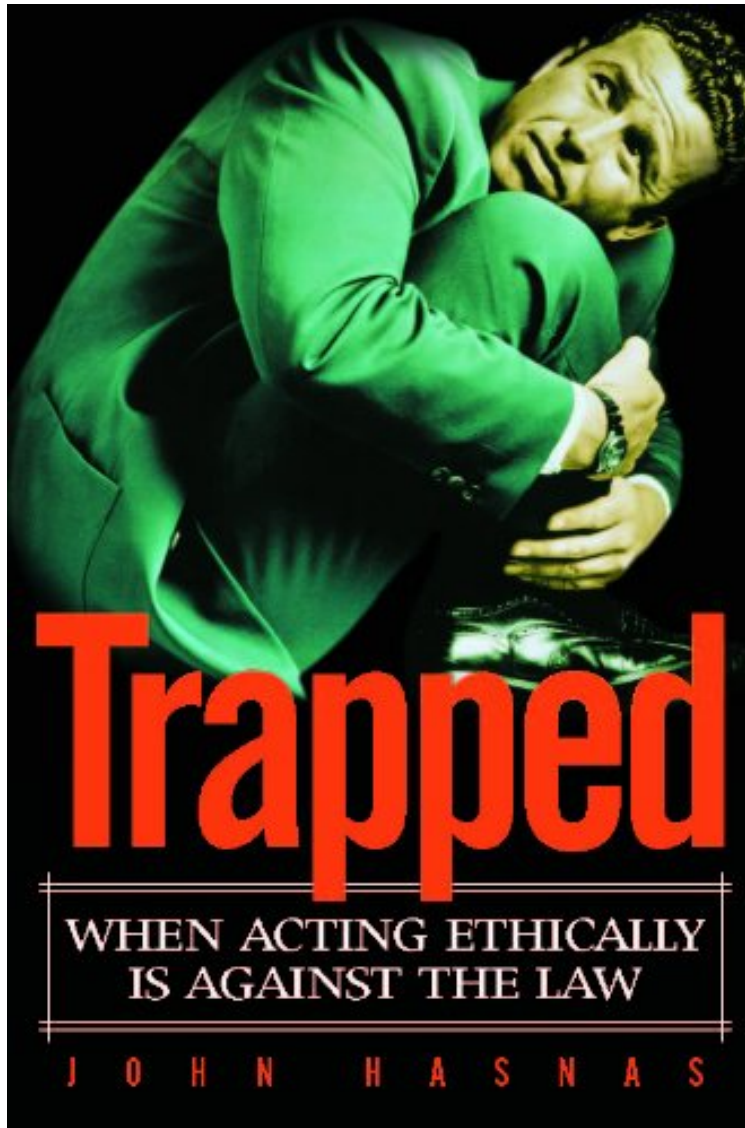


(Download pdf) Trapped: When Acting Ethically is Against the Law

## Trapped: When Acting Ethically is Against the Law

*John Hasnas*

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**John Hasnas : Trapped: When Acting Ethically is Against the Law** before purchasing it in order to gage whether or not it would be worth my time, and all praised Trapped: When Acting Ethically is Against the Law:

0 of 1 people found the following review helpful. Hasnas and the Straw ManBy J.P.P.Mr. Hasnas has written two very interesting books in one narrative. One is the discussion of the evolution of federal business regulations, the principles behind them, and the potential they have for conflicting with our common-sense ethical judgments. I've taught Business Ethics, and find Hasnas' discussion accessible, interesting, and very informative.The other book Hasnas has written here is a poorly designed, poorly executed argument against banking laws and regulations. From the outset, Hasnas gives the feeling that he has an agenda, and it is summed up by himself in the last pages of the book: there

ought to be no laws governing business; we should let business people make their ethical decisions unhindered by federal intervention. Hasnas is either pitifully naive or a mediocre spokesperson for the criminal element that has brought about our current catastrophes in the marketplace. He carefully focuses on a few cases where, in principle, people of solid ethical character could do better without Federal interference; but he neglects the plethora of cases where unsuspecting investors, savers, consumers, et al, have fallen victim precisely to people/corporations which, when given the opportunity, showed themselves to be devoid of any moral decency, and to be all too willing to let personal greed overshadow public good. We need only think of Enron, Goldman-Sachs, Lehman, and (the poster-boy for contemporary business) Bernie Madoff to see how completely misguided Hasnas is. His book is little more than a pretty straw man argument to let business continue its shady dealings. 0 of 0 people found the following review helpful. Confused about the law and ethics? By Michelle Dunn John Hasnas gives us examples and scenarios that can help us to see his point on acting ethically when it is against the law. What can a business owner do? If you are in business, you will find this book extremely interesting. Being in the debt collection business this book is a great read, bill collectors are supposed to follow the law, act ethically all while being dubbed as the "bottom feeders" of society. Very interesting book and ideas. 4 of 5 people found the following review helpful. Interesting ... but ethical? By Not My Real Name I initially obtained this book on the hope that it would furnish advice for those caught between the devil and the deep blue sea in a business deal. This book is somewhat that, but boy was I wrong about its recommendations. Instead of being something that argues to act ethically as we know it, it was an apologia written to govt policymakers on the merits of a market totally unregulated by criminal law. To be fair, however, I will present the book on the merits of what it is, not what I had wished it to be, because not everyone agrees with me, and you want to know more than my opinion about this book. Hasnas, who currently works as an associate professor of Business at Georgetown U., embarks this book with a series of multiple-choice questions, each answer an option for a dilemma. For instance, you are the CEO of CORP. LLC. The SEC recently is investigating CORP. of insider trading, and you voluntarily cooperate with the investigation. You say you sold the stock according to a pre-arranged stop-loss contract (not unlike Russia fulfilling old arms contracts with Syria that the US accuses of violating non-retroactive sanctions), and the information that you're being questioned leaks. You go public and defend your reputation, asserting innocence. The SEC then indicts you for obstruction of justice (for telling federal investigators that you sold stock pursuant to a stop-loss order) and for securities fraud for attempting to prop CORP.'s value by attesting innocence when you had not even been accused. Your options, then are: 'a' - throw your whole weight behind supporting CORP publicly; 'b' - take no action; 'c' - consulting with private counsel to ensure no further damage comes to CORP.; 'd' - arrange with the Board to resign from your CEO post until the storm blows over, cooperating with the investigation to the fullest extent possible under civil law; or 'e' - authorizing the corporation to plead guilty to securities fraud, waiving the right to a corporate attorney-right privilege, and handing over all records of CORP to the investigation. There are four or five other examples of this, which Hasnas does not conclude until the end of the book. With this in mind, Hasnas wanders deeper down the rabbit hole, showing how criminal prosecution of white-collar crime (not going through the tort system) has simply made white-collar crime evolve into something more abundant, more deceptive, and more vicious than it was before. Such argumentation fills the second third of the book. The last third of the book covers different misconceptions about business that people commonly make, which have no legal basis in a court of law. Hence, criminal law is therefore overstepping its bounds. For example, Hasnas discusses trust, (from p75) "Trust ... does not embody an ethical principle. Although Ethicists have argued that corporate managers who actively encourage their subordinates to trust them are thereby invested with positive moral obligations for the subordinates' well-being, there is no independent moral obligation to trust others." The same de-ethicization continues for chapters on privacy, confidentiality, inter alia ... Return to the aforementioned multiple-choice problem. Hasnas argues that a CEO's legal obligation appears to be 'e', the last option, "[y]et it is doubtful whether many people would choose 'e' as representing the ethically correct course of action." (from p85). He concludes, "the solution to the problem of white-collar crime simply does not lie with more vigorous federal enforcement efforts .... Hence, with regard to this category of offense, the proper solution may lie in abstaining from any efforts at criminal enforcement at all." (from p96) Any reader can see plainly that if you want to make money, if you want federal regulators off your back, if you want what the Koch brothers masquerade as libertarianism - you simply fight tooth and nail against anyone who criminalizes behavior that intentionally misrepresents your organization in order to materially profit and violate the trust of your business partner. Any efforts to curtail your behavior will not plague your conscience with guilt, because your first obligation is not to God or your fellowmen (stakeholders), but rather to the profit motive, your Board of Directors, and your shareholders. Absolute loyalty to the latter is taken as the golden rule of business; those who do otherwise can't be "trusted", to use an ironic but legally suitable word. Hasnas blows over in one sentence the good of using a blunt instrument against mendacity and fraud: deterrence of future criminal behavior. He instead argues that white-collar criminals just become more devious and the best ones slip through the cracks. Concluding that there should be no blunt instrument is akin to treating a patient for a disease or cancer. If the treatment causes the cancer to go into remission or to spread to become more painful for the patient, the treatment should be stopped altogether. It is better to have cancer with a low-grade pain than to go through long-term pain with a cancer that will never go away. This is a profoundly complex subject,

hardly dealt with definitively in a handy hundred pages. It would have been helpful to "externalities" like us if Hasnas presented an alternative to dealing with white-collar crime, but he did not. Instead, he simply acceded that all efforts to punish such duplicity will result in greater duplicity, which may hold statistically but it is not an inevitability. Hasnas overlooks that people have a choice, that nothing is concretely predetermined ... the entire scale of justice rests on the culpability of individual choice. If people have a choice, they can choose not to be more devious, to get out of a bad situation, to answer to a standard higher than the profit motive and your shareholders (who do not give a damn about your well-being, only about lining their pockets, capturing greater market share, and doing it with as little hassle from their victims as possible). Not all corporations are evil. I'm not arguing that. I'm merely stating that Hasnas' link between the evolution of white-collar crime with federal crackdowns omits that people who engage in fraudulent behavior know what they are doing. Are there no needless errors with this? Are there no complications? Sure, a manager who uses his company letterhead to lend credence to the solution to a personal problem (writing a company letter condemning the activity of a loud neighbor), could fall under the penalty of criminal fraud. Should he go to jail? Should he pay a fine? If such behavior is punished, do all the other guys using company letterhead to shut up neighborhood rock bands just start sending mercenaries to muscle vociferous people into silence rather than using company letterhead? That is a choice a person makes; there is nothing inevitable about the evolution in complexity of such crime. Let us go to something like the Bernie Madoff scam. According to Hasnas, such behavior should not be punished with criminal law. Madoff and his conspirators should be forced to indemnify victims with money or just to not be punished at all. There is a tricky scenario here. Without the threat of criminal punishment, confessions would plummet. People like Madoff do not want to spend time in federal prison, and would much rather be outside a humiliating sentence. A lot of them cooperate with DoJ to reduce their sentence by ratting out their conspirators, by elaborating further details as to the extent of a conspiracy's activities, etc. Without such information, if all members of CORP. simply kept their traps shut and refused to cooperate with any outside investigation, if there was just the threat of tort fines, it would be much harder to build a case against breaches of what Hasnas says is not trust. This is not just economically permissive of business activity, but is also morally wrong. Then again, you either have to be more interested in CORP.'s welfare and your own financial security than you are of external behavior. Hasnas does not treat any alternatives to criminalization of white-collar offenses with the same level of research that he pours into arguing one position. The book, as such, is fascinating from a partisan perspective, but it cannot be regarded as a serious work of scholarship. It poses a loaded question, samples evidence only to corroborate one outcome, ignores or suppresses antithetical evidence, and asserts a conclusion you know is already coming. In logic, you call this "petitio principii". In literary theory, you say there's no suspense or plot development. In politics, you say a citizen's foremost duty is to his government, not his corporation. In religion you say this is totally immoral. In business you say "good job". Here's where I stand. If you're going to give a corporation all the rights of being a citizen, such as letting them buy politicians with sleazy deals, et al., you should treat its officers and shareholders in court as people, too, guilty of what the corporation is guilty of. You don't give right without responsibility, privilege without accountability, and freedom without liability. You don't rewrite the definition of ethics to suit the interests of a small coterie of informed members at the expense of everyone else. That is not ethics. That is what you call Randianism, or what was in more honest days termed as evil.

Since Enron's collapse in 2002, the federal government has stepped up its campaign against white-collar crime. In this timely book, John Hasnas reveals how the government's effort to enforce legal rules has created a Catch-22 legal environment in which businesspeople must either act unethically or illegally.

From the Back Cover "Deftly exploring the impracticalities and seemingly inane concepts which restrict our citizens and fill our penitentiaries, Trapped is very strongly recommended reading for anyone with an interest in business ethics, white collar crime, and their impact in a highly competitive marketplace." --Midwest Book "Did you know that in many ways the terrorists detained at Guantanamo Bay have more rights than corporate CEOs and their employees? If you want to know more, get John Hasnas's book!" --Mark Levin, author, Men in Black: How the Supreme Court Is Destroying America "Ethical behavior is critical in business. John Hasnas shows that new laws and regulations too often force CEOs to choose between acting legally and acting ethically. This is a book for business people, policymakers, and everyone who has a stake in successful and ethical business enterprises." --John Mackey, Co-founder and CEO, Whole Foods Market "Most Americans think that they receive ample protections against unwise or excessive criminal prosecution. But they had better think again. John Hasnas's quiet dissection of the manifold laws dealing with such arcane subjects as money laundering, mail fraud, racketeering, and obstruction of justice shows how people who are innocent of any primary offense are all too often caught in a complex web of federal law dealing with white-collar crime as they go about their ordinary business. Granted, argues Hasnas, white-collar crime is harder to prosecute than street crime. But he convincingly shows that an aggressive Congress and compliant courts have tilted the balance too much in favor of criminal prosecution. We should all be troubled by the prosecutorial histories of Arthur Andersen and Martha Stewart, among others." --Richard A. Epstein, James Parker Hall Distinguished Service

Professor of Law, University of Chicago "Mr. Hasnas does a good job of explaining the current state of criminal law for corporations, which have no Fifth Amendment right against self-incrimination, as well as Justice Department policies that offer leniency only to companies that cooperate by turning in employees." --Floyd Norris, the New York Times "Hasnas demonstrates very effectively that lawmakers and judges have placed corporate executives in an untenable position. Trampling on the traditional elements of criminal law may make it easier to prosecute alleged deceptive corporate behavior, but it also makes business an endeavor that may result in personal financial loss and imprisonment, despite one's best efforts at compliance with the law. Trapped makes a persuasive case for the need to return to our former, more traditional principles of criminal law. On the present course, we face the prospect that only the foolhardy and unethical will be willing to enter the world of business, while competent and qualified individuals will justifiably steer clear." --Erica Little, Townhall.com

About the Author John Hasnas is an associate professor of business at the McDonough School of Business at Georgetown University in Washington, D.C. and a senior fellow at the Cato Institute.