Popular Images of Bankers Reflected in Regulation

Heidi Mandanis Schooner

Several years ago, Microsoft Chairman Bill Gates declared that "banks are dinosaurs."[1] Only time will tell whether banks follow dinosaurs into extinction, but searching for popular cultural images of bankers resembles the paleontologist's search for dinosaur bones. The images are there, but unearthing them requires lots of digging. Ask someone to name a banker in a popular film and you will receive a puzzled look, followed by an inapt list of dashing characters in 1980s films glamorizing Wall Street (*e.g.*, Sherman McCoy in Bonfire of the Vanities;[2] Gordon Gekko in Wall Street[3]). Traditional bankers likely would take great offense to such references since they exemplify investment bankers, *i.e.*, the Wall Street types, and not commercial bankers, *i.e.*, the take-deposits-and-lend-money types.[4]

Once the term "banker" is distilled to include only the commercial banker, most observe that there seems nothing particularly *popular,* let alone *cultured,* about *those* kinds of bankers. The initial skepticism fades somewhat upon the recollection of the silver screen's favorite banker image: George Bailey,

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Heidi Mandanis Schooner is an Associate Professor at the Columbus School of Law, The Catholic University of America. *Earlier versions of this article were presented at the 1999 Law and Society Annual Meeting in Chicago and at the Columbus School of Law faculty luncheon series. She thanks the participants at those meetings and Steve Schooner for their helpful comments.*

1 *See* Michael Meyer, *Culture Club*, Newsweek 38 (July 11, 1994). Gates later attempted to soften his proclamation by insisting that the comment was not directed at banks themselves but at their computer systems. *See* http://seattletimes.nwsource.com/extra/browse/html97/gate_032797.html (visited June 26, 2000).

2 Bonfire of the Vanities (Warner Bros. 1990).

3 Wall Street (20th Century Fox 1987).

4 This article uses the term "banker" to refer exclusively to the "take-deposits-and-lend-money" types, whether they work for commercial banks, savings associations (including savings and loans), or credit unions.

portrayed by Jimmy Stewart, in *It's A Wonderful Life*.[5] While many other bankers fill the silver screen, their images are not the type that pervade the popular consciousness as do the popular images of law enforcement officers, athletes, doctors, lawyers, teachers, and, quite frankly, Wall Street investment bankers. While only rarely capturing the limelight, the banker displays a persistent image in popular cultural media.

Bankers in Film

Numerous images of bankers surface in various popular cultural media. Mark Twain is attributed with describing a banker as "a fellow who lends you his umbrella when the sun is shining and wants it back the minute it begins to rain."[6] Television sit-coms of the 1950s and 1960s often were populated by bankers such as Mr. Mooney, in The Lucy Show, and Mr. Drysdale, the banker in The Beverly Hillbillies. And, of course, most all are familiar with that do-good banker, George Bailey.

Given the numerous sources of popular culture, this article focuses exclusively on images in film for several reasons. First, film provides a more dependable barometer of what one might consider truly popular culture, *i.e.*, culture shared by the masses. This is not necessarily true with respect to literature. Second, the image produced on film, often larger than life, leaves much less to individual imagination and interpretation. Film is the most fully integrated illustration – concocted through visual and auditory imagery as well as through dialogue.

This article explores two themes[7] that emerge from the images of bankers[8] in film and considers how those images are reflected in the law.[9] First, and the most obvious, is the image of the banker as the conservative, non-risk taker. Second, and perhaps more important, is the image of the banker as the "everyman."

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5 It's A Wonderful Life (Liberty Films 1946).

6 *See* http://www.twainquotes.com/Banker.html (visited June 14, 2000).

7 Other categories could have been included. For example, the images of bankers in film are overwhelming male. I uncovered only three exceptions, all relatively recent: Ally Walker's portrayal of Josephine McClintock in Happy Texas (Marked Entertainment 1999); Margot Kidder's depiction of Mickey Tremaine in Keeping Track (Telescene Productions, 1985); and Olivia Newton-John's portrayal of Debbie Wylder in Two of a Kind (Twentieth Century Fox 1983). I chose to exclude this category because there probably is nothing unique to bankers about the persistently male representation. My sense is that the male image of the banker is a reflection of public attitudes toward people in business generally, and perhaps in finance in particular, rather than a particular statement regarding the banker. Similarly, I chose to exclude a recurring theme of the banker as a smart, cunning, virtual con-artist. *See, e.g.*, Claire Tremaine in Keeping Track; and Miles Cullen in The Silent Partner (Silent Partner Film Productions 1978). Despite the examples of this portrayal, I am unpersuaded that this theme is unique to bankers and surmise that just as many examples of smart and cunning characters could be found among the Wall Street bankers or, for that matter, law enforcement officers, doctors, lawyers, or any other popular category of protagonist.

8 In examining images of bankers, the article focuses exclusively on films in which a main character, as opposed to a supporting or walk-on character, is a banker. The article excludes exploration of silent films both because of the difficulty in locating such films and because they predate the most important developments in bank regulation in this country.

9 For a general history of bank regulation in the United States, see Heidi Mandanis Schooner & Michael Taylor, *Convergence and Competition: The Case of Bank Regulation in Britain and the United States*, 20 Mich. J. Int'l L. 595, 605-47 (1999).

The Feedback Loop

The law often presumes that existing legal rules shape attitudes and behavior. For example, criminal laws seek not only to punish wrongdoers, but also to deter future crimes. This article, however, does not examine the cultural images of bankers as a possible reflection of existing laws. Rather, this article explores the popular images of bankers because those images influence the development of law and regulation. Professors Bandes and Beermann call this the "Popular Culture Feedback Loop," describing the phenomenon in which popular media "not only transmits legal norms, but has a role in creating them."[10] Evidence of film's influence on the regulation of financial institutions and markets can be found in numerous references to popular characters such as George Bailey in Congressional hearings. Senator Metzenbaum invoked the popular holiday film during hearings on the Financial Institutions Reform, Recovery, and Enforcement Act of 1989[11] (a.k.a. the S&L bailout bill):

> With deregulation, a whole new frontier was opened to the savings and loan industry. Out went the Jimmy Stewart model – you know, George Bailey, of the building and loan. Out went low-risk home loans with low interest savings deposits by small-town America. In came the era of fast-paced wheeling and dealing – big cars, huge estates, fast planes.[12]

While George Bailey is often referenced by lawmakers as the icon of the conservative, small-town banker,[13] in contrast, investment banker Gordon Gekko is often lawmakers' personification of greed.[14] Evidence of the influence of film images of bankers can be found in case law as well.[15]

These explicit references to film images strongly support the feedback loop theory, *i.e.*, that popular images have a role in creating law. A question remains, however, as to the extent of that role. It is quite possible, and intuitively probable in our media junkie world, that the influence of popular images on lawmakers is more extensive than is suggested by sporadic references to well-known films in Congressional testimony and caselaw. Such insidious influence, which would require the study of the internal thought processes of lawmakers, could never be measured with certainty (without major advances in psycho-therapy and brain mapping techniques). Still, the study of the

10 Susan Bandes & Jack Beermann, *Lawyering Up*, 2 Green Bag 2d 5, 6 (1998).

11 Pub. L. No. 101-73, 103 Stat. 183 (1989) (codified as amended in scattered sections of 12 U.S.C.).

12 135 Cong. Rec. s4084, s4102 (Apr. 18, 1989).

13 *See* 145 Cong. Rec. s4952, s4953 (May 10, 1999) (statements by Senator Feingold regarding the Community Reinvestment Act); 144 Cong. Rec. e400, e403 (Mar. 17, 1998) (statements of Congressman Kanjorski regarding the Credit Union Membership Access Act); 137 Cong. Rec. h10748, h10767 (Nov. 21, 1991) (testimony regarding the Federal Deposit Insurance Corporation Improvement Act of 1991); 137 Cong. Rec. s7497, s7498 (June 11, 1991) (testimony regarding a bill to establish a Presidential Commission on insurance); 136 Cong. Rec. s9664, s9665 (July 12, 1990) (statements of Senator Mikulski regarding the S&L bailout); 135 Cong. Rec. s1183, s1186 (Feb. 7, 1989) (statements of Senator Graham regarding the Federal Savings and Loan Insurance Corporation Separation Act); 134 Cong. Rec. s7616, s7618 (Jun. 13, 1988) (statements of Senator Proxmire regarding S&L bailout).

14 141 Cong. Rec. e1895, e1896 (Sept. 29, 1995) (statements of Congressman Richardson); 137 Cong. Rec. h8808, h8894 (Oct. 31, 1991) (testimony regarding the Financial Institutions Safety and Consumer Choice Act of 1991); 134 Cong. Rec. h1189, h1195 (Mar. 28, 1988) (statements by Congressman Gonzalez).

15 *See* Crocker Commercial Services, Inc. v. Countryside Bank, 538 F. Supp. 1360, 1362 (N.D. Ill. 1981) (reference to *It's a Wonderful Life*).

nature of the influence – as opposed to the extent – is pervious to our understanding.

The Conservative Banker

Films depict bankers as overwhelmingly conservative,[16] if not downright boring. In Walt Disney's timeless musical *Mary Poppins*,[17] George Banks, father of Jane and Michael and unwitting employer of Mary Poppins, is the model of British restraint. He works, as did his father before him, for the Dawes, Tomes, Mousely, Grubbs Fidelity Fiduciary Bank. Banks expresses dismay when his young son Michael wishes to spend his tuppence to feed the pigeons, rather than depositing his coins in the bank. Banks and his bank partners sing praise to "tuppence, prudently, thriftily, frugally, invested in the bank." George Banks's signature number features his proud recitation of his tiresome daily routine – "I run my home precisely on schedule; At 6:01, I march through my door …" – and his jubilant conclusion that "consistent is the life I lead!"

In *It's A Wonderful Life*, George Bailey, head of Bailey Brothers Building & Loan Association, feels oppressed by his boring banker's life. The film traces his life-long attempt to escape from humdrum Bedford Falls in the face of the bank's and the community's steadfast hold on him. In the movie re-make of the television classic, *The Beverly Hillbillies*,[18] Milburn Drysdale, President of the Commerce Bank of Beverly Hills, is as caught up with material wealth as all the other characters in the movie (he drives a Rolls Royce, for goodness sake!). Yet, Mr. Drysdale blanches at the suggestion that the oil-baron Clampetts invest in a stud farm. Too risky, he declares. A recent film, *What Planet Are You From?*,[19] makes the globalization of financial markets seem passé. The film casts Harry Anderson as a highly-evolved, yet emotionally void, clone-bred alien (think Mr. Spock) who, upon his arrival on Earth, becomes – what else – a banker.[20]

Often, film uses the conservative banker image to contrast the current, risky, creative and much more interesting life of the protagonist. In *The Shawshank Redemption*, Andrew Dufresne, the former vice-president of a large Portland bank, is a falsely accused, convicted murderer. Screenplay author Stephen King juxtaposes the refined, straight-arrow, country club banker image with Dufresne's current circumstances: two life-term sentences in a maximum security prison where his colleagues include every variety of low-life murderer, felon, and psychopath. Similarly, in *The Mask*,[21] the boring, spineless, Stanley Ipkiss, bank officer at the Edge City Savings Bank, stands in stark distinction to the rogue supernatural hero Ipkiss becomes upon donning the magical mask. Henry Pulling, in *Travels With My Aunt*,[22] is a banker whose only passion is his prize dahlias until his relationship with his

16 This article uses the term "conservative" to mean: "tending or disposed to maintain existing views, habits, conditions, or institutions: opposed to radical or basic changes … involving little or fearful of risk (a ~ banker)." Webster's Third New International Dictionary of the English Language Unabridged at 483 (1986). This article does not intend the term "conservative" to include necessarily other dictionary meanings such as those relating to political party affiliations or views.

17 Mary Poppins (Walt Disney Productions 1964).

18 The Beverly Hillbillies (20th Century Fox 1993).

19 What Planet Are You From? (Columbia Pictures 2000).

20 Anderson's planet's plan to conquer earth depends upon his ability to impregnate an earth woman.

21 The Mask (Dark Horse Entertainment 1994).

22 Travels With My Aunt (MGM 1972).

colorful Aunt Augusta leads him into a life of pot-smoking, casual sex, and crime.[23]

Reflections of this conservative image in the regulation of banks and bankers are fundamental to the regulatory regime that governs banks. The activities of banks historically have been restricted – in general terms, banks are limited by law to activities related closely to traditional deposit taking and lending.[24] The popular understanding of these restrictions (although not necessarily their true basis) is that banks should confine their activities to the less risky, traditional banking activities as opposed to, for example, securities underwriting.[25]

Bankers, as individuals, often are held, or purportedly held, to a higher standard of care than their counterparts in other areas of business.[26] In *Litwin v. Allen*,[27] a decision found in many corporate law casebooks, the bank director defendants were held liable for breach of their fiduciary duty of care.[28] The court explained: "Undoubtedly, a director of a bank is held to a stricter accountability than the director of an ordinary business corporation. A director of a bank is entrusted with the funds of depositors, and the stockholders look to him for protection from the imposition of personal liability."[29] One federal judge

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23 Similarly, banker Miles Cullen, in *The Silent Partner*, is an uptight, tropical fish collector who turns bank robber. Thus, it is not surprising that John Gray, the married, friendly, and squeaky clean loan officer at the Arizona State Bank in BLACK OUT (Midnight Heat Productions 1996), uncovers a repressed memory of his former life as a bank robber and prison gang member.

24 *See* 12 U.S.C. § 24 (Seventh). Recent bank legislation, the Gramm-Leach-Bliley Act, Act of November 12, 1999, Public Law 106-102, 113 Stat. 1338, repealed many of the former restrictions on bank activities within a bank holding company or through a bank subsidiary. Still, the long-standing restrictions on the activities of the bank itself (as a separate corporate entity) remain in place.

25 Congress separated the business of investment banking from the business of commercial banking when it passed the Glass-Steagall Act as part of the New Deal reforms in 1933. *See infra* notes 36-39 and accompanying text. Interestingly, my research revealed that the only significant deviations from the conservative image of bankers in film are found in films made prior to the New Deal. *See, e.g.*, David Dwight in SKYSCRAPER SOULS (MGM 1932) (Dwight is a bank executive who is actively involved in risky and illegal stock and lending transactions; he is a power broker, risk taker, and manipulator); Tom Dickson in AMERICAN MADNESS (Columbia Pictures 1932) (Dickson, a bank president, describes himself as a "liberal" lender who makes credit decisions on subjective judgments of character).

26 *See* Fleishhacker v. Blum, 109 F.2d 543, 547 (9th Cir.), *cert. denied*, 311 U.S. 665 (1940); Gadd v. Pearson, 351 F. Supp. 895, 903 (M.D. Fla. 1972) (mem.); Billman v. State of Md. Deposit Ins. Fund Corp., 593 A.2d 684, 697-98 (Md. Ct. Spec. App.), *cert. denied*, 599 A.2d 447 (Md. 1991); Barber v. Kolowich, 277 N.W. 189, 191-92 (Mich. 1938); Broderick v. Marcus, 272 N.Y.S. 455, 461 (Sup. Ct. 1934). Professor Schipani argues that in most of the early cases purporting to apply a higher standard of care to bank directors, the banking official would have been subjected to liability under a standard of ordinary care. Cindy A. Schipani, *Should Bank Directors Fear FIRREA: The FDIC's Enforcement of the Financial Institutions, Reform, Recovery, Enforcement Act*, 17 J. CORP. L. 739, 742 (1992).

27 25 N.Y.S. 2d 667 (1940).

28 Under the Model Business Corporation Act, directors discharge their duty of care by acting "(1) in good faith; (2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and (3) in a manner [they] reasonably believe[] to be in the best interests of the corporation." Model Business Corporation Act, § 8.30(a).

29 25 N.Y.S. 2d at 678. The court explained further: "But clairvoyance is not required even of a bank director. The law recognizes that the most conservative director is not infallible, and that he will make mistakes, but if he uses that degree of care ordinarily exercised by prudent bankers he will be absolved from liability although his opinion may turn out to have been mistaken and his judgment faulty." *Id.*

candidly observed: "The natural impulse of the judge trying a case [against a bank director] is to expect and demand a high degree of care on the part of such a bank director and to believe that the ordinary bank director is ... a very careful, conservative, prudent director."[30]

What is most startling about the popular conservative image is its failure to reflect reality. The business of banking, in which liabilities are due on demand (in the form of deposit accounts) and assets are highly illiquid (in the form of commercial and retail loans), is risky by definition. This inherent riskiness provides the primary rationale for the statutory regime that dictates heavy regulation and supervision of banks. Moreover, the American public's widespread experience with the dramatic bank failures during both the 1930s and 1980s should dissuade even the most gullible Americans from believing that banking is a conservative line of business.

While the twenty-first century banker is not likely to resemble the conservative icon in movies such as *Mary Poppins* or *It's A Wonderful Life*, Hollywood's conservative image can be reconciled historically, to some extent, with the real life business of banking. Until the deregulatory movement of the 1970s and 1980s, banks enjoyed government-sponsored restraints on competition that eliminated certain business risks. Until 1980, interest rate regulation rendered price competition virtually non-existent. In addition, banks held a government-sponsored oligopoly, to the extent that law prohibited non-banks from offering deposit services. Therefore, until the last third of the twentieth century, bankers operated in an environment insulated from risks associated with competitive markets.[31]

While banks' oligopolistic control over traditional depository instruments remains today, the evolution of rival financial instruments, such as the money market account offered by a growing number of non-bank financial institutions, now compete with bank deposit accounts, thereby diluting the value of the oligopoly. Today, banks operate in an environment in which they compete not only with investment banks, mutual funds, and insurance companies, but also with dot.com newcomers. Today's banker does not have the luxury of ultra-conservativism. Yet, Hollywood retains the conservative image and, despite deregulation, the law continues to reflect this conservative image.

The Banker as "Everyman"

While the banker remains the conservative icon in American film, as suggested above, Hollywood often depicts the banker as conservative for purposes of contrast, *i.e.*, conservative in relation to other roles depicted in the film.[32] This derives from films' use of the banker to symbolize what literary critics call "everyman."[33] "Everyman" connotes the ordinary person, the person with whom we can all relate, the person

30 Anderson v. Akers, 7 F. Supp. 924, 929-30 (W.D. Ky. 1934).

31 At least one study bears out Hollywood's stereotyping, suggesting that the lack of competition may have contributed to banks' tendency to hire individuals lacking in creativity and strong leadership skills. *See* Robert N. McMurry, *Recruitment, Dependency, and Morale in the Banking Industry*, Admin. Sci. Q. at 87 (1958).

32 *See supra* note 21-23 and accompanying text.

33 While I might prefer to coin the term "everyperson" as opposed to "everyman," I use "everyman" in this article because of the term's prevalent use in literary circles. The term "everyman" derives from a Medieval drama, *Everyman* (after 1485). *Everyman* is a morality play which "employed allegory to dramatize the moral struggle Christianity envisions universal in every individual." http://www.luminarium.org/medlit/intro.htm (visited June 14, 2000). For the full text of the brief play, see http://darkwing.uoregon.edu/~rbear/everyman.html (visited June 14, 2000).

whose plight evokes "there but for the grace of God, go I."

The everyman banker, like all of us, is the dreamer of dreams. George Bailey in *It's A Wonderful Life*, dreams of going to college, traveling the world, building modern cities. George Banks in *Mary Poppins* laments his dashed dreams:

> A man has dreams, of walking with giants,
>
> To carve his niche, in the edifice of time.
>
> Before the mortar of the seal, has a chance to congeal,
>
> The cup is dashed from his lips,
>
> the flame is snuffed aborning,
>
> he's brought to wreck and ruin in his prime.

Again, like most of us, the everyman banker confronts serious obstacles in pursuit of his dream and, in the end, in search of himself. Stuck in Bedford Falls, George Bailey will never go to college, never see New York.[34] *Mary Poppins'* George Banks, who has deluded himself that his life is in perfect order, is shattered by the realization that his children are neglected, his servants are disgruntled, and his job is in jeopardy. Similarly, Andrew Dufresne is plucked from the sure, true path to success and stability when his wife's infidelity sets off a course of events that lands him in the Shawshank penitentiary.

Why do film makers cast the everyman role as a banker? The banker is by no means a common man. Historically, the banker is part of the elite. Today's banker is prosperous: he enjoys social status, education, and a good, stable income. He is powerful – dispensing the fuel of an industrialized nation.[35] At the same time, he is a man of a business whose business we all understand. Taking deposits and lending money is neither rocket science nor breathtaking sport. Mere mortals might scratch their heads at the idea of managing a hedge fund, saving a life, designing a software package, or dunking a basketball. But we can all fathom, although not necessarily perform, the work of the traditional banker.

The conception of a banker as "everyman" is reflected in the development and future of bank regulation in this country. The recent and important debate regarding the extent to which banks should be allowed to engage in securities activities illustrates this point.

Conventional wisdom over the last twenty years concluded that banks would benefit from expansion into the securities markets. Given their financial expertise, reputation, and vast retail networks, banks enjoy a relative edge over other new market entrants. Expansion into the securities markets would allow banks to diversify their limited balance sheets and hopefully help to insulate banks from the ill effects of regional economic

34 Interestingly, one of the few female banker characters in film, Josephine McClintock in *Happy Texas*, bears a striking resemblance to George Bailey. McClintock is stuck in Happy, Texas as president of the First Farmers County Bank – a position she inherited from her recently deceased father, along with all of the civic responsibilities associated with being a small town banker. McClintock is attractive, intelligent, caring, responsible and, most pertinent, romantically frustrated. She maintains a wholly unsatisfactory relationship with a man from out-of-town, whom she almost never sees, but hesitates to sever the relationship because of the dim romantic prospects in her very small town. She, like George Bailey, dreams of a life unencumbered by small town responsibilities.

35 Banks are often referred to as the "'transmission belt' through which the actions and policies of the central bank [i.e., the Federal Reserve] have their effect on financial market conditions." Corrigan, *Are Banks Special?*, Federal Reserve Bank of Minneapolis 1982 Annual Report. That is not to say, of course, that other financial institutions do not have a significant impact on our economy. In fact, in this country, the securities markets provide a comparatively greater share of firms' capitalization than do bank loans.

crises such as those experienced by banks operating in certain real estate markets during the late 1980s. Therefore, scholars began to examine the motivation and purpose behind Congress' decision – included in the 1932 Democratic platform – to separate commercial banking (the take-deposits-and-lend-money kind) from investment banking. Congress passed this legislation, commonly known as the Glass-Steagall Act,[36] as part of the New Deal banking reforms.

Despite thorough research and speculation, the basic policy purpose, intent, or justification for the Glass-Steagall Act remains unclear.[37] The most conventional interpretation of Glass-Steagall is that Congress sought to keep banks from engaging in securities activities because of the risk of those activities. Under this interpretation, Congress sought to serve the public interest in striving to prevent a repeat of the 1929 stock market crash.[38] Many scholars have disputed this interpretation and have argued that Glass-Steagall is the product of special interest group pressures, *i.e.*, that Congress was motivated by investment bankers who successfully persuaded Congress to eliminate commercial banks from participating in their prized securities business.[39]

The popular image of bankers adds to the complex reconstruction of Glass-Steagall. If bankers are not simply conservative characters, but instead project an image of the ordinary business person – as opposed to the business maverick or the power broker – then our vision of our own capabilities and limitations might affect how banks and bankers are regulated. If, for example, everyman is reluctant, or oblivious, with regard to stock market investments – regardless of whether stock market investments are

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36 The Banking Act of 1933, ch. 89, 48 Stat. 162 (1933) (the provisions known as the Glass-Steagall Act were codified at 12 U.S.C. §§ 24, 335, 377, and 378).

37 "Determining who was responsible for the separation of commercial and investment banking – and why – resembles solving a murder mystery in which all the evidence is circumstantial." Donald C. Langevoort, *Statutory Obsolescence and the Judicial Process: The Revisionist Role of the Courts in Federal Banking Regulation*, 85 Mich. L. Rev. 672, 691-92 (1987). *See also* George J. Benston, The Separation of Commercial and Investment Banking (1990).

38 Investment Co. Institute v. Camp, 401 U.S. 617, 629-30 (1971). *See also* Mark J. Roe, Strong Managers, Weak Owners at 95 (1994); Susan Estabrook Kennedy, The Banking Crisis of 1933 at 212 (1973). Moreover, Glass-Steagall may represent a public interest oriented law if Congress thought that the public was better served when banks channel their resources to the traditional business of commercial lending. Professor Langevoort argues that "the principal motivation was pursuit, perhaps more emotional than rational, of the challenging objective – an attempt to force banks to redirect their resources, efforts, and energies to the traditional business of commercial and agricultural lending by foreclosing the securities temptation." Langevoort, *Statutory Obsolescence*, 85 Mich. L. Rev. at 697. As Professor Langevoort notes, if this was the motivation, it was not rational. Professor Macey notes that commercial lending and securities underwriting achieve the same economic purpose and, therefore, are substitutes for one another. Forcing a bank to use one financial vehicle over the other, therefore, would not prove beneficial. Jonathan R. Macey, *The Political Science of Regulating Bank Risk*, 49 Ohio St. L.J. 1277, 1291, n.75 (1989).

39 Jonathan R. Macey, *Special Interest Groups Legislation And The Judicial Function: The Dilemma Of Glass-Steagall*, 33 Emory L.J. 1, 15-21 (1983). *See also* George Benston, *Federal Regulation of Banking, Analysis and Policy Recommendations*, 13 J. Bank Res. 216, 222 (1983); Frank H. Easterbrook, *Foreword: The Court and the Economic System*, 98 Harv. L. Rev. 4, 57-58 (1984); William Shugart II, *A Public Choice Perspective of the 1933 Banking Act*, in The Financial Services Revolution at 87 (C. England & T. Huertas, eds. 1988). This special interest group analysis, popular within the law and economics movement, has been criticized from within that quarter. *See* Langevoort, *Statutory Obsolescence*, 85 Mich. L. Rev. at 692 (1987).

actually more or less risky than other investments – then perhaps it was natural to limit, as Congress did in the 1930s, banks' ability to make such investments.

While claiming that the 1930s everyman did not invest in the stock market would be an overstatement, stock market investment at that time pales compared to the public's more recent stock market investment appetite. In the first half of the 20th century, people deposited their savings in the bank (or hid it under the mattress). Today – due in large part to the proliferation of self-directed retirement accounts and the mind-boggling 1990s market performance – everyman relies on television, newspapers, magazines, or the Internet to choose between investments in a multitude of mutual funds or individual stocks. In fact, most analysts agree that the surge of middle class investment in the stock market fueled the historic bull market.

Perhaps, the banker's everyman image informs the search for answers regarding Glass-Steagall. The assignment of the ordinary man's capabilities (and limitations) to the banker may explain, in part, why Congress was willing to impose restrictions on the activities of banks that were not justifiable in an economic or business sense, *i.e.*, if the ordinary man should be sheltered from the volatility of the stock market, then so should the banks.

What does the everyman image mean for bank regulation today? If Hollywood portrays, and the public perceives, bankers as everyman characters, how does that vision impact the future of bank regulation? With regard to the securities activities of banks, the answer seems clear. As Americans have become more active, interested, and serious about investing in Wall Street, Congress has become more willing to relax federal banking law to allow banks to re-enter the investment banking business. In 1999, after two decades of intense lobbying from industry participants, Congress passed legislation repealing most of the Glass-Steagall restrictions on the combination of the banking and securities businesses.[40] While the new legislation does not completely deregulate the historic restrictions on the activities of banks, it represents an important incremental step toward integration of our financial markets.

Congress's 1999 decision to remove barriers to banks' participation in the securities markets, however, must be viewed in context, *i.e.*, an historic bull-market. When bull turns bear and everyman suffers, the question remains how Congress will react. The marriage of commercial and investment banks, along with insurance companies (*e.g.*, the merger between Citibank and Travelers which created Citigroup) could and probably should alter the public's, Hollywood's, and Congress's view of the banker. The future will likely prove Bill Gates wrong. No, bankers will not go the way of the dinosaur. Instead, they will evolve and adapt to our new economy and changing financial needs.

This article began by suggesting that bankers neither occupy the popular consciousness in the same way, nor share the silver screen limelight with cops, jocks, docs and, well, Wall Street bankers. The article concludes, however, that the most critical image of the banker is one that casts the banker as the everyman of the business world. These seemingly inconsistent propositions can be reconciled. The banker is easy to fathom. Bankers need not inhabit scarce space in our gray matter reserved for the more complex, exotic, or exciting. The public understands the banker. We need not strive to *be* the banker, because he is already part of us.

How then do we regulate the banker? It appears that regulation of the banker assumes, possibly imposes, the everyman

40 *See supra* note 24.

image of the banker. Regardless of the banker's sophistication in financial markets, we cannot imagine the banker engaging in activities that we ourselves would not readily undertake. Thus, perhaps, the regulation of banks and bankers reflects our own financial insecurities.

Yet, as our own sophistication matures and we become more willing to expand our financial horizons, the banker is permitted to do the same. Buoyed by prosperity, regulation and control take a back seat to growth and optimism. Still, the history of fluctuations in the financial markets is real, not movie fiction. The next economic crisis will test the mettle of everyman's dream of the promise of Wall Street over the security of the bank.