, 2003, p. 59). Client presentations were done on chalkboards or erasable whiteboards, and written materials were retrieved from clients before leaving a meeting. Potential clients had to sign "non-disclosure" agreements.

For a number of years US tax professionals have been required to register the tax avoidance schemes marketed by their organisations with the tax authorities. Those failing to do so could face civil and criminal penalties. The Senate report found that despite "its 500 active tax product inventory KPMG has never registered, and thereby disclosed to the IRS the existence of, a single one of its tax products..." (US Senate Permanent Subcommittee on Investigations, 2003, p. 13). The Senate report stated that senior tax professionals urged the firm "to knowingly, purposefully, and willfully violate the federal tax shelter law" (US Senate Permanent Subcommittee on Investigations, 2003, p. 13). In an internal communication, a senior KPMG professional reasoned that "the IRS was not vigorously enforcing the registration requirement, the penalties for noncompliance were much less than the potential profits from selling the tax product..." (US Senate Permanent Subcommittee on Investigations, 2003, p.13). The Senate report states for just one of the abusive tax avoidance schemes the "KPMG tax professional coldly calculated the penalties for noncompliance compared to potential fees" and said: "Based on our analysis of the applicable penalty sections, we conclude that the penalties would be no greater than $14,000 per $100,000 in KPMG fees ... For example, our average ... deal would result in KPMG fees of $360,000 with a maximum penalty exposure of only $31,000." The senior tax professional also warned that if KPMG were to comply with the tax shelter registration requirement, this action would place the firm at such a competitive disadvantage in its sales that KPMG would "not be able to compete in the tax advantaged products market." (US Senate Permanent Subcommittee on Investigations, 2003, p. 13). Following the critical Senate report KPMG promised to curb some of its activities, but was soon found to be marketing aggressive avoidance schemes (*New York Times*, 26 August 2004) leading to further condemnations by the Senate Committee (US Senate Permanent Subcommittee on Investigations, 2005b).

After further investigations by the US tax authorities, KPMG and nineteen (current and former) personnel were charged with conspiring to "defraud the IRS by designing, marketing and implementing illegal tax shelters" in what the Department of Justice described as "the largest criminal tax case ever filed" (press release, 17 October 2005 – www.usdoj.gov/opa/pr/2005/October/05_tax_547.html). KPMG, the firm, avoided prosecution, but "admitted to criminal wrongdoing and agreed to pay $456 million in fines, restitution, and penalties as part of an agreement to defer prosecution of the

firm" (Department of Justice press release, 29 August 2005 – www.usdoj.gov/opa/pr/2005/August/05_ag_433.html). One of the KPMG [former] tax partners told a court, "I willfully aided and abetted the evasion of taxes" and added that the illegal schemes were "designed and approved by senior partners and leaders at KPMG and other entities to allow wealthy taxpayers to claim phony losses on their tax returns through a series of complicated transactions … so that KPMG and other entities could earn significant fees" (*The San Diego Union Tribune*, 9 April 2006 – www.signonsandiego.com/uniontrib/20060409/news_1b9kpmg.html). In January 2007, a former KPMG tax consultant, pleaded guilty to "participating in a conspiracy to defraud the United States Treasury, evade taxes and file false tax returns" (www.usdoj.gov/usao/nys/pressreleases/January07/acostapleapr.pdf). He stated that "a former partner in KPMG's Los Angeles office paid him $600,000 to pose as a private hedge fund owner and manager of several entities that were used to advance the tax shelter known as short options strategy". He also stated that at the direction of a KPMG partner "he lied to an IRS agent about his and [KPMG partner's] roles in marketing the shelters" (www.usdoj.gov/tax/TaxDiv2007ResultsAppx.pdf).

Inevitably, there are legal wranglings about prosecutions, especially as the US prosecutors insisted that KPMG personnel should not be able to get financial help from the firm to fight their cases. Such a restriction was considered to be a violation of their constitutional rights and in July 2007, a US court[8] dismissed charges against 13 KPMG personnel because the restriction had prevented them from presenting their defence (*New York Times*, 17 July 2007). The US Justice Department is considering the possibilities of an appeal (*New York Times*, 19 July 2007).

Attention has also focused on other accountancy firms. A US Senate report stated that "PricewaterhouseCoopers sold generic tax products to multiple clients, despite evidence that some … were potentially abusive or illegal…" (US Senate Permanent Subcommittee on Investigations, 2005b, p. 7). The role of Deloitte & Touche in crafting tax avoidance schemes for Enron is under scrutiny (US Senate Joint Committee on Taxation, 2003). The firm had also been under scrutiny in the US state of North Carolina for designing "unemployment-insurance tax shelters". Government officials claimed that the:

> … scheme basically involves setting up phony corporations and then shifting employees into those new corporations because new corporations generally pay lower unemployment-insurance tax rates than do older companies with an established history of layoffs … as many as 150 companies may have used the technique, which is illegal(*Miami Herald*, 19 March 2004, also see www.accountingweb.com/cgi-bin/item.cgi?id = 98916; accessed 23 March 2004).

Following the Senate Committee conclusion that Ernst & Young (E&Y) sold "abusive or illegal tax shelters" (US Senate Permanent Subcommittee on Investigations, 2005b, p. 6), the US Justice Department charged "four current and former partners of Big-Four accounting firm Ernst & Young (E&Y) with tax fraud conspiracy and related crimes arising out of tax shelters promoted by E&Y … the defendants and their co-conspirators concocted and marketed tax shelter transactions based on false and fraudulent factual scenarios to be used by wealthy individuals with taxable income generally in excess of $10 or $20 million to eliminate or reduce the taxes they would have to pay the IRS" (US Justice Department press release, 30 May 2007, www.usdoj.gov/usao/nys/pressreleases/May07/eyindictmentpr.pdf). The accompanying 72 page indictment sheet (available at

http://visar.csustan.edu/aaba/Ernst&Young2007taxindictment.pdf) alleges that the firm had elaborate organisational structures for designing and marketing tax avoidance schemes, which through a series of complex transactions either eliminated, or deferred taxes. The schemes were mass-marketed and sceptical clients were reassured by what the Justice Department alleges were: "false and fraudulent opinion letters" from leading law firms (see paras 15 and 62 of the indictment sheet). The Justice Department alleges that the defendants took active steps to prevent the tax authorities from becoming aware of the nature of the schemes by directing "destruction of documents which would reveal the true facts surrounding the design, marketing and implementation" (para 29). Internal emails allegedly said that there "should be no materials in the clients' hands – or even in their memory . . . a fax of the materials to certain people in the... government would have calamitous results" (para 39 and 46). So far one former Ernst & Young employee has pleaded guilty to conspiracy to commit tax fraud and "acknowledged that she and her co-conspirators also took steps to disguise the fact that all the steps of the transactions were all pre-planned from the beginning" (*New York Times*, 15 Jun 2007, http://money.cnn.com/2007/06/14/news/newsmakers/bc.ernstyoung.tax.employee.reut).

The sale of tax avoidance schemes in other countries is also under scrutiny. For example, a UK Tax Tribunal found that KPMG cold-called on clients to sell a scheme that would boost corporate earnings by avoiding sales tax (or Value Added Tax (VAT)). The scheme involving use of offshore tax havens and complex corporate structures was declared unlawful by the Tribunal (for further details see www.financeandtaxtribunals.gov.uk/decisions/documents/vat/17914.pdf) and subsequently the European Court of Justice described it as "unacceptable" (*The Observer*, 27 March 2005). Ernst & Young marketed a scheme to enable retailers to boost earnings by avoiding VAT and levying a credit handling fee on credit card sales. Under the scheme retailers would claim that 2.5 per cent of all credit card sales were a "card handling fee" and not subject to VAT as financial services are exempt. Thus for an item of £100, the retailer would account for VAT on the sale price of £97.50 only and keep the other £2.50 as a service charge. The scheme was declared unlawful by a Tax Tribunal (for further details see www.bailii.org/ew/cases/EWCA/Civ/2005/892.html) and a UK Treasury spokesperson described it as "one of the most blatantly abusive avoidance scams of recent years" (*The Guardian*, 19 July 2005). In September 2007, another Ernst & Young designed scheme to enable companies to use complex instruments known as "tax-efficient off-market swaps" was declared unlawful (for further details see www.financeandtaxtribunals.gov.uk/judgmentfiles/j3463/Spc00636.doc). It could have lost the UK Treasury £1 billion of tax revenues (*Accountancy Age*, 27 September 2007).

Some questions have also been posed about the firms' own tax computations. For example, it was reported (*Wall Street Journal*, 14 October 2005) that KPMG "used one of its own mass-marketed corporate-tax strategies to record a $34 million deduction on its 2001 tax return, just months before the Internal Revenue Service listed the strategy as an abusive tax-avoidance transaction". The US IRS is also "conducting a special audit of PricewaterhouseCoopers . . . studying the firm's accounts going back to 2001" (*The Daily Telegraph*, 28 August 2006). The Australian press reported that:

> . . . partners from leading tax firm KPMG were hit with a claim for up to $100 million in unpaid taxes and penalties for allegedly breaching . . . anti-avoidance tax laws. [Australian Taxation Office] claimed that KPMG partners had channelled such a high proportion of their income through the trusts that the sole or dominant purpose of the trusts must have been to

avoid paying tax (*Sydney Morning Herald*, 17 May 2004, 18 May 2004, www.smh.com.au/articles/2004/05/16/1084646069195.html; accessed 11 June 2007).

It was also reported that "Ernst & Young admitted it had settled a multimillion-dollar tax claim [with the Australian Taxation Office] over income splitting through service trusts . . . " (*Sydney Morning Herald*, 18 May 2004, www.smh.com.au/articles/2004/05/17/1084783453641.html). Following a raid on its Moscow office and three court hearings the Russian arm of Pricewatehousecoopers paid 290 million roubles to cover its backtaxes (*The Times*, 10 March 2007).

Bribery and corruption

Some questions about the possible role of accounting firms in incidences of alleged bribery and corruption are raised after public revelations about their audit clients. For example, following claims that Siemens paid over £1 billion in bribes to secure contracts German prosecutors are looking at whether Siemens' auditor, the German arm of KPMG ignored questionable payments on the conglomerate's books (*Wall Street Journal*, 2 March 2007). It is alleged that KPMG did not do enough to flag improprieties (*Wall Street Journal*, 4 May 2007). Questions have also been raised about KPMG's failure to report alleged bribes paid by BAE, UK's largest arms company, to secure arms contracts (*The Guardian*, 8 March 2004)

Serious questions are also raised when, as sellers of consultancy services, accounting firms compete with a variety of other suppliers, or when accountancy firms prioritise the interests of a client in a situation that is contested by regulators. Might they be tempted to seek competitive advantage by paying kickbacks or shield clients by withholding co-operation with regulators? Following evidence provided by a whistleblower in September 2004, the US authorities charged PricewaterhouseCoopers [and IBM] for paying kickbacks to secure government contracts. In August 2007, the US Justice Department (www.usdoj.gov/opa/pr/2007/August/07_civ_620.html; accessed 17 August 2007.) announced that "IBM Corporation and PricewaterhouseCoopers have both agreed to pay the USA more than $5.2 million to settle allegations that the companies solicited and provided improper payments and other things of value on technology contracts with government agencies . . . PWC will pay $2,316,662". The government press release stated that:

> PWC knowingly solicited and/or made payments of money and other things of value, known as alliance benefits, to a number of companies with whom they had global alliance relationships. The government intervened in the actions because the alleged alliance relationships and resulting alliance benefits amount to kickbacks, as well as undisclosed conflict of interest relationships in violation of contractual provisions and the applicable provisions of the federal acquisition regulations.

In July 2005, the US Department of Justice announced that PricewaterhouseCoopers paid the government $41.9 million to "resolve allegations that it defrauded numerous federal government agencies over a 13-year period" (www.usdoj.gov/usao/cac/news/pr2005/100.html; accessed 3 September 2007). The government lawsuit had alleged that between 1990 and 2003 "PwC charged the government agencies substantially more for travel expenses and credit card purchases than the firm actually spent. An investigation by the government following the filing of the lawsuit determined that PwC overbilled the government because its bills failed to take into account

commissions, rebates and incentives given to PwC by travel companies and charge card issuers". The lawsuit had alleged that PwC management had been made aware of the problem through internal complaints by several partners, but it made no effort to refund the overpayments to the government. The court evidence contained internal emails from one partner in which he described the firm's practice as "a bit greedy" (*Wall Street Journal*, 30 September 2003). Previously, an Arkansas judge fined PricewaterhouseCoopers $50,000 for destroying documents related to an overbilling lawsuit (*Wall Street Journal*, 19 September 2003).

In January 2006, the US government announced that Ernst & Young and KPMG settled lawsuits "concerning false claims allegedly submitted to various agencies of the United States in connection with travel reimbursement … E&Y has agreed to pay $4,471,980 and KPMG has agreed to pay $2,770,000 … firms received rebates on travel expenses from credit card companies, airlines, hotels, rental car agencies and travel service providers. The companies did not consistently disclose the existence of these travel rebates to the United States and did not reduce travel reimbursement claims by the amounts of the rebates … knowingly presented claims for payment to the United States for amounts greater than the travel expenses actually incurred" (Department of Justice press release, 3 January 2006 – www.usdoj.gov/usao/cac/news/pr2006/001.html)

The involvement of accountancy firms in bribery and fraud is highlighted by the New York District Attorney Robert Morgenthau's testimony (www.senate.gov/~gov_affairs/071801_psimorgenthau.htm) to the US Senate Subcommittee on Permanent Investigations on 16 July 2001 (also see *New York Times*, 4 May 1995). Morgenthau explained[9] that:

> … a private debt trader in Westchester County, New York, formerly a vice president of a major U.S. bank, set up shell companies in Antigua with the help of one of the "big five" accounting firms; employees of the accounting firm served as nominee managers and directors. The payments arranged by the accounting firm on behalf of the crooked debt trader included bribes paid to a New York banker in the name of a British Virgin Islands company, into a Swiss bank account; bribes to two bankers in Florida in the name of another British Virgin Islands corporation; and bribes to a banker in Amsterdam into a numbered Swiss account. Because nearly all the profits in this scheme were realized in the name of the off-shore corporations or off-shore accounts, almost no taxes were paid.

The shell company in the above case went under the name of Merlin Overseas Limited. There was no actual physical business in Antigua, named Merlin. It consisted of little more than a fax machine in a Caribbean office of Price Waterhouse (*New York Daily News*, 10 January 1999). Robert Morgenthau stated that:

> This accounting company was complicit … They facilitated hiding of bribes that were paid to bank officers, and they provided the officers and directors for those phoney companies (*New York Daily News*, 10 January 1999).

Morgenthau prosecuted the trader at the centre of the scheme but could not put his hands on Price Waterhouse. The district attorney's office asked Price Waterhouse in Manhattan for help in reaching the people behind Merlin, but the help was not forthcoming. They were told that the Price Waterhouse in Antigua is not the same legal creature as the one in New York. Morgenthau added:

> If you changed the name Pricewaterhouse to Gotti or Gambino, the stunts in Antigua would bar them from towing cars or picking up trash, much less auditing sensitive financial transactions worth billions of dollars (*New York Daily News*, 10 January 1999).

Money laundering

Money laundering requires secrecy, knowledge of global financial systems and ability to structure transactions to disguise their origins and destinations. Money laundering is lucrative because intermediaries can collect as much as 20 percent of the money laundered as a fee (Mitchell and Sikka, 2002). Regulators claim a:

> . . . growing role played by professional services providers. Accountants . . . turn up ever more frequently in anti-money laundering investigations. In establishing and administering the foreign legal entities which conceal money laundering schemes, it is these professionals that increasingly provide the apparent sophistication and extra layer of respectability to some laundering operations (Financial Action Task Force, 1999, p. 12; also see Financial Action Task Force, 2006).

A recent Australian government study stated that among others ". . . accountancy profession to be [most] associated with money laundering" (Stamp and Walker, 2007, p. 69). The US Treasury highlighted a case and added that:

> . . . several shell companies were involved . . . The scheme was of great sophistication and had a veneer of respectability provided by the cooperation of so many professionals including . . . accountants... [Our] investigation uncovered a complex scheme to defraud investors through the unprecedented use of newly created shell companies, paper transactions, and false reports (Financial Crimes Enforcement Network, 2006, p. 10).

In July 2007, as part of Australia's largest-ever tax fraud and money laundering probe, millionaire Glenn Wheatley was jailed for 15 months. Wheatley pleaded guilty to not paying more than $300,000 in tax by hiding money in an (unnamed) Swiss-based accounting firm and engaging in bogus offshore transactions (*Sydney Morning Herald*, 1 February 2007). However, money laundering also takes place onshore and Britain's failure to regulate front and shell companies has made it a haven for money laundering (*The Guardian*, 30 October 2004) and such structures have been used by accountancy firms to launder money. Mitchell *et al.* (1998a, b) document a case study in which 27 shell companies were used to launder money. The paper trail went from Tunisia, London, the Isle of Man and Jersey to France and beyond. Most of the companies never traded, but millions passed through their bank accounts. A High Court judgement stated that:

> Mr. Jackson and Mr. Griffin knew . . . of no connection or dealings between the Plaintiffs and Kinz or of any commercial reason for the Plaintiffs to make substantial payments to Kinz. They must have realised that the only function which the payee companies or Euro-Arabian performed was to act as "cut-outs" in order to conceal the true destination of the money from the Plaintiffs . . . to make it impossible for investigators to make any connection between the Plaintiffs and Kinz without having recourse to Lloyds Bank's records; and their object in frequently replacing the payee company by another must have been to reduce the risk of discovery by the Plaintiffs. Mr. Jackson and Mr. Griffin are professional men. They obviously knew they were laundering money . . . It must have been obvious to them that their clients could not afford their activities to see the light of the day. Secrecy is the badge of fraud. They must have realised at least that their clients *might* be involved in a fraud on the plaintiffs.

Jackson & Co. were introduced to the High Holborn branch of Lloyds Bank Plc. in March 1983 by a Mr Humphrey, a partner in the well known firm of Thornton Baker [now part of Grant Thornton]. They probably took over an established arrangement. Thenceforth they provided the payee companies... In each case Mr Jackson and Mr Griffin were the directors and the authorised signatories on the company's account at Lloyds Bank. In the case of the first few companies Mr Humphrey was also a director and authorised signatory (cited in Mitchell *et al.*, 1998a b). The strong court judgement should have encouraged regulators to investigate and take appropriate action. Mitchell *et al.* (1998a, b) approached the police, the Department of Trade, the attorney general, the prime minister and professional bodies, but they all passed the buck, claiming that it was someone else's responsibility. No report or fine has been exacted by any professional body or regulator.

Some of the difficulties of pursuing accountancy firms operating from diverse locations are highlighted by the case of the Bank of Credit and Commerce International (BCCI). About two years prior to its forced closure by the UK authorities in 1991, BCCI had been indicted for drug trafficking and money laundering offences by the US regulators and had an "international reputation for capital flight, tax fraud, and money laundering" (US Senate Committee on Foreign Relations, 1992, p. 243), but its annual accounts continued to receive unqualified audit reports (Arnold and Sikka, 2001). As part of their enquiries the US authorities sought access to auditor's files and the US Senate hearings were told that:

> The audit of BCCI, the financial statement, profit and loss balance sheet that was filed in the State of New York was certified by Price Waterhouse Luxembourg. When we asked Price Waterhouse U.S. for the records to support that, they said, oh, we don't have those, that's Price Waterhouse U.K . . . We said, can you get them for us? They said, oh, no, that's a separate entity owned by Price Waterhouse Worldwide, based in Bermuda. So, here you have financial statements, profit and loss, filed in Washington, filed in Virginia, filed in Tennessee, filed in New York, and audited by auditors who are beyond the reach of law enforcement. So that creates some very, very serious problems (US Senate Committee on Foreign Relations, 1992, p. 245).

Auditing

In the aftermath of unexpected frauds and corporate failures auditors usually come under scrutiny. Regulatory and scholarly attention is often fixed on whether auditors could have detected or reported "red flags" (Clarke *et al.*, 2003). However, little attention is paid to how the enterprise culture shaped the production of company audits. This section provides a brief indication of some practices.

In January 1999, following a $2.5 million fine on PricewaterhouseCoopers for violating audit independence rules, primarily relating to ownership of securities in client companies, (SEC press release, 14 January 1999, www.sec.gov/news/press/pressarchive/1999/99-5.txt), the US Securities and Exchange Commission (SEC) commissioned a study into the firm's compliance practices. The report (US Securities and Exchange Commission, 2000) disclosed that:

> . . . a substantial number of PwC professionals, particularly partners, had violations of the independence rules, and that many had multiple violations. The review found excusable mistakes, but also attributed the violations to laxity and insensitivity to the importance of independence compliance . . . PwC acknowledges that the review disclosed widespread

> independence non-compliance that reflected serious structural and cultural problems in the firm (SEC press release, 6 January 2000 – www.sec.gov/news/press/2000-4.txt).

The study said that over 8,000 violations of the rules, in a one month period, were found and the firm agreed to revise its compliance procedures. In 2002, PricewaterhouseCoopers again came under scrutiny and were fined $5 million for violating auditor independence rules and entering "into impermissible contingent fee arrangements with 14 public audit clients . . . " (SEC press release, 17 July 2002 – www.sec.gov/news/press/2002-105.htm).

Following previous regulatory actions, in 1995, Ernst & Young gave undertakings to comply with the auditor independence rules (US Securities and Exchange Commission, 2004). These undertakings were soon to be tested. The SEC learnt that for the period 1994 to 2000, contrary to the rules on auditor independence, Ernst & Young (EY) entered into a business relationship with software giant PeopleSoft, one of its audit clients. This time the SEC prosecuted and a 69 page court judgement stated that:

> The most outrageous were the joint marketing and joint sales activities that occurred across the board . . . day-to-day operations were profit driven and ignored considerations of auditor independence in business relationship with PeopleSoft . . . EY committed repeated violation of the auditor independence standards by conduct that was reckless, highly unreasonable and negligent . . . The firm paid only perfunctory attention to the rules on auditor independence in business dealings with a client, and that EY reliance on a "culture of consulting" to achieve compliance with the rules on auditor independence was a sham" (US Securities and Exchange Commission, 2004).

Ernst & Young were fined $1.7 million, banned for six months from securing new audit clients and also put on probation for the next two years. Ernst & Young were again censured in March 2007 for violation of auditor independence rules (www.sec.gov/litigation/admin/2007/34-55523.pdf) and fined $1.7 million.

KPMG was also admonished for violating auditor independence rules by holding investments in a client company. According to the SEC (press release, 14 January 2002):

> KPMG had a substantial investment in Short-Term Investment Trust (STIT), part of the AIM Funds, a collection of mutual funds audited by the firm . . . KPMG repeatedly confirmed its putative independence from the AIM funds it audited, including STIT, during the period in which KPMG was invested in STIT.

In another case, in 2005, KPMG were fined $22 million because the firm "willfully aided and abetted Xerox's violations of the anti-fraud, reporting, recordkeeping and internal controls provisions of the federal securities laws . . . KPMG violated its obligations to disclose to Xerox illegal acts that came to its attention during the Xerox audits" (SEC press release, 19 April 2005).

In 2003, a (former) Ernst & Young partner was arrested on criminal charges for allegedly altering and destroying audit working papers and obstructing investigations relating to NextCard (SEC press release, 25 September 2003). He became one of the first cases to be tried under the Sarbanes-Oxley Act 2002. He pled guilty and admitted that:

> . . . he knowingly altered, destroyed and falsified records with the intent to impede and obstruct an investigation by the Securities and Exchange Commission (SEC) . . . by not informing the SEC of these alterations and deletions that he knowingly concealed and covered up an original version of the documents with the intent to impede, obstruct, and influence an investigation of the SEC (Department of Justice press

release, 27 January 2005 – http://sanfrancisco.fbi.gov/dojpressrel/2005/trauger013105.htm).

The Ernst & Young was sentenced to a year in federal prison, a fine of $5,000 and two years of supervised release.

In 2005, Deloitte & Touche were fined $50 million to settle charges stemming from its audit of Adelphia Communications Corporation. The SEC stated that:

> Deloitte engaged in improper professional conduct and caused Adelphia's violations of the recordkeeping provisions of the securities laws because it failed to detect a massive fraud … Deloitte failed to design an audit appropriately tailored to address audit risk areas that Deloitte had explicitly identified (SEC press release, 26 April 2005).

After settlement with the SEC, Deloitte issued a press statement stating that "the client and certain of its senior executives and others deliberately misled Deloitte & Touche". The SEC objected to this characterisation and forced the firm to revise its press release which ommitted the above sentence (www.webcpa.com/article.cfm?articleid = 12845). In 2007, a Deloitte partner responsible for the Adelphia audit was banned for life from conducting audits (http://sec.gov/litigation/aljdec/2006/id315jtk.pdf).

In September 2005, Japanese regulators arrested four partners of ChuoAoyama PricewaterhouseCoopers for allegedly helping executives at Kenebo, an audit client, to falsify company accounts. (*Financial Times*, 14 September 2005). The four were suspected of working with two Kanebo executives to produce false consolidated financial statements showing that Kanebo's assets exceeded its debts in fiscal year 2001 and 2002. In reality, its debts exceeded its assets by Y81.9bn and Y80.6bn, respectively. Subsequently, the regulator stated that "ChuoAoyama PricewaterhouseCoopers admitted the facts charged in the Kanebo accounting fraud scandal" (www.fsa.go.jp/en/conference/minister/2006/20060331.html) and that the four "willfully certified Kanebo's falsified annual reports for the five periods, ending March 1999, March 2000, March 2001, March 2002 and March 2003, as not containing such falsities" (www.fsa.go.jp/en/news/2006/20060510.html). In an unprecented punishment, the firm's licence to conduct company audits was suspended for a two month period covering July-August 2006. Subsequently, despite a name change, a number of major clients deserted and in August 2007 the firm was disbanded (www.webcpa.com/article.cfm?articleid = 25001).

Smaller accounting firms are not immune to the effects of enterprise culture and higher profits through questionable practices, as illustrated by the case of Versailles Group, a UK listed company and whose founder was convicted of fraud (*The Guardian*, 26 March 2004). Attention soon focused on its auditors Messrs Nunn Hayward. A disciplinary hearing found that:

> In 1996, Mr Clough [Versailles finance director] arranged for publication of the Versailles accounts, and their circulation to shareholders, *before* the audit was completed. The published accounts contained a false audit certificate. When this was discovered, Nunn Hayward signed an audit certificate on unchanged accounts after little further work, and these were re-circulated to shareholders. In the face of this obvious dishonesty, Nunn Hayward acquiesced in a circular to shareholders describing what had happened as *"an oversight"*. The reality was that Versailles was too important a client for Nunn Hayward to risk losing … [partner] responded that this was *"a big fee account"* and his firm did not want to resign (Joint Disciplinary Scheme press release, 25 March 2004 – www.castigator.org.uk/versailles_pn.html).

Summary and discussion

This paper has sought to stimulate debates about the contemporary enterprise culture, which is often distinguished by its focus on wealth creation. However, the paper has argued that it is also accompanied by predatory practices which increase profits, but impoverish citizens and societies through the operations of cartels, tax avoidance/evasion, bribery, corruption and money laundering. In pursuit of higher financial rewards, promotions and status, such practices seem to be crafted and sanctioned by highly paid executives at senior levels in organisational structures. In an environment of poor regulation, enforcement, secrecy and lack of ethical constraints, the occasional investigation by regulators and financial penalties do not seem to deter some company executives, or dull the systemic pressures for higher profits and returns. Some of the practices may not be criminal, but they have negative effects on the welfare of citizens and condemn millions of people to poverty and poor health.

Though appeals to codes of ethics and claims of "serving the public interest" may camouflage the capitalist nature of accountancy firms, they too are under systemic pressure to increase profits and on occasions have shown a willingness to increase profits through predatory behaviour. Behind a wall of secrecy, some firms have operated cartels, devised aggressive tax avoidance and evasion schemes, engaged in bribery, corruption and money laundering. The rapacious behaviour is also present in the external auditing arena, a jurisdiction traditionally considered to be informed by professional codes of ethics. Firms do not seem to have been constrained by any notion of ethics or morality. Their misdemeanours were not exposed by any professional accountancy body, but by whistleblowers, determined parliamentary investigations and state-backed regulators. Repeated fines and warnings from regulators did not curb violations of rules and anti-social behaviour by accountancy firms. The regulators suspended or restricted the operations of some firms, but even that seems to have a limited effect as firms seem to be keen to pursue higher profits at almost any cost. Some accountancy firms also coldly calculated that revenues from "bending the rules" greatly exceeded the penalties and on that basis pursued higher profits. Some firm partners seem to have little hesitation in shredding key documents to aid their clients, or conceal their own role in some débâcles. Such policies are not the result of just one or two rotten apples, but appear to be carefully crafted, researched, documented and sanctioned at the highest levels in organisations and are indicative of a rampant enterprise culture that has little regard of the consequences for citizens. Perhaps, this is an inevitable feature of capitalism distinguished by oligopolies where individual firms and corporations are so big that it produces a certain kind of arrogance and makes the senior people believe that they are somehow beyond the reach of the law, regulators and public opinion.

As long as business executives are rewarded for increases in profits there may be economic incentives to engage in predatory behaviour. A strong regulatory response could suggest that corporations and accountancy firms are corrupt, while a relatively weak response has evidently failed to curb predatory behaviour and could erode the state's public legitimacy. In principle, higher liability and punishment thresholds have a potential to curb predatory practices, but the prospects of that are low as in a deregulatory environment accountancy firms are campaigning for ever more liability concessions (Sikka, forthcoming) and despite admission of "criminal wrongdoing" (e.g. by KPMG) regulators are reluctant to closedown the offending firms. In any case, there

are limits to the number of transactions and policies that the regulators can scrutinise and will ultimately have to create an environment in which accountancy firms have to be mindful of the consequences of anti-social practices. So the challenge is to develop a research agenda that scrutinises the anti-social aspects of the enterprise culture and develops public policies for constraining predatory behaviour.

Admittedly, the evidence in this paper and the public domain is somewhat limited and whether it represents the tip of an iceberg or something more modest is open to conjecture. However, at the very least it raises some questions about the nature of enterprise culture embraced by some accountancy firms. In contemporary folklore, audit committees, non-executive directors and notions of corporate social responsibility are advanced as ways of curbing predatory behaviour, but even such modest mechanisms are absent from major accountancy firms. The "transparency" and "accountability" debates applied to corporations are rarely applied to accountancy firms. The bourgeoning corporate social responsibility literature rarely focuses on the anti-social practices of accounting firms. Seemingly, despite evidence of anti-social behaviour, their accountability and social responsibility has been organised off the political agenda.

Accountancy firms are on a collision course with civil society. Their involvement in bribery and corruption forces ordinary consumers to pay higher prices and also degrades the quality of life for millions of people. Their involvement in money laundering challenges the very fabric of society. Elected governments take months and years to develop effective tax laws and collect revenues for investment in social infrastructure and possible eradication of poverty, but accountancy firms seem to have developed structures and mechanisms to undermine them. We can all be persuaded to vote for governments that promise to invest public revenues in education, healthcare, pensions or public transport, but the purveyors of enterprise culture exercise the final veto by shrinking the tax base and eroding tax revenues through a variety of complex schemes. Thus the practices of major firms pose serious challenges to the very nature of representative democracy.

Notes

1. Their ranks are now being swelled by mergers of medium-size firms. Recently, Grant Thornton merged with RSM Robson Rhodes.
2. World Bank's 2006 estimates for GDP of each country are available at: http://siteresources.worldbank.org/DATASTATISTICS/Resources/GDP.pdf (accessed 25 June 2007).
3. This was a large Washington DC based US bank. In 2005 it was bought by PNC Financial Services Group.
4. http://levin.senate.gov/newsroom/release.cfm?id = 223923 (accessed 2 April 2007).
5. The HealthSouth scandal revealed auditors Ernst & Young's responsibilities included inspecting toilets and ceilings for stains, making sure trash receptacles had liners, and attesting that magazines in the waiting areas were displayed in an orderly fashion. The $2.6 million fee was classified as part of the "audit fee" (*Wall Street Journal*, 11 June 2003).
6. Interview on 5 April 2002; download available at: www.pbs.org/wgbh/pages/frontline/shows/regulation/interviews/turner.html
7. Following the Limited Liability Partnership (LLP) Act 2000, UK accountancy firms trading as LLPs need to publish audited accounts. The regulators permitted accounting firms to formulate the contents of such accounts through a Statement of Recommended Practice

(SORP) issued in 2002 and revised in 2006 (Consultative Committee of Accountancy Bodies, 2006).

8. The court judgement is available at: www1.nysd.uscourts.gov/cases/show.php?db = special&id = 56
9. This episode is also explained by James Kindler, Chief Assistant District Attorney for New York County, available at: www.ciponline.org/financialflows/kindlerremarks.htm

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