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Big money takes one on the chin

CHAPEL HILL It's been a rough year for those believing in corporate responsibility and playing by the rules. Pirates of greed and fraud have wrecked the economy. In the process, millions of innocent, hard-toiling workers have been cast aside -- losing their jobs, their health care and the security they prize for their families. Doing everything you're supposed to do, and doing it well, hasn't been enough. Larger tides, not of their making, scuttled their course.

And it has actually been worse. While those trapped at the bottom struggle at the edge of devastation, many who triggered the disaster dance between the raindrops. Responding to claims of pending doom, the federal government has bailed out the bankers and the speculators, the financial wizards and the fraudists. In turn, the bailees used billions -- wrought from thin paychecks of waitresses, mechanics, hotel workers and carpenters -- to pay themselves grotesque bonuses. Reminding us they are the masters, we are the serfs.

Our lot, apparently, is to assure that their helicopters and French jets, their summer homes on the Cape and their quick trips to Tuscany remain at the ready. If not, we hear, we might lose the gift of their brilliance. They might take their wonders and go home. Thank God, we are told, for the economic royalists. Without them, where would we be?

But last week, a tiny shaft of accountability pierced through the economic moral darkness.

A cranky and courageous federal judge in Manhattan threw out what he found to be the "cynical," "contrived" and "concocted" settlement between the Securities and Exchange Commission and the Bank of America -- over lies contained in the bank's proxy statement seeking shareholder approval of the \$50 billion acquisition of Merrill Lynch.

Having allegedly "hidden from the Bank's shareholders that ... \$5.8 billion of their money would be given to the executives of Merrill who had run that company nearly into bankruptcy," the management of BOA now sought "to settle the legal consequences of their lying by paying \$33 million more of their shareholders money." Not on Judge Jed Rakoff's watch.

The cushy settlement, in the judge's view, violated "the most elementary notions of justice and morality." It proposed "that the victims of the misconduct pay the penalty." The SEC's argument that a corporate punishment "sends a strong signal to shareholders to assess the performance of management" was "absurd." The shareholders of the bank, "having been lied to blatantly," hardly

"needed to lose another \$33 million" to see what kind of management they had. No one is that dense.

Rakoff could find no reason charges weren't pursued, individually, against "either bank management or the lawyers responsible for the false statements." If the bank were "innocent," it wouldn't fork over millions as penalty for lying. BOA's purported defense that the falsehoods were "immaterial" -- because everyone knew them to be untrue -- did nothing, unsurprisingly, to stem the judge's ire. The "very management" that "lied to its shareholders" now sought to determine how much of the "victims' money should be used to make the case go away." Self-dealing on stilts.

What could they have been thinking? Part of it, of course, is that "this is business" -- there are no rules; rules are for losers. But, beyond that, we now practice 21st century American corporate capitalism -- the "heads I win, tails you lose" variety. Cutthroat, subsidized, fraud-induced competition on the way up. Velvet, smooth-landing, golden parachute socialism on the way down. If you strike gold, you hungrily gather the winnings. If things go south, the little folks are there to pay.

Recently I read, again, of Franklin Roosevelt's battles with Wall Street. FDR closed his 1936 campaign with a huge rally in Madison Square Garden. Noting the "economic royalists" arrayed against him, Roosevelt shouted: "I should like to have it said of my first administration that in it the forces of selfishness met their match." The crowd erupted. Quieting them, he concluded, "I should like to have it said of my second administration that in it these forces met their master." From FDR's lips to President Obama's ears.

Gene R. Nichol is a professor of law and director of the Center on Poverty, Work and Opportunity at UNC-Chapel Hill.