Wall Street, class war and the criminality of capitalism

Netflix airs docudrama on the rise and fall of Bernie Madoff: Part one

Barry Grey
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Netflix is currently streaming a four-part docudrama, *Madoff: The Monster of Wall Street*, tracing the rise and fall of Bernie Madoff, the multi-millionaire stock trader and hedge fund operator whose financial empire collapsed in December of 2008 after its founder-owner admitted to authorities that he was running the world's biggest Ponzi scheme.

The recent demise of the cryptocurrency trading platform FTX and the expanding international financial crisis triggered by the US government bailout of Silicon Valley Bank makes all the more timely a review of the Madoff scandal. These are episodes in the intensifying crisis of American and world capitalism that reveal the pervasive parasitism and criminality of the profit system.

Bernard L. Madoff Investment Securities LLC included a secretive investment advisory business whose market value was estimated at $64.8 billion when, on December 11, 2008, the 70-year-old Wall Street "legend" turned himself in to the FBI and informed the agents that he had been operating a Ponzi scheme for decades. The billions he received from wealthy clients and numerous "feeder funds" were never actually invested in stocks and bonds. Instead, he put the money into a business account at JPMorgan Chase Bank and paid out 10-15 percent annual returns year after year, regardless of the gyrations in the markets, from the money he received from new clients—the basic modus operandi of a Ponzi scheme.

Many major financial institutions refused to deal with Madoff, and his business was repeatedly examined by federal regulators in response to warnings from industry insiders that his operations were fraudulent. But the Securities and Exchange Commission (SEC), under Democratic and Republican administrations alike, repeatedly gave him a clean bill of health, having failed to conduct even the most rudimentary investigation, lending credibility to his fraud and enabling it to expand. A one-time chair of NASDAQ and board member of numerous industry oversight organizations, Madoff boasted of his close relations with top SEC officials.

His clients included European royalty, major international banks and prominent members of America's rich and famous, including J. Ezra Merkin, the chairman of General Motors Acceptance Corporation; Fred Wilpon, the principal owner of the New York Mets baseball team; Frank Lautenberg, the multi-millionaire Democratic senator from New Jersey; Mortimer Zuckerman, the owner of the *New York Daily News*; and Hollywood film maker Steven Spielberg. Then-New York Attorney General Eliot Spitzer, whose family firm invested with Madoff, refused to look into detailed allegations of fraud sent to him by whistle-blower Harry Markopolos.

Madoff was a major donor to the Democratic Party, including at least $100,000 to the Democratic Senatorial Campaign Committee. One of his beneficiaries was the current Senate majority leader Charles Schumer, known as the "Senator from Wall Street."

A Ponzi scheme can be sustained as long as new money keeps rolling in. But the world economic and financial crisis precipitated by the collapse of the US subprime mortgage market and the resultant bankruptcy of Lehman Brothers in September of 2008 made that impossible. By the fall of 2008, with the market crashing and major banks and businesses teetering or failing, Madoff's clients were demanding billions in redemptions and the Wall Street "wizard" had run out of funds.

Madoff pleaded guilty to 11 federal felony counts in March of 2009. In July of the same year he was sentenced to 150 years in prison. He died in prison in April of 2021, of natural causes, at the age of 82.

The Netflix documentary is worth watching, providing as it does a fairly detailed and interesting account of Madoff's career. It is built around interviews with former Madoff employees, FBI officials involved in his case, Wall Street insiders, smaller investors who lost everything, and former government officials. One of the latter is David Kotz, who, as SEC inspector general, issued a devastating report in 2009 on the agency's cover-up of Madoff's criminal enterprise.

Coverup by federal regulators

Most revealing are interviews with Harry Markopolos, a former Wall Street executive who repeatedly submitted reports to the SEC beginning in 1999 providing evidence that Madoff was operating a Ponzi scheme. The four-part series effectively exposes the complicity of the big banks, particularly JPMorgan Chase, and the government and the media in Madoff's fraud.

But the documentary carefully avoids drawing any conclusions about the nature of American capitalism and the profit system itself. What produced Madoff, the fundamental social and class issues involved, remains in the shade.

This is what the *World Socialist Web Site* wrote just days after Madoff's arrest:

> What is being widely reported as the largest financial fraud in history goes far deeper and extends far wider than the machinations of a single broker and fund manager. It marks a new stage in the disintegration of the US and world financial system—the convulsive outcome of decades in which a vast accumulation of personal wealth at the top has been achieved on the basis of semi-criminal forms of financial manipulation unrelated to production and the creation of real value. To a great

extent, the entire economy has been transformed into a giant Ponzi scheme. The collapse of trillions in paper assets will assume ever more malignant forms.

Madoff's fraud was neither complicated nor difficult to detect. As one narrator in the documentary explains:

> Bernie Madoff's fraud was not a complex fraud. It involved simply taking people's money, telling them he was going to invest their money, and he never did.
>
> So to continue the Ponzi scheme and perpetrate this fraud he had a handful of soldiers at the investment advisory side of the business create fake trades. George Perez and Jerry O'Hara had computer programs that took the information from the fake trades and put it on a customer statement, so that when the customer got it, it looked real.

Despite Madoff's ties to government regulators and global investors, there was a stench of fraud surrounding his business. In the summer of 1987, at the height of the bull market that followed Reagan's smashing of the PATCO air traffic controllers' strike in 1981 and the ensuing wave of union-busting, wage-cutting and mass layoffs, Madoff moved his business to the high-rent "Lipstick building" in the midtown Manhattan business district. His legal stock trading business was on the 19th floor, but none of the employees on that side of the business, including his brother Peter and his sons Mark and Andrew, were allowed to visit his investment advisory (hedge fund) business on the 17th floor.

Madoff refused to allow his hedge fund clients to access their accounts electronically. He never even registered the business with the SEC, as required by law, until 2006.

In early May of 2001, the securities industry journal *MAR/Hedge* published an article by Michael Ocrant headlined "Madoff tops charts; skeptics ask how." Noting the astonishing consistency of Madoff's hedge fund returns over decades, whatever the gyrations on the markets, Ocrant wrote:

> Skeptics who express a mixture of amazement, fascination and curiosity about [Madoff's] program wonder, first, about the relative complete lack of volatility in the reported monthly returns. But among other things, they also marvel at the seemingly astonishing ability to time the market and move to cash in the underlying securities before market conditions turn negative, and the related ability to buy and sell the underlying stocks without noticeably affecting the market.

Another article, raising similar doubts, appeared only days later in the more widely read publication *Barron's*. Titled "Don't Ask, Don't Tell: Bernie Madoff Attracts Skeptics in 2001," it was authored by Erin Arvedlund, who appears prominently in the Netflix documentary.

Yet none of the major financial dailies, weeklies or monthlies—the *Wall Street Journal*, the *Financial Times*, the *Economist*, *Forbes*—pursued the questions raised about the legitimacy of Madoff's operations. To the extent the latter two publications wrote about Madoff, they touted him as a visionary and a pioneer of finance.

The third episode in the Netflix series is largely taken up with interviews with Harry Markopolos. Beginning in 1999 and through 2006, Markopolos repeatedly alerted the SEC to the Madoff fraud and submitted detailed analyses demonstrating the impossibility of Madoff obtaining his reported returns on a legitimate and legal basis. No genuine investigation was carried out.

In the fall of 2005, Markopolos sent the SEC a lengthy report listing 30 red flags in relation to Madoff's hedge fund. The report was titled, "The World's Biggest Hedge Fund is a Fraud." One of the red flags was the fact that the volume of options Madoff claimed to be trading was far in excess of the actual number of options traded on the Chicago options exchange.

A narrator in the documentary explains:

> One of the obvious red flags was the lack of a counterparty. For every trade there is a partner or counterparty. And no one was able to find the counterparties for Madoff's trades…
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> Every time a trade is done there is a record of it at this independent outside entity called the DTC. It's a way for regulators or others to check to see if the trades are actually happening.

In a meeting in early 2006 with the SEC in New York, Madoff was obliged to give the examiners his DTC account number. At that point, according to the Netflix narrative, Madoff was convinced that his long-running fraud would be exposed. He fully expected after that Friday meeting to be contacted on Monday and brought in for further questioning and eventual prosecution. But nothing happened.

In 2009, while awaiting sentencing, Madoff met with SEC Inspector General Kotz, who was investigating the failure of regulators to expose his Ponzi scheme. Madoff told Kotz:

> I was astonished. They never even looked at my stock records. If investigators had checked with the Depository Trust Company, a central securities depository, it would've been easy for them to see. If you're looking at a Ponzi scheme, it's the first thing you do.

As the docudrama makes clear, none of the major players who enabled Madoff—bankers, hedge fund operators who channeled investors' money into Madoff's business, regulators, credit rating agencies—were prosecuted or jailed. Four long-time Madoff employees who worked on the 17th floor hedge fund side of the business were tried, convicted and sentenced to jail terms. Madoff's brother, Peter, pleaded guilty to lesser charges and was sentenced to 10 years. Frank DiPascali, who ran the Ponzi scheme on a day-to-day basis, turned state's evidence. He died of cancer before he was sentenced.

Bankers "too big to jail"

Particularly egregious was the role of JPMorgan Chase, Madoff's long-time bank. The biggest US bank by assets, JPMorgan was, and still is, headed by Jamie Dimon, known in the 2000s as "Obama's favorite banker."

Madoff's business account at JPMorgan swelled to many billions of dollars in the years before his demise. He used it to funnel new money coming in to pay returns to his investment advisory clients. In the final years, he illegally moved hundreds of millions from this side of his operation to prop up his brokerage business, which was faltering, laundering the money through British banks.

JPMorgan never filed a single "Suspicious Activity Report" on the Madoff account. Banks file such reports with federal regulators on movements of money greater than $10,000 that are deemed potentially irregular.

According to a civil suit filed against the bank some 18 months before Madoff's Ponzi scheme was exposed, a senior risk officer at JPMorgan said: "For whatever it's worth, I am sitting at lunch with Matt Zames, who just told me that there is a well-known cloud over the head of Madoff and that his returns are speculated to be part of a Ponzi scheme." Zames was subsequently promoted to the post of co-chief operating officer at the bank.

Interviewed from prison by the *Financial Times* in 2011, Madoff said:

> JPMorgan doesn't have a chance in hell of not coming up with a big settlement. There were people at the bank who knew what was going on.

In 2014, the Obama administration settled a criminal complaint against JPMorgan with a fine and a "deferred prosecution" agreement, letting Dimon and company off the hook for their role in the fraud. This was in line with the policy announced the previous year by then-Attorney General Eric Holder in testimony before the Senate. Holder explained that the federal government chose not to prosecute top bankers because "if we do bring a criminal charge, it will have a negative impact on the national economy, perhaps the world economy."

The big bankers, in other words, were "too big to jail."

This, the WSWS explained, was an admission that the Wall Street parasites were above the law:

> What prevails in America is not democracy, but a revival of what in former epochs was called aristocratic privilege. Under feudalism, the aristocracy enjoyed immunity from the laws that applied to ordinary people. Today's financial aristocracy is, in practice, similarly immunized.
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> This is a country where two million people are behind bars. Every day people are hauled into court and thrown in jail for committing crimes whose principal cause is economic destitution. American society is remorseless in its treatment of the poor, but infinitely forgiving when it comes to the atrocities of the rich.

It is estimated that JPMorgan made $483 million off of Madoff's business account.

To be continued