The Moral of History or Immoral History?

The name of protagonists, the signs of financial establishments as the dates are followed and certainly do not resemble each other. The story told, however, is always the same, punctuated by personal interests, greed, accidents on the financial markets described as “unpredictable”… so many episodes that marked the life of the past twenty-five years as “the more things change the more they stay the same”, as the Anglo-Saxons would say. A list – which does not claim to be exhaustive – of the scams and fraud of the world of finance and revealed only during a part of 2012 would indeed be eloquent. Let us begin with a case which lasted just as long as the Madoff scam, namely that committed by the owner of “Peregrine Financial Group”, who stole altogether the assets of his depositors. To build offices for $18 million or to pay fines handed down by regulatory authorities… whereby only $5 million remained in the accounts of his clients, which were supposed to amount to $200 million! A scam comparable with the best of them, made public in the Fall 2011, called “MF Global”, except that it was some $1,600 billion that went missing. Now let us talk about the illegitimate losses of $9 billion deposited during this period of 2012 by a JP Morgan Chase trader nicknamed “London Whale”… Or the shocking example of one of the premier banking institutions in the world, HSBC, which had to disclose that it was a repeat offender of money laundering. Indeed, despite the steps taken in 2003 and 2007 by U.S. authorities, this bank continued its relationships with drug traffickers and businesses suspected of having links with terrorists. Until the U.S. Congress marked the end of the festivities in the summer of 2012. Let us not forget to mention also the program of spring of 2012 the scam by the credit card company Capital One, forced to reimburse $210 million for having abusively distributed its products to U.S. consumers.

Let us round off this list by the mother of all manipulations, called the “Libor”. Indeed, threatened by legal proceedings by the both the Justice Departments in Great Britain and the U.S. for falsifying the reference interest rate called the “London Interbank Offered Rate”, Barclays Bank had to pay in July 2012 close to $500 million to these two countries in settlement of this litigation. Despite this arrangement, let us make no mistake here, this wrongdoing is not just another act of embezzlement along the already very tortuous paths of finance. As one
of the most important rate indicators in the world, the Libor influences actually the interest rates of the majority of key currencies since almost all of the loans granted to businesses around the world is indexed to it. The (presumed) fraud focused on mortgages, credit card loans and other transactions agreed to in favor of businesses and private individuals for a total amount including between $500,000 and $800,00 billion! The amounts involved by this wrongdoing are astonishing since all credit agreed to – from mortgages to student loans or that granted to businesses through credit card overdraft – are more or less related to this Libor. Thus, according to the Federal Reserve Bank in Cleveland, more than half of the mortgages at variable rates in the U.S. are affected by Libor fluctuations. As well, and despite mass resignations of the highest level executives at Barclays, the scandal does not stop there since these manipulations were discovered at two levels. Barclays knowingly disclosed a wrong rate to its regulatory authority which itself used to borrow on the markets with dual first: first, to realize profits on derivatives and second, improve its public image by showing that it managed to borrow at attractive rates. In doing so, this bank – in cahoots with other satellite offices – masked the reality of its financial situation with its regulatory agencies, its clients and its creditors by posting falsely attractive rates on its own borrowings. The chain of manipulation of this interest rate would have infected some forty financial companies and more traditional businesses, dozens of traders, more or less involved at various levels in this new financial scam unmasked in the summer of 2012.

How do you continue to have confidence in a banking and financial system engulfed in so many scandals, scams and concealments? Bankers – who can only blame themselves for their total loss of credibility – are responsible for the entire capitalist financial system running a great risk which relies wholly on trust. Indeed, without this precious trust, the entire edifice will crumble, money in circulation (or “fiduciary” currency) loses all its value and all financial instruments will be auctioned off. How is it possible – and even less tolerated – that one of the key financial institutions for many years manipulated the most determining interest rate on financial markets? Indeed, without this precious trust, the entire edifice will crumble, money in circulation (or “fiduciary” currency) loses all its value and all financial instruments will be auctioned off. How is it possible – and even less tolerated – that one of the key financial institutions for many years manipulated the most determining interest rate on financial markets? How can we not be outraged by these three international banks – JP Morgan, Barclays and HSBC – having survived the tough crisis of 2008 by the grace of tax contributions, nonetheless persevere in their wrongdoings with the objective of taking more from this same citizen who uses their services? How can an
institution like Goldman Sachs justify using the most important leverage in all of its history in full turmoil in 2009? The year when, according to the Wall Street Journal, Wall Street salaries and bonuses reached amounts comparable to those of 2004 and 2005, i.e. at the height of the speculative bubble… In reality, those from the financial institutions who survived the 2007-2009 crisis are today even more powerful than prior to the collapse of the subprime bubble. Slight competition due to a certain number of banks which were absorbed or went bankrupt, but also to weakened states in debt – therefore the striking force lessened – are today transformed by a world of finance that it is very difficult to fight.

Another step – massive and which concerns us all – is, itself also, “likely from manipulation or distortion”, according to a recent G20 report, namely that of oil tariffs. At the height of the Libor scandal, it would seem that the integrity of companies is challenged within a context where the setting of their price depends (such as the Libor) voluntary declarations from a certain number of institutions, funds and traders who disclose the prices paid on their acquisitions. Oil tariffs – which are therefore the result or the weighting of the system based on trust – would themselves also be subjected to attempts of manipulation from operators seeking to make money from knowingly induced distortions. All in a market of thousands of billions of dollars and which very closely affects our daily life and our purchasing power. This financial universe has now become so imbued with its prerogatives and its power on our lives that it measures its success only in terms of profits. Persuaded actually that more it inflates its profits and more its public utility is comforted, it is mired in a before schizophrenic escape, whose only advantage is that it leads directly to self-destruction. That is why scandals and scams – even widen – five years after the setting off of the most acute financial crisis in a century. As such, trickery and deviant behavior are now so much part of normal life that no one is any longer surprise or outraged when another fraud is discovered. That is why advertising the Libor scandal – however major – only attracted a shrug from observers who had reason… A survey conducted in 2012 by a U.S. law firm, Labaton Suciahrow, at 500 banks and financial companies in the U.S. and Great Britain, was amazing/astounding/staggering. As such, 24% of those in charge who were questioned admit the existence of fraud as a condition for success. As well, 70% of the people surveyed estimate that the regulatory authorities are totally incompetent. In other words, there would be several reasons for not committing fraud. The fear of “getting caught” would not, however, be sufficient reason for not lying or not stealing, since punishment is almost nonexistent.
However, this latest scandal with the Libor seems sadly familiar, as it has now become routine for financial establishments to try to manipulate rates or profit from unethical situations. Financial abuses have now become part of our morals. Indeed, honest bankers and financiers are no longer big enough to compete with their fraudster colleagues. So a bank which does not hide its losses, or sells rotten assets, or launders money, or influence the rate of a derivative or another instrument… would no longer be competitive and would eventually go bankrupt, or suffer a severe drop in its stock price. In real life as in nature, the Darwinian selection teaches us that on the strongest survive. In the financial universe – which unfortunately rubbed off on our daily lives –, it is the dishonest ones who remain, even prosper, while those who play by the rules are damned. This steamroller of scams and wrongdoings has a name, the “Gresham” dynamic, which was described by George Akerlof, born in 1940 and Nobel Prize Winner for Economics in 2001.

“Dishonest dealings tend to drive honest dealings out of the market. The cost of dishonesty, therefore, lies not only in the amount by which the purchaser is cheated; the cost also must include the loss incurred from driving legitimate business out of existence”. This Gresham dynamic – dominant in today’s financial markets – there causes volatility in ethics for the benefit of fraud which is becoming more endemic. Those who respect the law and morality are therefore becoming scarce whereas their unscrupulous rivals remain thanks to the tricks and manipulations which compromise their costs, or inflate their profits. In other words, it is becoming “too expensive” to be honest these days.

Would justice – or rather the lack thereof – be on the verge of destabilizing the economic and financial system? Have you not noticed how managers of small businesses are relentlessly pursued – sometimes even harassed – while the criminal justice system struggles to find justifications and legal grounds, since it must deal with the case of “too big to fail”? This is, however, not the qualifications required by our lawyers, analysts and other experts that are lacking. The French Financial Markets Authority and specialists of the Monetary and Financial Code in France, like the “United States Attorney’s Office” in the U.S. have indeed often husked, unraveled and successfully investigated many complex cases when it is about crucifying the “small fry”. A certainty, an observation: we are not all equal in the eyes of the law, and public authorities do not treat us all alike. Enough to discourage future entrepreneurs and other small investors as a biased – even arbitrary – legal system fundamentally harm the economy. The cement of our society, equality before the law is nevertheless a prerequisite for a healthy and balanced economic and financial environment. Once the prison is reserved only for small fish and for those who, well, have “bad luck”, when the causal link between crime and punishment is broken or even
weakened, evil and vice are raised to the level of standards. Why be honest and why prescribe the rules of the game if the chances of being sidelined are dwindling? Is it not understandable – or simply human – that those who are tempted by crime take this route if the penalty is not always the appointment? With devastating consequences for those who prescribe to the law are clearly disadvantaged and weakened in an economy where fierce competition prevails. Is it any wonder that in such a context stakeholders and actors in the system gradually change their behavior because of the shift of the “risk-reward” ratio? Is this imbalance of justice not a boon for those who violate the rules are still yearning for moral justification? Society as a whole must therefore adapt to this new paradigm that teaches that it is “acceptable” to break the law. According to the same compelling logic, the “too big to fail” are considered “too big to jail” or too important to be jailed… Does this very disturbing constant that undermines confidence in the system not also demonstrate – hollow – that the protection of money and interests comes before the protection of citizens and society? Real exhortation launched towards institutions (financial and other) and from their directions to form cartels, manipulate share prices and prices, and defraud, in defiance of the stability of our economies. Even if this clemency is often invoked precisely on behalf of this economic and financial stability, as our leaders are haunted by the possible consequences that the bankruptcy of a bank could have, or the court appearance of a prominent (economic or political) individual. What good is it to obey the laws and regulations if only the weakest and least protected are tried? When crime is legitimized, it is the state that naturally loses all legitimacy. And it becomes impossible to reconstruct the financial system on the only basis that counts and on which it can prosper: trust.