Ralph Nader Radio Hour Ep 87 Transcript

Robert Monks, Mehrsa Baradaran

Steve Skrovan: Welcome to the Ralph Nader Radio Hour. My name is Steve Skrovan along with my co-host David Feldman. How are you today, David?

David Feldman: Very excited about reading all the questions that people are sending in to the Ralph Nader Radio Hour.

Steve Skrovan: And we are also here with the man of the hour, Ralph Nader. Hello Ralph.

Ralph Nader: Hello everybody.

Steve Skrovan: We have another informative and provocative show for you today talking about all the stuff that doesn't get talked about enough. Last week, we had a great conversation with Nomi Prins, author of All the Presidents' Bankers, who explained to us about how the Federal Reserve's policy of quantitative easing is only really easing to Wall Street while leaving Main Street, the harder road to hoe. In the second half of the show, we're going to continue our discussion of banking and money with law professor Mehrsa Baradaran, who is the author of "How the Other Half Banks." I assume the other half doesn't include us. I don't know which half I'm in. But we're also going to hear as always from Russell Mohkiber, the corporate crime reporter. And if we have time, we'll try to get to more listener questions. But first, we're going to drilled down on a topic that Ralph has railed about on this show in a number of different contexts, that is: stock buybacks and corporate inversions. That is the trend of American companies taken a foreign partner to avoid US taxes. So David, introduce us to our first guest.

David Feldman: Our first guest is called "A Traitor to His Class," at least that was the title of the biography written about him. Robert A.G. Monks is a pioneer and shareholder activist and a corporate governance advisor. He's written extensively about shareholder rights and responsibilities. He's also an expert on pension and retirement plans, and was appointed director of the United States Synthetic Fuels Corporation by President Ronald Reagan. Mr. Monks was also a founder of Institutional Shareholder Services, now the leading corporate governance consulting firm. He was also featured in one of my favorite movies, the documentary, "The Corporation." Welcome to the Ralph Nader Radio Hour, Robert Monks.

Robert Monks: I'm glad to be with you. When I'm called a traitor to my class, I just point out that Ralph and I are classmates.

Ralph Nader: Yes, indeed. Bob and I were in the Harvard Law School Class of 1958, which is distinguished itself by starting the Appleseed Foundation, that has in turn started 16 centers for law and justice in various states around the country, representing a very often low-income people. Bob, I'm absolutely delighted to have you on, because a few weeks ago, Walmart made an amazing declaration, which led to their shares going down. They said, "It expects its earnings to decline next year." And here's who they blamed: The cost associated with raising employee wages as well as its efforts to improve its e-commerce operations to compete with Amazon and spruce up its stores. Now, the reason why this stunned me was its earnings increased by $1 an hour for over a million workers, comes down to a little more in $2 billion before deduction. But what they left out was that in the last few years Walmart has spent 60 billion of your dollars, customers, for stock buybacks. So here you have the scapegoating of raising workers' wages a little bit. They're still behind 1968 Walmart minimum wage, adjusted forward to inflation, and ignoring the stock buyback. The stock buyback is perhaps the greatest unsung story. And it's your money. Where do you think these stock buybacks come from that your dollars when you buy products and services? And just to set the stage for your observation, Bob Monks, in the last three years, the Wall Street Journal has just reported there have been $1.5 trillion, that's $1.5 trillion in stock buybacks in the United States. What have they do this for? Can you explain to our listeners?

Robert Monks: I think you have to put the stock buyback into the two contexts. One is, the pattern of American industry in the last thirty years to be less concerned about making products and to be more concerned about making money. And the second category is the incredible pattern of executives in companies increasing their compensation. And the stock buyback started in a very big way as the counterpart to grants of previously unimagined stock options to principal employees. So the stock option portion of the compensation was by far the largest piece and accounts for what, 350 times the multiples between the CEO and the beginning level employee. And this contrasts with 30 times as being considered in most of our industrial history as a reasonable amount. Well, this wasn't enough. What then happened was that the principal business executives -- and these were at that time in the Business Roundtable -- managed to bully the accounting profession, so that the grant of options was not considered to be an event that needed to be reflected on the profit and loss statement. So, if you gave people $1 million bonus that cost $1 million to the P&L. If you gave them $10 million worth of options, no impact on the P&L.

Ralph Nader: Profit and loss, yeah. Profit and loss.

Robert Monks: Profit and loss, yeah. So what you had was just an *extraordinary* increase in a number of options that were granted because they were free. And the word went that the option isn't worth anything unless under the CEO's tutelage, they make a lot of money and therefore, it's incentivizing and they deserve it. And so it became – since it doesn't cost anything, nobody paid any attention how much it has evolved. Okay, the thing that does happen when you issue an option is that there are more shares outstanding. If there are more shares outstanding, the earnings per share are reduced. I think maybe, hopefully, you're going to see where we're going with this. You obviously had to find a way to reduce the number of shares so as to eliminate or reduce the element of dilution that was an essential part of CEO pay. This really is part of one of the great wealth transfers in private business history. And that is over the last 20, 30 years, the transfer of wealth from the owners of corporations to the executives. And the stock buyback is the last piece that enables this to happen.

Ralph Nader: And what does it tell you Bob, when you read about companies spending billions of dollars buying back their stock? And they're all doing it now, Cisco, Microsoft, Oracle, General Electric, and many others. What does it tell you about management? Because that money could go to raise employees' salaries. It could go to productive investment. It could go to dividends, straight out checks to the shareholders. What's it tell you about management that engages in this? And, why isn't that decision -- in terms of stock buybacks -- have to be approved by shareholders?

Robert Monks: When you consider the value that the stock market puts on Amazon, and you stop to think that -- I think Amazon's last quarter was the first profit it has recorded since it became a public company -- you begin to see what is happening that the Amazon management has had a vision, which requires increasing investments of capital. And they have had the ability to finance these. But the cost of doing it has meant that, in the short term, they operate at a loss. The converse is true with the companies that you've cited. It appears that they have got to a point where they know the businesses they have, they can protect those businesses. They don't really have any idea as to where they could generate a return that wouldn't involve them …

Ralph Nader: The bosses.

Robert Monks: … the executives in a risk that they don't have to take. So you're talking about a way of locking in essentially short-term profitability, which has its manifestation in the contracts for compensation of the executives.

Ralph Nader: You told me once the stock buybacks is almost the sure sign of inept management. What do you mean by that?

Robert Monks: I mean that if you hire a management and that you really are counting on that management to be able to use the leverage of their position, to increase their place in the market either by product, or by simply expanding the volume. And it's the failure of managers to be able to find a use for money is the clearest example of all lack of imagination. And I go back to what I said earlier about the correlation between the boom of stock options and the increase of stock buybacks, this is now just become locked in as a way in which you transfer wealth to the executive. Once you understand that, you can see what it's all about. Increasingly, the purpose of American corporations is the enrichment of the senior management.

Ralph Nader: Which means, doesn't it Bob that the bosses of these giant multinational corporations have set up a system of stock buybacks to enhance their own stock options and their own executive compensation, in a conflict of interest with their own companies, with their own employees, with their own shareholders whom are not receiving dividends? They're having to read about stock buybacks.

Robert Monks: Yes. I'd stay a little differently, Ralph. I would say that as you look at this pattern, and as you observe it and characterize it the way you just have, there's only one conclusion: and that is that the position of the CEO in the modern American company is one that is akin to being an emperor. Indeed, but the annual meeting of Exxon from years ago addressed Lee Raymond as an emperor with a certain amount of respect. And the reason is that if the present time, corporate governance has failed in any meaningful way to make the CEOs accountable. And the fact of their compensation is the clearest evidence of this. And mechanisms like stock buybacks are simply an incident to that. So all of these simply confirm that the CEO of the modern American corporation really is not accountable to anybody. And the way in which they have used that power is to enhance their compensation. We're talking big money here. Lucian Bebchuk, who's a professor at our old alma mater, Ralph, a great scholar in his field, did an extensive study and found that the top five officers compensations over a recent ten year period had moved from 5% of total income to 10% of total income. Meanwhile, if you can believe it, one of the great atrocities of modern time this has been committed, the companies have said to their pensioners, "Guess what? We can't afford as a matter of competitiveness to continue to pay you a defined benefit pension." And for your listeners who can be excused for just shutting their eyes when they hear the words like "defined benefit." A defined benefit pension is a real pension. It means somebody would credit guarantees paying you real money …

Ralph Nader: That's right. Every month.

Robert Monks: Yes. It's got the government credit and back of it finally. At the time, that the executive pay in all these games about stock buyback and all the mechanisms by which the corporate resources are being mobilized for the purpose of increasing executive compensation, they go to the world and say, "As a matter of being competitive with the rest of the world, we can't afford to pay these defined benefit pensions." So, it isn't just as if this was an innocent event. It is a very key part of what is really an atrocity that challenges the legitimacy of the modern corporation.

Ralph Nader: And you've been advocating for years, Robert Monks, for the rights of institutional and individual shareholders, mutual funds, pension funds, individual shareholders, who have been stripped of their rights of ownership. They own the corporations and management is supposed to manage them, but they have taken the power away. And so this monster global corporate centralized power in the hands of the executives and the board of directors, which we would never envision when we are at law school years ago, has developed a system of tyranny that has no regulation and under the guise of this business judgment rule can do anything, can merge, can make all kinds of judges without going back to their owners for approval. So I ask you again, they have all this capital piled up for stock buybacks, these are consumer dollars, they don't want to give it the money to the employees. They want to give it more dividends to shareholders. They don't want to invest in productive capital and equipment to expand and create jobs. If this decision is so momentous, and it is so self-interested in terms of increasing their own pay, which is a main conclusion of stock buyback, why doesn't this break the business judgment rule which puts a decision on a lot of smaller issues in executive suite, and have to be reverted for shareholder vote? Can you explain that to our listeners?

Robert Monks: Well, the difficulty with looking for legal changes in the apparent governance mechanisms is that oftentimes almost inevitably they don't mean what they say. So, if you have shareholder approval required of issues, the reality is that what, 40% of the shareholders of companies today are computer entries derived from algorithm or from an index program, there is in brief no meaningful exercise of ownership. That, of course, is why the current Carl Icahn energies are so effective, because there's so few real owners in the deal, that when you get somebody who has real money and a real objective, now they're able to assert their objectives, which unhappily turn out largely to be short term.

Ralph Nader: Well, let me take you to the next step on this. You're arguably the leading advocate over the years of what the responsibility should be of university stock endowments, pension fund stock endowments, and bond endowments, and big mutual funds like Fidelity, Vanguard and other large investors. Now, they have well over half of all the stock of corporations on a New York Stock Exchange. What have you been urging him, Bob Monks to do in terms of their declared fiduciary responsibilities? Could you educate our listeners on that?

Robert Monks: Well, when I said a minute ago that words in the corporate governance context oftentimes don't mean what they seem to mean. The one you just cited is a classic example is "fiduciary." The reality is that about what, 85%, 90% of the stock is held in one form of trust or another, and what I have been trying to urge is that the trustees have legal obligations. And their legal obligation is: to take steps necessary to ensure the long-term optimization of the value of the stock held in their portfolio. So far so good. Well, the last time a court upheld a fiduciary obligation that was in the early 1970s, Judge Friendly in the Second Circuit. And he upheld a fiduciary obligation, and the Congress then overruled him. We haven't had a world in which the word "fiduciary duty to shareholders" has any meaning. It sounds good. I mean, when you tell people that they are so fortunate as to get an investment in which there are fiduciaries looking after them, good Lord. I mean, what kind of comfort are the beneficiaries of mutual funds supposed to get in a system in which the fees or their charge against them aren't disclosed? And you have the SEC as an enabling agency that is clearly a case of regulatory capture, practically every year since 1940 when they started. So the word "fiduciary" unfortunately pollutes the discussion. Because it creates an impression of there being some kind of energy or force that is going to act according to the ancient and well understood simple principles that a fiduciary must act for you and not for himself. And we live in a world where the exact opposite is so plainly the case, that -- It is stressing there isn't a greater level of public opposition and rebellion.

Ralph Nader: But then what? In that sense, this is a pretty dreary picture that's being painted. It almost looks like the corporate bosses have gone into a completely closed circle of impunity and immunity from their own owners, from the regulators who they …

Robert Monks: And if they don't, if they haven't got that yet, guess what they do? They take your money and buy D&O insurance.

Ralph Nader: Yes, that's director and officer liability insurance. That's true. The reason why this is important to listeners is not just because of the sums involved, trillions of dollars. It's that years ago there was always talk about a capital shortage in this country. And people like Charles Walker, a lobbyist in Washington, would use that as, you know Bob, to try to get greater tax deductions.

Robert Monks: Yeah--

Ralph Nader: Now, there is a mass of capital piled up here and abroad. US companies have trillions of dollars that they don't know what to do with other than to use as stock buybacks. In the meantime, this is the people's money. People have investment in money market accounts for Fidelity, or they have investments in Pension Trust, or their own investments, they're the technically, the owners of these trillions of dollars, and they can't get it to be used as owners. Under a capitalist philosophy, owners are supposed to control about what they own. They have lost control to a few people at the top, who have pensions, recent report just disclosed, that they are making $245,000 on the average, every month in terms of their pension checks when they retire. What's the way out here? Is it a presidential campaign by people like Bernie Sanders? Is it a grassroot move on Congress? Can the mutual funds and pension funds exert political muscle, if they don't have any rights as depleted owners of their corporations? What's the way out here, Bob?

Robert Monks: You know, there is no clear track. We got here in large measure because in my experience, the big change was that the so-called triangulation of President Clinton in getting elected for his second term. And that's where he discovered something that Tony Blair of England then used to great, good effect, and so, alas has Barack Obama. If you were running as a candidate for the Left, and you assure the banking community and the business community that you can be relied on to continue their current benefits, like for example, President Obama urging for the Ex-Im Bank, you have a political situation that can only be sold by a counter party. And we see that argument being held today into relatively small ways. One is, it turned out that in the world of corporate welfare, the Ex-Im Bank is at top of everybody's list and always has been. Somehow, there was a expression of will by Congress that terminated the Ex-Im Bank in June. And come to find out, guess what? By the end of December, we're going to have Ex-Im Bank again. The story is that, on that front at least, there was a political effort to try and stop this dominance of the business agenda. And we got beaten. On another front, the Department of Labor now, in a very modest way is attempting to say that brokers, who manage money for retirees, must genuinely act as fiduciaries. Honest to God fiduciaries, not just we write it in the prospectus and that everybody knows it isn't true fiduciaries, but honest to God, fiduciaries. They can no longer take this money from beneficiaries, and they can invest it in products that their own organizations runs at a cost that the Council of Economic Advisers in the White House estimated with $17 billion a year of excess cost for people violating their fiduciary duty at the cost of beneficiaries. Now the Department of Labor, in this one the President is backing, and there is all manner of mischief being conducted in order to prevent this from happening. I'm citing these two cases because this is a battle that has to be fought in the political battlefield. And the votes should be there. They have not been there because with two political parties and with the party on the Left, I mean, everybody knew the Republicans were always going to vote for the banks. But when the Democrats started voting for 'em too, that's what created at the problem.

Ralph Nader: We're down to 535 members of Congress, is that what you're saying? Senators and representatives, and back home were millions. There are millions of investors, people own stock. There are millions of people who can mobilize around the congressional districts. That's the direction, is that what you're saying?

Robert Monks: Yeah. We already have. As I already mentioned, these two skirmishes that are taking place have gotten so bad that you've actually had -- I mean, this may be why Speaker Boehner was put down -- the force against this corporate power was simply strong enough that he simply couldn't continue to hold that together. And it'll be very interesting to see what the new speaker does, because the interest groups haven't changed.

Ralph Nader: Robert Monks, what would you do if you had your druthers? What would be the nature of corporate law if Congress came to you and said, "We're ready for reform? Mr. Monks, you have so many ideas, so many proposals, so many great books, one of which is called <u>Corpocracy</u>. What would you do?" What's the design to make capital productive, to make it accountable to people who own it, and to hold these corporate bosses responsible when they stray and commit negligence, speculative, or criminal acts?

Robert Monks: What I would do if you will indulge me in a little bit of drama is I would call the Speaker of the House, the Senate President, the chairman of the SEC, the Secretary of Labor, the chairman of the Federal Reserve, and I would summons them into the Roosevelt Room. And I would say to them, "Gentlemen, we are one government. Our government has created a situation in which controlling interests of all the companies that are listed on our public exchanges are held by funds whose conduct is regulated by you under existing laws. You, Mr. ERISA fund, Department of Labor, you Mr. 40 Act mutual fund, SEC, you various other trust and funds, Mr. Bank Regulator, each of you have the power to require that the trustees subject to your monitoring, to your supervision, to your direction, will exercise their ownership power in such a way as to cause the corporations to be run for the long term sustainable benefit of the beneficiaries."

Ralph Nader: Who are the beneficiaries?

Robert Monks: Well, the beneficiaries are all the retirees, every employee benefit plan on ERISA. Every mutual fund under the SEC. Every common law trust. And all of the places like Harvard and what have you, the universities under the Federal Reserve and the IRS who determines what is a charity. So, the government has the power to create an enforceable fiduciary standard for a majority of the stock. And if it were up to me, I would act as the leader of the government and tell them to do this. And that way, you'd be using the existing mechanism. You don't have to go to Congress for authority. You don't have to get a statute passed. You don't have to spend any tax money. All you have to do is to enforce what is the existing law. And it's been ignored.

Ralph Nader: In that context, Bob Monks, a couple of years ago, you sent an elaborate recommendation to Harvard University about its stock endowments, and it applies to all universities who hold hundreds of billions of dollars of stocks and bonds. What would you recommend students at Harvard and elsewhere to do given your recommendations? Let's get some student activity here.

Robert Monks: Yes. I think that the situation of the students is a very difficult one now, because if I were on the other side of the students, what I would do is I would have what I've always thought Harvard does have, and that is a 36-month plan. So by the time people get involved in the various student participations of governance at Harvard, they've graduated. And so, typically with involving the students is that they are short-term energy and it's very, very hard to make an accomplishment against someone who has an infinite amount of time on their hands as well as your money. I think what the students need to do is to find a method of expressing their fundamental dissatisfaction with the management of their university that requires them to be associated with an institution that will not take responsibility as an owner in accordance with the traditions of fiduciary duty. And I think that there are all different kinds of ways of doing that. But it seems to me that there has to be a fundamental expression of disapproval of the management.

Ralph Nader: Aren't you impressed by the student movement on dis-investment in fossil fuels that's cropping up at universities all over the country? Isn't that a good start?

Robert Monks: Yes, it is. It's a good start. And there are a lot of people, who are really fine people are committing their resources to it. And I encourage them. But I think at the student level, there's a power of any kind of plebiscite amongst students that flat out condemns the integrity of the institution where they're attending. I think that's the critical first step. And I don't believe that the *incredible* failure of the institutions to be upfront, to be transparent, to say nothing of being constructive about the particular problem of global warming. It can't last, but it has to be confronted and the people with the unique right to do it are today's students

Ralph Nader: Bob Monks, as we conclude, tell our listeners how they can contact you, and secondly, how they can get that proposal you made regarding Harvard University's endowment, which should be a prototype for alumni and students at universities all over the country. Can you give 'em some contact points for you?

Robert Monks: Sure. I have a website and there's a contact, all kind of information on, it's ragm.com and that's me. And I answer my mail. And I'm glad to get it.

Ralph Nader: That's ragm.com. This has to be continued. We're going to translate this into everybody's daily life, whether they know it or not, they own directly or indirectly trillions of dollars that are not being used to improve their livelihood and improve the prospects of their descendants with the vibrant progressive, efficient economy. And most societies don't have that benefit. They're looking for capital. We have it piled up, mostly used to embellish and expand the vast compensation of corporate executives of the giant multinational corporations. So this does have to be continued. Robert Monks, thank you very much for the first installment.

Robert Monks: Thanks so much, Ralph. Lovely to talk to you.

Ralph Nader: You're welcome.

Steve Skrovan: We've been talking with shareholder activist Robert Monks. Go to ragm.com for more on his work in corporate governance. That's ragm.com. Ralph, I have a couple of questions …

Ralph Nader: Sure.

Steve Skrovan: … just to digest what we've just heard.

Ralph Nader: Right.

Steve Skrovan: First of all, for our listeners, what is the Ex-Im Bank?

Ralph Nader: The Export-Import Bank is a government institution that guarantees the sales of Boeing, Caterpillar and other exporters of heavy equipment as well as other smaller exporters. So that when people oversees want to buy US products, they go to a bank for a loan in Pakistan or Egypt, and the US government guarantees that bank loan and enhances Boeing sales. You think Boeing which makes incredible profits and doesn't pay any taxes, federal or state, believe it or not, would be able to find its own financing. That's why the Tea Party against crony capitalism won its temporary victory in June that Bob talked about.

Steve Skrovan: So it's corporate welfare for companies?

Ralph Nader: Yes.

David Feldman: So you're not for that?

Ralph Nader: No, we interest -- no …

David Feldman: Yeah, that's interesting.

Ralph Nader: … we have been opposed -- we've been opposed to the Ex-Im Bank. It's been reinstated, as Bob Monks said, for December, because the pressure from Wall Street and the Boeing type was overwhelming. They overwhelmed the Tea Party opponents. I must say the Liberals weren't very distinguished on this. Some of them opposed it, but nowhere near with the ferocity of opposition by the Tea Party. The Tea Party is ferocious against crony capitalism, which the Left calls corporate welfare. And the Left is against corporate welfare, but nowhere the energy and ferocity. That's the difference in Congress.

Steve Skrovan: Well very good. Let's move on. It's time to fire up the teletype machine and check in with Russell Mohkiber at the National Press Building in Washington D.C. Russell?

Russell Mohkiber: From the National Press Building in Washington D.C., this is your corporate crime reporter morning minute for Wednesday, November 11, 2015. I'm Russell Mohkiber. The Department of Justice has filed a civil antitrust lawsuit seeking to block a proposed transaction between United Continental Holdings and Delta Air Lines at Newark International Airport . The Antitrust Division's lawsuit alleges that United's planned acquisition of 24 takeoff and landing slots at Newark would increase United's already dominant position at the airport. As a result, the 35 million air passengers, who fly into and out of Newark every year likely would face higher fares and fewer choices. "A slot is essentially a license to compete at Newark," said Antitrust Division Chief Bill Baer. Allowing United to acquire even more slots at Newark would fortify United's monopoly position and weaken rival's ability to challenge that dominance. For the corporate crime reporter, I'm Russell Mohkiber.

Steve Skrovan: Thank you, Russell. Remember, if you have missed any of this episode on the radio, you can go to RalphNaderRadioHour.com and catch up with our conversation with Robert Monks or listen to any of our other previous episodes that are archived there. We provide links to guests and their work. You can submit questions, and we have also added a new feature, a downloadable PDF transcript of the show. You'll see the link posted just above the audio player on your computer for that. And don't forget you can also subscribe to us for free. We always love that name. "Free" on iTunes and Stitcher and feel free to share tweaked reposts, mail it to your grandparents. Whatever you need to do, let's just get it out there. David?

David Feldman: Our next guest, Mehrsa Baradaran, is an associate professor of law at the University of Georgia, where she teaches Contracts and Banking Law. Ralph, I know you'll appreciate this because you've been advocating this a lot on our show. Professor Baradaran wrote an article for the Harvard Law Review Forum entitled, "It's Time for Postal Banking." She's also the author of the new book, "How the Other Half Banks." So welcome to the show Professor Mehrsa Baradaran.

Mehrsa Baradaran: Thank you so much for having me. It's great to be here.

Ralph Nader: These are going to be a great interest to you listeners. Mehrsa Baradaran has written a very readable book published by Harvard University Press, and the title it tells the message, "How the Other Half Banks." We have an incredible situation in this country where the big banks and not so big banks are not interested in tens of millions of potential customers. Tens of millions of potential depositors holders of checking accounts, credit cards because why Professor Baradaran? How can all these capitalist banks not want tens of millions of new customers?

Mehrsa Baradaran: Yeah. Let me start by saying that banks don't operate by the rules of capitalism. I mean, they never have. And it's a myth that got started sometime three decades ago that they wanted to be treated like regular corporations. But as anyone who understands how banks work and their relationship with the government, these are not markets. But, on the low end, they have been operating as market entities. And the reason why they have been so sloughing off the poor and low-income neighborhoods is because these products that the poor need, the small savings account, checking, all this stuff, it's just not profitable for big institution if they have other choices. So, it costs a bank the same amount of overhead, money, servicing cost, et cetera, to service a $500,000 deposit versus a $500 one, where obviously they can make a ton more money off of the prior. And so, over the last 30 years, they've just decided to move out of these neighborhoods and then just reject this customer-base. And they do it through a variety of ways. They just shutdown their brick and mortar in these areas. And they also slap on fees to transactions that don't really need fees. In other words, it's not a high cost to banks to deal with an overdraft, but they put on these fees. And I suspect they put on the fees because they don't want your deposits, if you're going to be below a certain amount. And so the fees are to repel a certain type of customer, and that's usually those who don't have a ton of money to put in the bank.

Ralph Nader: Now, these banks are recipients of corporate welfare from the get go. Explain to our listeners what you mean when you say, "America's banking system was originally created as a public service. Banks have always relied on credit from the federal government provided on favorable terms so that they could issue low-interest loans. But as banks grew in size and political influence, they shed their social contract with the American people, demanding to be treated as a private industry free from any public-serving responsibility." They may demand that, but that doesn't chang the reality that there are corporate welfare kings. Can you explain that?

Mehrsa Baradaran: Yeah, that's right. And I think the myth would have gone on had the financial crisis not laid it bare. It's banks saying, "Look, we're going to operate by market principals, we're going to – look there's these market pressures, and we're going to deal with these, and we don't need any government help, and therefore we don't need any government regulation. And so just leave us alone like you would any other sort of quote-unquote "capitalist" entity. But as we saw in 2008, we can't let banks fail. They're so integrally tied to the government, and we did give them these corporate bailouts or welfare, but it's more than just corporate welfare. It's a matter of -- and both President Bush and Obama made clear -- this is a matter of our country surviving, our entire financial system surviving. And so, it's not just subsidies, as I say in the book it's, you know, it's just called "bank bailouts" or "federal help" of the bank. Calling these "subsidies" is like calling the wheels of your car a bonus feature, right? This is a federal foundation that banks lay atop of and have always. And as you mentioned, we created banks essentially because you have this government currency; and you want credit allocation and there are these engines that allocate the credit. The first banks in England are created through government "IOUs." That's what money is. Money is a government IOU. But you need institutions to push this money out. So for 200 years of our history, we allowed banks this charter to deal with this money, and to put out this credit, and to made a little bit of a profit. But Jefferson and Brandeis and Roosevelt, and many other presidents, including Hamilton and those who opposed Jefferson and Brandeis and Roosevelt said that, "Look, you can have this charter but there are going to be a whole ton of restrictions. You can't do this. You can't operate here." And then over the last 30 years, we forgot that there is this social contract or that banks are based on government trust. And so once that social contract was breached, then we have this one-sided bailout, right. So, in 2008 the banks had stopped fulfilling their public obligations. But as we saw, the government *couldn't not* fulfill its and bail them out. So you have a lopsided -- Yeah.

Ralph Nader: In other words, what you mean by lopsided is that the taxpayer bailed them out. They did not get anything in return. There is no reciprocity. Now, let's get back to today. There are tens of millions of Americans, very hard working, raising their family who are non-banked. They're excluded from the banks as a reality. They're red lined in low-income neighborhoods: that is the banks will not provide mortgage money. And if that happens, the insurance companies don't provide their services, and they lead the neighborhoods to further and further decay. Where are these tens of millions of people going? And describe it in graphic terms that would even horrify your laidback law students in your class.

Mehrsa Baradaran: Yeah. I mean, they go to modern day loan sharks. I mean, it's not exactly Bubba, who breaks your kneecaps, but kind of. You know what I mean, we have these very usurious sometimes predatory lenders that you go in to borrow $500 because your car breaks down and you need to go to work, like you said, because you are hardworking American, and you just need to go to get to your next paycheck. And you go to borrow $500, and the modern day loan sharks, these payday lenders, end up charging you by the time all said and done, $3,000 or more in interest. And so, going into it, you need that $500, as we all need some buffer occasionally, and you end up with an anchor that turns the temporary liquidity crunch into a permanent financial bankruptcy.

Ralph Nader: A peonage. Explain how they get the $3,000? Explain the spiral, Professor?

Mehrsa Baradaran: Yeah. I mean, the ATR on these loans are at a minimum something like 300%. Sometimes they get up to 2000%. So you go in and you pay a fee, and the way that the payday lenders describe it as it just a fee for a two-week period. But these loans are meant to be rolled over. And the rollover, you just keep accruing fees without paying the principal. And most people that take out payday loans end up rolling them over something like 10 times. And so it ends up being a very cyclical process, as it's designed to be. So, you take out the first loan, and by the time you've paid off the principal, you've paid over 300% in interest, and that's where all of those extra fees come in. And then, by the way, the payday lender counts it as a default, even if you've paid principal plus the time of interest, if you just stopped the paying at some point the interest, right. So they say, "Oh, we've got the high defaults but really the person already paid out the principal."

Ralph Nader: That's a fine print contracts, right? Which I'm sure you've perused. They're like contract servitude, right?

Mehrsa Baradaran: Right. Yeah, and they stick, yeah.

Ralph Nader: And you can't sue the payday loan because there's probably an arbitration clause or …

Mehrsa Baradaran: That's right.

Ralph Nader: … or waiver of liability. So, let's take the next step. Why can't these people go to a credit union?

Mehrsa Baradaran: So the credit union was the fix since when they were started in the 1890s until I would say around the 1970s, when the credit unions also started pushing for deregulation. Credit unions today just aren't doing the heavy lifting for poor communities that they were initially meant to do. Credit unions have members with good incomes. In the '70s and '80s they pushed for their common bond membership criterion to be expanded, so anyone can join a credit union now, and therefore, they can now get any customer. So I don't think the credit unions should be left out of this game. I think those that are still trying. And there are about 200 credit unions in the country called Community Development Credit Unions that are still really active in doing some great work. But, as a body of institutions they're bigger, they are geared toward high-income customers. They're just not able to do this.

Ralph Nader: We're speaking with Professor Mehrsa Baradaran, associate professor of law at the University of Georgia School of Law. I think she will get tenure with the publication of this book, <u>How the Other Half Banks: Exclusion, Exploitation, and the Threat to Democracy.</u> Professor, let's go to redlining and the Community Reinvestment Act. Years ago, we really dug in more than anybody else on the Community Reinvestment Act, which we helped pass through Congress. John Brown who is our banking expert actually did maps of cities all over the country using HMDA data from the Department of Housing and Urban Affairs under the Community Reinvestment Act, and showed which banks were lending, which banks were not lending in violation of the act. What's the status? I don't know whether you mention this in your book, but before the crash of 2008 and '09, Citi-Group admitted proudly that it's lending in low-income neighborhoods was stable, people paid on time, and they made a moderate profit. And they wouldn't have done it without the Community Reinvestment Act. Do you want to explain all that to the public? Because I'm sure there are listeners here who reside in or next to redlined areas in cities and towns around the country.

Mehrsa Baradaran: That's right. I think there are some interesting things with the Community Reinvestment Act, and one is that redlining is coming back. I've started to see that the DOJ and CFPB studies showing that actually there's banks now that stopped redlining because the CRA and the Community Reinvestment Act, but are -- were starting to do it post crisis. So in other words, they're putting proverbial redlines around some places, where they just won't lend inside. And the thing with the CRA is, I'm glad the organization is very active in exposing some of these banks that aren't lending. But the CRA doesn't always have the teeth that it was designed to have. In other words, it only comes after the bank asks for a merger or needs something from its regulator. And so, it's a great law and it should be enforced, but it's not always enforced the way that is more protectionary of these communities. But, I will say the really hilarious thing about the CRA, I mean, hilarious in an ironic way is that, even though it really hasn't been as robust as it should have been, it got blamed for the financial crisis by the likes of Peter Wallison and the American Heritage Foundation where they say, "Oh, so it weren't for the CRA, there wouldn't be all this prime lending." So that myth has been debunked thoroughly one, because the timing doesn't match and two, neither do the products. Most subprime loans were not lent out of a CRA compliant banks. And so, it's a myth. But it's a really weird thing for people to blame, “Oh, it’s because we were lending to poor communities – that’s why the financial crisis.” But, it just comes back in these weird ways. But as you mentioned, these loans are getting repaid and the low-income communities are not the ones that took us into the financial crisis. It was the Wall Street demands for subprime loans.

Ralph Nader: Yes. I think you were referring to the American Enterprise …

Mehrsa Baradaran: That’s right, American Enterprise. That’s right.

Ralph Nader: … Institute, which Peter Wallison works in. And that’s an institute that blames government for everything including sunspots on the moon.

Mehrsa Baradaran: Right.

Ralph Nader: It’s just grotesque, as you say, to blame the Community Reinvestment Act, which doesn’t have any enforcement really. It just provides a rating to make a bank look better when it wants to get clearance for a merger with another bank or want some other regulatory benefit.

Mehrsa Baradaran: Right.

Ralph Nader: It did pull in billions of dollars into low-income areas and deserves to be used more by people and invoked more by local community and neighborhood groups. All right. Now, we come to your proposal. When I was a youngster and growing up in Connecticut, I remember people walking into a post office and putting down a few dollars into their savings account, because the post office had a postal banking service. And then the banks decided in the 1960s to lobby Congress to get rid of it, and it closed down in 1967, ’68, even though it’s a great success. Now, you want to revive it and you elaborate the reasons for it and the history behind it, so that tens of millions of people very accessible to post offices all over the country, 32, 000 post offices and branches, can have a secure banking service. Can you explain all that?

Mehrsa Baradaran: Sure. As we talked about all these banks leaving these low-income areas and creating these banking deserts, the post offices have remained. And as you, yeah, I'm glad that you remembered this. A lot of people don’t, but we -- the post office was in this business from 1910 until 1966. They offered small deposit accounts to *millions* of recent immigrants and low-income people. The reason why it was shut down in the 1960s, there were a lot of reasons, but one of the main reasons is that there were so many community banks at that time and credit unions and thrifts. So, every community had a bank and a post office, right? Three decades later they wouldn't have the bank. And post office bank accounts were already shutdown. So, what I propose is that we drive this postal banking function, and by the way, every other developed country has done this, some very, very successfully. So, you have the post office offering small deposits, check cashing, transmitting funds from one post office to another or even abroad. You have an ATM, a debit card, all of these services that people who don't have a bank account end up paying 10% of their salary to some check casher or payday lender. They could do it at those post office, and the post office will charge much less and get a revenue that would cover it, cost of services, because these services don't cost all that much. They're fairly risk free, and the post office could use the added revenue, because it really is the last public institution that we have. It really is working in communities that many, many businesses have left. I think this would be a boon to the post office and a boon for the poor.

Ralph Nader: And they have law overhead, because they've already got the post office. They don't have to pay rent, and they already provide money orders. Who's supporting you, this idea now? Tell us how this idea is spreading around the country, starting with the Inspector General of the US Postal Service.

Mehrsa Baradaran: Yeah, so the Inspector General is the regulator of the Post Office. And they have put out a white paper about a year ago supporting us. They can't make the Post Office do it. They've just recommended that the Post Office do it. And the post office regulatory commission, Ruth Goldway on that commission, has supported it. But the Postmaster General, this new one has been mostly silent. The union supports it. Several top policy makers, Senators have supported it. Senator Warren, Senator Brown, Sharrod Brown, and Senator Bernie Sanders have all come out in favor. And there's been some other groups across the country that have come out in favor. I think the public still needs to understand what it is. I get a lot of questions, like "Why should the post office do this?" or "Can the post office handle it?" And I actually think there's some really easy explanations once people understand the type of services required. The reason for the book is just to educate people on why this makes so much sense. I should say that I didn't start out wanting to protect the post office or wanting even to have a solution to this problem. As an academic, I just wanted to lay out, "Here's the problem and this is the history of why we've gotten there." But the post office solution made *so* much sense to me as I stumbled upon this history. And again I have no personal recollection of postal savings account, but it makes so much sense that I thought I really need to advocate for this in the last chapters because it deals with a lot of the problems in a very low cost way. And then on the other hand, it just saves an institution that no one is willing to let go. So far, the policy hasn't had a lot of legs but it also hasn't garnered a lot of opposition. Most people that hear about it think, "Yeah, that makes sense."

Ralph Nader: I think we would win the public opinion polls hands down. Number one, the banks don't want 30 million customers. Number two, they don't want anyone else to have them? Who's going to support that kind of nonsense? Just to show you what the banks are getting away with. The average fee for a bounced check in banks in the United States today is between $30 and $35 for one bounced check. And if they rig the sequence, they can make a lot of checks bounce, as you know. Do you know how much the Federal Reserve estimated it cost the banks to deal with the bounced check, including the cost of any fraud?

Mehrsa Baradaran: Probably zero. Very little.

Ralph Nader: It was a dollar and a half. These fees folks that you're being hit with -- you can hardly breathe in a bank without getting hit with a fee -- are costing tens of billions of your dollars every year. And what you might ask yourself, when you get your bank statement, you look at all these charges and penalties and fees and credit card shenanigans, ask yourself one question. Did I agree to this? No, you didn't agree to it. That's the tyranny of what Senator Elizabeth Warren calls the fine print, "mice print" trap door. And we've got to deal with the contracts here. Underneath all fraud are these fine print one-sided contracts. Keep saying to the banks, when you're charged like that, "Did I agree to this?" They're using penalties as a profit center, another argument for the postal savings bank. Spread the word, Professor Baradaran, and get your students to put out a proclamation of law students from all over America, demanding that this reform take place. You think it's going to require Congressional authority, or can the postal service do it on their own establishing the postal savings arm?

Mehrsa Baradaran: That's a good question. I think there's a lot they could do without legislation, and I think that's where the unions want to go. They could start offering simple transaction accounts without legislation. Probably to start taking deposits and giving loans, they would need legislation.

Ralph Nader: Well, that's good. As you know, it was a law students and a professor who started the Innocence Project, which has now spread and saved many prisoners on Death Row, who were convicted without evidence. How about University of Georgia Law School starting a mass movement among law students and faculty around the country for a postal savings bank?

Mehrsa Baradaran: That would be great. As we've seen students joining together can have a lot of power over some big, important organizations. So, I do hope that we can start something,or as soon as across the country or just the public. Just writing to their legislator or the Postmaster General. This is something that you don't have to be a law student to get behind. You can just be an informed citizen and really push with this.

Ralph Nader: If you write a thousand word article proposing a postal savings bank, send it to the Harvard Law of Record. That's the student newspaper for Harvard Law School where I was an editor many years ago. They will not only print it, but they will send it all over the country, not just on their website but to law schools. Can you do that?

Mehrsa Baradaran: That's wonderful, sure.

Ralph Nader: Okay. Go to hlrecord.org. And just send it to them directly, and I'll call them and give them a heads up. Let's start moving here. That's what the Ralph Nader Hour is all about, getting people active, showing how easy it is to turn this country around, if you reflect majority opinion with less than 1% of the people becoming reasonably active, similar to the number of hours they put in every year on any number of hobbies. Thank you very much Professor Mehrsa Baradaran, University of Georgia Law School professor and author of How the Other Half Banks Exclusion, Exploitation, and the Threat to Democracy. Professor Baradaran, can you give your contact information, so people who want to know more about the postal bank idea you have and any other questions they have about your book can do so?

Mehrsa Baradaran: Sure. Twitter is probably a great way. @mehrsabaradaran M-E-H-R-S-A-B-A-R-A-D-A-R-A-N and then you can email me. mehrsa@uga.edu

Ralph Nader: There you are. Thank you very much.

Mehrsa Baradaran: And thank you so much Mr. Nader, I've been following you for years and your example has motivated me immensely. So, I really appreciate all that you've done.

Ralph Nader: Thank you very much Mehrsa.

Mehrsa Baradaran: Thank *you* very much.

Ralph Nader: You're welcome.

Steve Skrovan: We've been talking to Professor Mehrsa Baradaran whose book, How the Other Half Banks is available from Harvard University press. We'll post a link on the Ralph Nader

Radio Hour dot com site. And, that's our show. I want to thank our guest today. Corporate Governance expert Robert Monks and Professor Mehrsa Baradaran, author of How the Other Half Banks. A transcript will be posted of this show on the ralphnaderradiohour.com. For Ralph's weekly blog go to nader.org. For more from Russell Mokhiber go to corporatecrimereporter.com. Remember to visit the country's only law museum, the American Museum of Tort Law in Winsted Connecticut. Go to tortmuseum.org. The producers of the Ralph Nader Radio Hour are Jimmy Lee Wirt and Matthew Marran. On behalf of David Feldman, I am Steve Skrovan. Talk to you next week Ralph.

Ralph Nader: Thank you Steve, and thank you David. Thank our guests and listeners. Get behind postal savings bank. You can make it happen. You've got post offices everywhere you are and branches as well. Thank you.

[Music]

David Feldman: From Pacifica, you've been listening to the Ralph Nader Radio Hour. www.nader.org.

Steve Skrovan: Special thanks to John Richard, Matthew Marran,

David Feldman: Our editor is Jimmy Lee Wirt.

Steve Skrovan: And thanks to our executive producer Alan Minsky.

David Feldman: And most importantly, special thanks to Mr. Ralph Nader, www.nader.org.

Steve Skrovan: Our theme music, "Stand Up Rise Up" is written and performed by Kemp Harris.

David Feldman: If you're listening to the Ralph Nader Radio Hour as a podcast and would like to listen to it as a broadcast…

Steve Skrovan: Call your local radio station and say, "I want the Ralph Nader Radio Hour."

David Feldman: He's Steve Skrovan.

Steve Skrovan: I'm Steve Skrovan. He's David Feldman. Until next time.