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Last part of the series: The Banks and the “Too Big to  
Jail” Doctrine (Part 9)

# The Impunity Enjoyed by the Banks must Stop

- Features -

Publication date: Monday 1 September 2014

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**We all know the saying “Too big to fail.” In managing the crisis the banks have caused, the governments of the industrialised countries have adopted a new doctrine that might be summed up as “Too big to jail.”**

Whereas the US and European justice systems are faced with very serious wrongdoing by the biggest banks, none of them have had their banking licences revoked. And yet the list of crimes is long: organised fraud committed against their customers, small shareholders, and public shareholders; laundering money from organised crime; systematic large-scale tax evasion, manipulating interest rates (Euribor, LIBOR), exchange rates, and financial markets (CDS and Commodities); fraud and document forgery; insider trading; destroying evidence; embezzlement; complicity in war crimes... [1] and the list goes on.

Eric Holder, the United States Attorney General, when interrogated by a Senate Committee, clearly defined the foundations of the “Too Big to Jail” doctrine, “I am concerned that the size of some of these institutions becomes so large that it does become difficult for us to prosecute them when we are hit with indications that if you do prosecute, if you do bring a criminal charge, it will have a negative impact on the national economy, perhaps even the world economy”. [2]

The implication is clear: The fact that speculation and financial crime have caused the worst economic crisis for nearly a century is of little concern to the justice system. Even if such excesses are closely associated with large-scale fraud, at all levels of US banking activities these institutions have de facto authorisation to continue their operations and settle their infringements “out of court.”

In this series, *The Banks and the “Too Big to Jail” Doctrine*, seven examples of banking activities have been used to characterise the current situation: 1. The agreements between US banks and various authorities to avoid convictions in the affairs concerning subprime mortgages, foreclosures, and illegal expulsions; 2. HSBC (the biggest British bank) being fined in the US for laundering money for Mexican and Colombian drug cartels; 3. HSBC’s involvement in large-scale tax evasion; 4. Manipulation of the interbank markets and derivatives rates as in the LIBOR affair; 5. the “Toxic Loans” scandal in France; 6. the international tax-evasion network organised by the major Swiss bank UBS; 7. the illegal activities of the Dexia bank in the Palestinian territories occupied by Israel. We have also studied the manipulation, by the banks, of commodities and foodstuffs, [3] currency, and exchange rates. [4]

To conclude the series, we will consider a few more examples of banking iniquity and propose an alternative.

### **A few more scandals the banks are involved in**

**BNP Paribas** (the biggest French bank) had a fine of \$8.9 billion levied on them by US authorities for using dollars in transactions with persons or countries subject to US economic sanctions.

In another case, on 19 February, 2014 the Attorney General of Monaco, Jean-Pierre Dréno, started a judicial investigation for money laundering, complicity to launder money, concealment of money laundering, and false declarations against person or persons unknown following information received from the association Sherpa concerning practices by BNP Paribas Wealth Management in Monaco. [5] An internal report by the bank’s own inspectors, dated 25 October, 2011, found that the office concerned had received, from Gabon, Senegal, Burkina Faso and Madagascar, [6] tens of thousands of checks drawn by French nationals across 21 African countries which

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were misappropriated, without their knowledge, to be cashed in Monaco. This was done to avoid exchange controls, taxes and perhaps to launder money from organised crime. "This is a pleasant surprise because we have sent several letters to the Attorney General of Monaco since April 2013 and we had started to believe he had hesitations to act on this information;" rejoiced Sophia Lakhdar, President of Sherpa. Wait and see!

In France, on 3 March, 2014, 400 customers filed a suit against a BNP-Paribas subsidiary that had granted them loans in Swiss Francs whose payments became increasingly onerous with the depreciation of the Euro. The customers are claiming €40 million in damages and interest.

**Deutsche Bank** (the largest German bank) has been fined [7] or investigated in several recent affairs, some of which are still in progress: manipulation of the electricity market in California, where a fine has been paid; taking part during 2009-2010 in a fraudulent trade in CO2 emissions permits, linked to tax evasion; [8] covering up \$12 billion in losses in derivatives trading in 2009; [9]

manipulating the LIBOR (DB has been penalised by the European Commission, but is still awaiting decisions from the US and the UK); [10] bribing Japanese pension fund representatives between 2010 and 2013 – a DB executive was arrested in Tokyo in December 2013; [11] enquiries are ongoing into affairs concerning currency-market manipulations, gold and silver price rigging, [12] abusive sale of Mortgage-Backed Securities to the public mortgage agencies Fannie Mae and Freddie Mac in the US, and a legal wrangle with the Kirch media group, which accuses DB of causing their bankruptcy in 2002. [13]

DB is also accused of money laundering by the Dubai authorities. [14] The bank owns a casino/hotel with 3,000 rooms – the Cosmopolitan – in Las Vegas. [15] In December 2013, the former director of the Hong Kong subsidiary was sentenced to 7 years in a Hong Kong prison for bribery. He pocketed illicit commissions for the sale of derivatives futures and was also sentenced to pay damages to DB. [16] Once again a scapegoat is penalised rather than the bank, which has the cheek to claim to be a victim.

**Royal Bank of Scotland** (the 3rd-largest British bank) avoided failure in 2008 by being nationalised, and at the beginning of 2014 the British government still held 81% of its stock. RBS, and more precisely its Global Restructuring Group (GRG), is accused of causing the bankruptcy of numerous small and medium enterprises (SMEs) in order to grab their assets for less than their real value. [17] Lawrence Tomlinson, advisor to the British Ministry of Commerce, industry and Tourism, points an accusing finger and says, "It is undeniable that some of the banks, RBS in particular, are harming their customers through their decisions and causing their financial downfall."

SMEs that could have, once again, become going concerns have been steered into the wall by the GRG. Exorbitant penalties, in the hundreds of thousands of pounds, were claimed from them under pretexts such as minor infringements of credit conditions. Unable to pay, they were forced into closure. Another subsidiary of RBS would then intervene to cherry-pick the assets, and in particular the liquidated real estate. Another British control authority attacked RBS reticence to increase loans to SMEs and households while at the same time receiving funds for this purpose. Remember that RBS was fined during 2013-2014 by the European Commission, the US and the UK for its part in the LIBOR rigging scandal and was involved in the manipulation of the currency markets and the sale of toxic products on the US subprime market in 2007-2008. [18] RBS had to increase its provision for legal costs to face future fines, which had the effect of increasing its losses and deteriorating its equity/assets ratio, which is currently at half the ratio it has promised to attain for 2016.

On 28 January 2014, French courts (*Tribunal de Grande instance (TGI) de Paris*) found Royal Bank of Scotland guilty of lack of counsel and information in a legal action brought by the city of Lille and suburbs, contesting three swap transactions.

**Crédit Suisse** (Switzerland's 2nd -ranking bank), along with 13 other Swiss banks including UBS and HSBC

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Switzerland, are all involved in organised tax evasion networks aimed at attracting big US fortunes. These fourteen banks are currently negotiating, with US authorities, a settlement of pending litigation and a return to a clean slate.

The CEO of Crédit Suisse claims that a small number of bank employees had behaved badly and that management was unaware of their doings. The bank's management declares: "We profoundly regret this behaviour, which was the work of only a few of our employees, but we accept full responsibility." [19]

Finally, in May 2014, Crédit Suisse recognised its guilt and agreed to settle out of court, paying a fine of \$2.6 billion to Washington authorities. [20] Crédit Suisse also paid a fine of €149 million to German authorities in a similar affair.

**Barclays** (the 2nd-largest British bank): One clearly identified fault occurred on a day in 2012 when Barclays pressed down the price of gold to avoid paying a £2.3 million indemnity to one of its customers. It happened the day after the announcement that Barclays would be fined £290 million by US authorities for having taken part in LIBOR manipulations! Barclays has been involved in the sale of toxic mortgage products in the US, manipulation of the foreign exchange and gold markets and the electricity market in California (Barclays paid a fine of £26 million in May 2014 [21]), and physical supply and demand in the commodities market. [22] Barclays has also practised the fraudulent sale of retail insurance policies in the UK, money laundering, and is accused, in the UK, in an affair concerning illegal transactions with a Qatari fund in 2008. Despite the above, in February 2014 Barclays announced a 10% increase in the bonuses received by its managers and traders and the cutting of 10,000 to 12,000 jobs.

**Bank of America** (the 2nd-largest US bank) has been involved in the sale of toxic subprime mortgages and the illegal expulsions of occupants from their homes after foreclosures. It is the bank that, up to now, has paid the highest fines in the US – \$44 billion over the period 2010-2013.

**Goldman Sachs** (the 5th-largest US bank) has much to account for: Manipulation of physical supply and demand in the commodities and foodstuffs markets; the sale of toxic subprime mortgages and the illegal expulsion of occupants from their homes after foreclosures; the falsification of Greek public accounts before Greece's entry into the Eurozone. Goldman Sachs is currently the subject of investigation for fraud by the Securities and Exchange Commission (SEC) concerning Abacus 2007-AC1, a synthetic structured product sold by Goldman Sachs in 2007. According to the SEC, Goldman Sachs lied to customers concerning the part played by the Paulson & Co hedge fund in the product. The bank claimed the fund was itself a purchaser, whereas in fact it positioned itself against the product. The buyers' losses were considerable and comparable to the profits shared by Goldman Sachs and Paulson & Co. [23]

Goldman Sachs is renowned for its capacity to infiltrate the highest levels of political office in the US, Europe and elsewhere.

**JPMorgan** (the biggest bank in the US) paid a \$2.6 billion fine in January 2014 to avoid being found guilty by a court in the Madoff affair. Bernard Madoff was a Wall Street shark sentenced to 150 years in prison (the maximum sentence) in 2009 for running a Ponzi scheme that lost more than \$50 billion of his customers' money. The authorities have proof that JPMorgan, Madoff's bank, had had serious doubts about his trustworthiness since 1994 but didn't inform them until after Madoff was arrested. [24]

JPMorgan is accused of retaining the information and of allowing Madoff to continue his lucrative activities without hindrance. During this time the bank perceived high commissions on his transactions, but refused to invest themselves.

Another £500 million was paid to British authorities to avoid being convicted in a tax-evasion affair that involved accounts in the island of Jersey.

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JPMorgan is also accused of selling faulty derivatives to the Italian bank Monte dei Paschi in 2008 that caused such high losses that the Italian authorities had to provide bail-out facilities towards the end of 2012.

It was JPMorgan that invented the first mortgage-backed structured products, in 1994. In 2013 the bank finally agreed to pay fines totalling \$18 billion to various US authorities. JPMorgan is also subject to legal proceedings for manipulating CDSs and other derivatives on the London market in 2012. It is involved in the LIBOR scandal, the manipulation of foreign exchange markets, influencing the availability and prices of “physicals” on the commodities markets and illegal foreclosures and expulsions.

### The Impunity of the Banks must be Ended

We see clearly that banks, along with other world-class financial institutions, often act concertedly (as cartels) and demonstrate a degree of cynicism and abuse of power rarely observed until today.

States are made to pump public money into banks that have squandered large sums in adventurous speculation, and the magistrates that have the responsibility of imposing the laws in fact protect them, as if their practices are commonplace, and even retroactively justify their illegal or criminal activities.

Such an environment of impunity can only encourage more abuse and risk taking. Banking institutions are rarely punished or even called to account, and they divert the entire blame onto scapegoats like Jérôme Kerviel.

Meanwhile the banks' directors are treated quite differently: Their bonuses continue to increase whether their banks' performance improves or deteriorate and whether the resources they use are legal, illegal or from high-risk speculation. If the worst comes to the worst they resign and walk away, scot-free, with a golden parachute and keep all of their gains. For as long as this goes on the pillaging of public resources will continue.

The banks themselves are immune to prosecution for as long as the authorities consider they are “Too Big to Jail.” This is a clear illustration of the close connivance between bank directors, big shareholders, political leaders and important State institutions.

This is only the tip of the iceberg that is visible through the mist of scandals and out-of-court fines, most of which are hidden from the public as much as possible.

In case of serious wrongdoing, radical responses are necessary: the revocation of guilty banks' banking licences, permanent prohibition of certain of their activities, and prosecution of their directors and shareholders, with reparations for damages taken from their personal estates.

Finally, banks must be socialised under public control and separated into smaller units that will provide a public service, giving priority to public needs and environmental protection.

**Translation Snake Arbusto and Mike Krolkowski**

[25]

<http://cadtm.org/The-Impunity-Enjoy...>

[1] See [Part 8](#) of this series

[2] Huffingtonpost, "Holder admits some Banks too big to jail", see:

[http://www.huffingtonpost.com/2013/03/06/eric-holder-banks-too-big\\_n\\_2821741.html](http://www.huffingtonpost.com/2013/03/06/eric-holder-banks-too-big_n_2821741.html) There is a 57-second video of the US Attorney general saying the quote; it's worth the trouble.

[3] <http://cadtm.org/Banks-speculate-on-raw-materials>

[4] <http://cadtm.org/Comment-les-grandes-banques> (in French)

[5] <http://www.asso-sherpa.org/le-procureur-de-monaco-decide-douvrir-information-judiciaire-x-dans-laffaire-de-blanchiment-de-capitaux-africains/#.UxSW6s5fmls>(in French)

[6] Official website of the bank: <https://www.wealthmanagement.bnpparibas.mc/public/en/home>

[7] The Wall Street Journal, "US Fines Deutsche over Energy Trades", 23 January 2013

[8] Financial Times, "Six jailed for tax evasion in emissions trades probe", 22 December 2011

[9] Financial Times, "D Bank in new probe over crisis accounting", 4 April 2013

[10] Financial Times, "Deutsche Bank suspends traders amid forex probe", 18-19 January 2014

[11] Financial Times, "DB employee arrested. Bribery allegation in Tokyo.", 6 December 2013

[12] Financial Times, "Big Deutsche Bank losses test nerves over multibillion-euro litigation risks", 21 January 2014. Deutsche Bank has withdrawn from the group of five banks that fix the price of gold on the London market. The other banks are Barclays, HSBC, Société Générale (France) and Scotiabank. FT: 24-25 May 2014.

[13] Financial Times, "DB co-chief named as probe suspect", 6 November 2013.

[14] Financial Times, "Deutsche Bank agrees to give client details to Dubai", 10 February 2014.

[15] Financial Times, "Deutsche Bank's exposure to Las Vegas casinos hits \$4.9bn", 17 October 2011

[16] Financial Times, "Ex-Deutsche Bank HK chief jailed for bribery", 10 December 2013

[17] Le Soir, "Royal Bank of Scotland poussait les PME à la faillite", 26 November 2013. See also: Le Monde, "La banque britannique RBS accusée d'avoir poussé des entreprises à la faillite", 25 November 2013 (all sources in French)

[18] Financial Times, "RBS faces £8bn loss after provision for mis-sold US mortgage claims", 28 January 2014

[19] Le Figaro, "USA: Credit Suisse reconnaît la fraude fiscale", 26 February 2014, <http://www.lefigaro.fr/flash-eco/2014/02/26/97002-20140226FILWWW00211-usa-credit-suisse-reconnait-la-fraude-fiscale.php> (in French)

[20] Financial Times, "Credit Suisse fined \$2.6bn for helping US tax evaders", 24-25 May 2014.

[21] Financial Times, "Barclays fined £26m for trader's gold rigging", 24-25 May 2014.

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[22] Financial Times, "Barclays misused client information, court told", 24 July 2013.

[23] Frank Partnoy, "Prends garde Wall Street ! Les juristes arrivent !", 31 January 2014.

[24] *Financial Times*, "JPMorgan had Madoff fears in 1998", 8 January 2014.

[25] Other parts of this series can be found at [Banks and the New "Too Big to Jail" Doctrine](#), [Bank abuses in the real estate sector and illegal foreclosures in the United States](#), [Drug and Bank Lords](#), [HSBC: the bank with a shameful past and scandalous present](#), [Big banks' tampering with interest rates](#), [The Big Banks Organise Massive Tax Evasion on an International Scale](#) and [Complicity of Dexia in very serious Human Rights violations in the Israeli occupied territories](#). Part 6 only exists in French: here <http://cadtm.org/L-Etat-au-service-...>