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## **A Toxic Legacy**

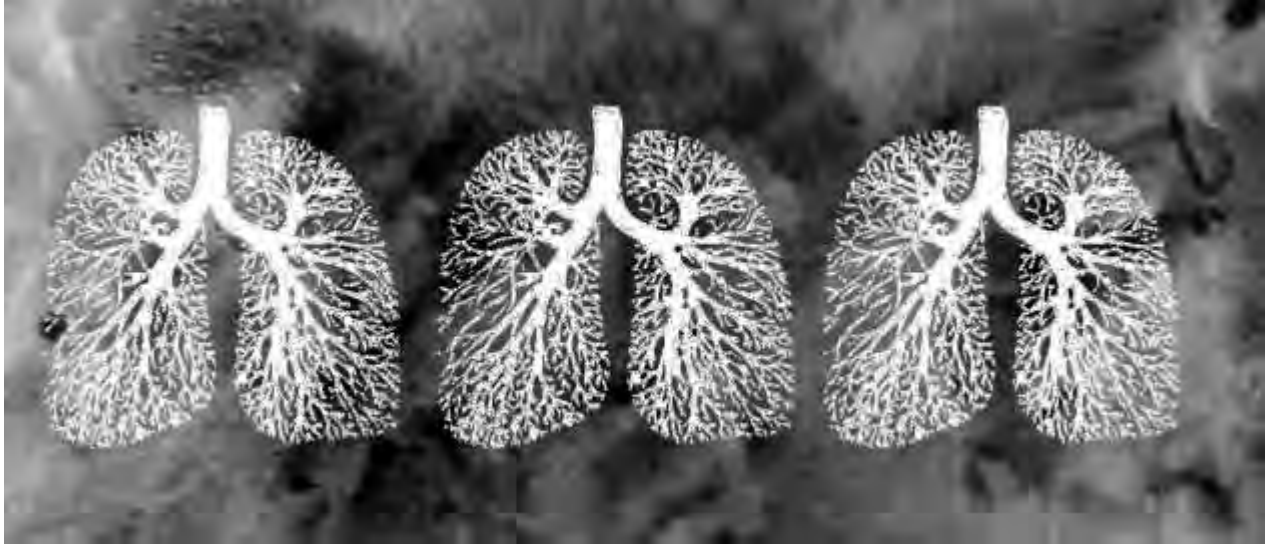


Photo by [Karen Tian](#).

By [Jack Newsham](#)

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The sun had just come out when graduation ceremonies began on Old Campus on a wet May morning in 1996. While a huge labor demonstration on the New Haven Green shook some students and their families, little of the clamor made it through Phelps Gate.

The Yale Concert Band played Wagner and Berlioz as graduates proceeded through the gates of Old Campus. Before students returned to their colleges and professional schools to receive their degrees, University President Richard Levin presented eight honorary diplomas to artists, doctors and innovators who had been selected from hundreds of candidates.

Among them was Stephan Schmidheiny.

“You have helped to create an attainable vision of a global economy based on sustainable, ecologically sound development,” read Levin, according to the ceremonial citation.

Seventeen years later, this June, in a courtroom in Italy, the atmosphere was tense as the judges filed into the courtroom. Some wore notes of protest clipped to their shirts, while others draped themselves in Italian flags emblazoned with a demand for justice.

Absent that day, as he had been at each of the dozens of court dates that preceded this one, was Stephan Schmidheiny.

“In the name of the Italian people, the Turin court of appeal issues its sentence,” the tribunal’s presiding justice read from the verdict. “This court finds the defendant, Stephan Schmidheiny, guilty.”

Schmidheiny probably wasn’t a familiar face to most Yale students. The Swiss businessman — 48 when he walked across the stage at Yale, 65 today — was well-known in the budding field of sustainable development from his forestry operations in Latin America and his advocacy for “eco-efficient” business practices, but archival searches indicate he had only visited Yale twice.

“He’s not shy, but he’s always been low-profile, definitely,” said Sean McKaughan, who chairs the board of the Panama-based Avina Foundation, a group founded by Schmidheiny that funds sustainable development projects in Latin America. Avina is one of his main philanthropic endeavors, and the billion-dollar endowment he set up in 2003 to support it led Forbes to declare him “the Bill Gates of Switzerland.”

Schmidheiny’s low profile elevated in 1992. That year, in anticipation of the United Nations “Earth Summit” to be held in Rio de Janeiro where he would be the voice of business and industry, Schmidheiny authored *Changing Course*, a book that outlined his belief that environmentally conscious business practices were not only feasible, but were an opportunity for growth and profit. In the book’s final pages, chairmen and CEOs of the world’s largest corporations co-signed a letter announcing their intention to “chang[e] course toward our common future.”

He was widely seen as someone who “had walked the talk,” according to William K. Reilly, who headed the Environmental Protection Agency. Reilly later introduced Schmidheiny’s name into consideration for an honorary degree while serving on the Yale board of trustees.

“He’s a very progressive man, and personally, he’s a very sympathetic man,” said Reilly. His book *Changing Course*, Reilly added, “was a key document that was widely cited going into Rio in 1992.”

Unstated in Schmidheiny’s book, however, was how he had personally changed course.

Before he put aside a billion dollars to promote sustainable development, before he received his honorary degree from Yale, before he spoke to the U.N. or bought his first tract of forest, Schmidheiny led the Swiss Eternit Group, one of the world’s largest producers of asbestos cement.

As the Italian justice system tells it, changing course wasn’t enough.

As president of the Swiss Eternit Group, Schmidheiny was responsible for several asbestos cement factories in northern Italy and Switzerland from 1976 until the late 1980s. In 2001, an Italian public prosecutor began investigating Schmidheiny after learning of the deaths of Italian workers who worked for Eternit in Switzerland.

In 2009, Schmidheiny was ordered to stand trial. With the support of unions and activists, the investigation shifted to focus on four Eternit plants in Italy. Citing internal company documents and medical reports, the prosecution alleged that Schmidheiny and other

executives knew that breathing asbestos could lead to disease and death, but downplayed those risks to the public and failed to protect their employees.

It wasn't just the employees who were harmed by asbestos, either. Epidemiological studies of Casale Monferrato, where Eternit's largest Italian plant was located, showed that residents didn't have to work at the Eternit plant to get sick. Even the wives of some asbestos workers contracted diseases like mesothelioma — a virtually untreatable cancer of the chest cavity — simply from washing their husbands' clothes. Today, the vast majority of those dying of cancer in Casale never worked with asbestos.

The entire city had been contaminated.

In February 2012, Schmidheiny and a co-defendant were sentenced to 16 years in prison and nearly 90 million euros in environmental and medical damages. Their crimes, the court found, included causing an “intentional disaster.”

A year later, in June, an appellate tribunal imposed millions of euros in additional penalties and added two years to Schmidheiny's sentence. (His co-defendant died before the appeal was filed.)

Schmidheiny, for his part, has maintained his innocence and has promised that he will “never go to an Italian prison.” While he did not agree to speak for this article, press releases issued by his representatives have referred to the verdict as “totally incomprehensible” and “scandalous,” and his defense team has announced that they will appeal the verdict to Italy's highest court.

### **changing course**

The story of Schmidheiny's trial, however — and his philanthropy, his business career, and all the rest — isn't just about what happened in a few factories in the 1970s and '80s. Both Schmidheiny's defenders and critics say that the trial is about an entire industry.

For nearly a century, asbestos could be found in everything. The fibrous mineral was easy to mine and cheap to process, and it lent its lightness and durability to hundreds of everyday products — including Eternit's cement.

“It's a marvelous mineral,” said Geoffrey McGovern, a researcher at RAND who has written about asbestos litigation and bankruptcy in the United States. “You can bend it, you can weave it, you can wrap it around things.” The only problem is that — with enough time and exposure — asbestos kills people.

As asbestos came into widespread use, though, few knew of its fatal consequences. Today, it's widely known that prolonged breathing of asbestos can result in painful and sometimes fatal diseases like lung cancer and mesothelioma. Globally, about 100,000 people die from them every year.

In Schmidheiny's telling, though, when he took the reins of the Swiss Eternit Group in 1976 at age 29, the company's executives believed that asbestos could be used safely. In a 2008 article in the Swiss magazine *Die Weltwoche*, Schmidheiny recalled that his father, who preceded him as president of the Swiss Eternit Group, had believed as much himself, and that

he cursed Irving Selikoff — an American doctor whose studies on asbestos diseases received global attention — and wrote him off as a quack.

Though Schmidheiny was more concerned than his father, having himself worked in an Eternit plant in Brazil, he said he believed that scientific evidence suggested that controlled use of asbestos was possible.

“At that time, I had no intention of replacing asbestos in my sphere of influence,” he said, according to *Die Weltwoche*.

By the end of his first year as chief executive, however, he has said he became convinced that the use of asbestos was unsustainable. He announced that Eternit would attempt to develop a replacement fiber for asbestos for use in its fiber cement. At the same time, Schmidheiny said, the Swiss Eternit Group would invest tens of millions of dollars into increasing safety at its Italian factories.

“You’re a 29-year-old that suddenly is telling the board that you’re going get out of the asbestos industry,” said McKaughan. “To a lot of businesspeople, the way that Stephan responded was seen as a model of social responsibility.”

As the story goes, Schmidheiny succeeded in reforming Eternit’s production methods by the 1980s. While the company still used asbestos, it cut back on asbestos use where possible. But between Italy’s weak construction sector and the inability of Eternit’s new asbestos-free products to compete with cheaper asbestos products, the company tanked. The Italian Eternit operation went bankrupt in 1986.

In the meantime, Schmidheiny got involved with other ventures. He had already purchased his first tract of forest in Chile four years earlier, and began to build a new company around forestry and wood products. In 1984, he established FUNDES, a philanthropy to support small businesses. He served on several corporate boards throughout the 1980s, and starting in 1988, began selling off the Swiss Eternit Group’s remaining factories. In 2006, he established a fund to make compensation payments to Eternit workers sickened by asbestos.

“One of his proudest life achievements was to rid his family of asbestos,” said Reilly, the Yale trustee.

And so Stephan Schmidheiny entered a new phase of his life. Embracing a lifelong concern for the environment, he advised the U.N., championed “eco-efficiency,” and founded the Avina Foundation. He spoke to industrialists and students alike, visiting Duke, Columbia, and Harvard — and, on a few occasions, Yale.

### **Victory for victims**

But two courts in Turin declared that Schmidheiny was more aware of the danger of asbestos than he would ever admit. Alberto Ogge, the chief justice of the appellate court, even compared Schmidheiny’s culpability in the deaths of Eternit’s workers to Hitler’s responsibility for the Holocaust.

In Britain, the epidemiologist Richard Doll “exhibited a clear association [between asbestos and lung cancer] in 1955,” said Benedetto Terracini, an epidemiologist at the University of

Turin who testified for the prosecution and helped conduct several studies of Casale Monferrato in the 1980s and 1990s. “If we want to fix a date in which persons of the industries should have known, I would say early 1960s,” he said.

The prosecution claimed that internal records make the case even clearer. They cited company documents from a 1976 meeting of European asbestos company executives, including Schmidheiny, in which lung cancer and mesothelioma were acknowledged to result from working with asbestos.

“In most European countries, you have to adapt your safety standards to the level of technical knowledge,” said Laurent Vogel, a lawyer and a researcher for the European Trade Union Institute who has written about the trial. “The level of harm could have been reduced significantly.”

Barry Castleman, an American asbestos expert who testified for the prosecution, said he thought Schmidheiny’s actions were not just illegal under Italian law, but morally offensive.

“They didn’t go through the little bit of trouble to at least say, ‘Look, we’re going to provide you with work clothes, we’re going to launder them at the plant and provide you separate lockers,’” said Castleman. While European asbestos companies were not under the same legal obligation to warn their employees as American companies, Castleman said, they still bore a moral responsibility.

“They were mum because they were cheap and no one was making them spend the dollar,” he said.

The trial began in late 2009. For the next 26 months, dozens of researchers, politicians, and former asbestos workers would take the stand. The trial’s conclusion was broadcast around the world. As the verdict was read, Schmidheiny’s lawyers grimaced and kneaded their faces.

Laurie Kazan-Allen, the coordinator of the International Ban Asbestos Secretariat, was among those Italians and international activists who cheered the verdict. During the trial, her group published a book of monographs on various aspects of Eternit’s history and environmental damage. It features a cartoon of a seven-headed hydra of Eternit executives perched atop a blood-drenched Earth.

“It’s inspiring, amazing, just extraordinary,” she said of the verdict. “Next to the Renaissance, it’s one of the most important things that Italy has ever done.”

Kazan-Allen said that other prosecutors have been watching the trial in Turin closely. She imagines other asbestos producers were, too.

“They would have to be deaf, dumb, and blind not to be worried,” she said.

### **A bizarre verdict**

But on the other side of the courtroom, Schmidheiny’s defenders speak of a different and chilling effect. Columns and editorials in Swiss newspapers have declared Italy an investment risk and called the verdict “class warfare.”

For Schmidheiny's defenders, the trial is about scapegoating one man for the sins of an entire industry, many of whose titans are dead. An open letter signed by more than 100 Latin American businessmen has referred to the proceedings in Italy as a "flawed political trial."

"Most of the countries where asbestos processing is prohibited have found solutions to deal with the casualties," wrote Peter Schurmann, a spokesman for Schmidheiny, in an email. "Those states have set up programs to compensate affected people and to safely dispose of asbestos. Italy is the only country which tries to solve the tragedy by a criminal lawsuit."

Indeed, one of the biggest reasons the verdict has disturbed so many is the downright strangeness of the Italian legal system. For starters, Schmidheiny was tried in absentia, a rarity in most of Europe and illegal in most circumstances in the United States. Then there's the fact that Schmidheiny was tried before a criminal court for something American justice solves these days with negotiated payouts, or less frequently, lawsuits.

"The European way of thinking about these things is fundamentally different from American law," said McGovern, the RAND scholar.

Except for a single federal prosecution of asbestos executives that ended in a not-guilty verdict, said McGovern, "within the realm of asbestos, it's purely a civil case for monetary damages."

The American system for processing asbestos claims may be uniquely efficient, however. In Italy, "basically, there's no legal shield, no way to get compensation" from one's employer for asbestos-related disease, according to Giovanni Comandé, a professor of comparative law at the Scuola Superiore Sant'Anna.

In Italy, however, there's precedent for prosecution of asbestos manufacturers, said Vogel, who added that Italian prosecutors have filed dozens of such cases against them — to mixed verdicts, none of which came close to that issued in Turin — since the 1980s. Still, he said, public and political pressure played a significant role.

"In most other European countries, it would have been possible to prosecute the managers and owners of Eternit," said Vogel. "The point is that there was no willingness from the public prosecution officials."

### **A question of honor**

Now, an Italian advocacy group is asking Yale to revoke Schmidheiny's honorary doctorate. The Association for Asbestos Victims' Families (AFeVA), an organization founded by residents of Casale Monferrato and unionized Eternit workers, has begun circulating a petition declaring that "there is no 'honor' in the conduct of Mr. Stephan Schmidheiny."

Yale has never stripped any recipient of an honorary degree, and few universities have ever done so. Since 2007, three universities revoked degrees they awarded in the 1980s to Robert Mugabe, the dictatorial leader of Zimbabwe. At the outbreak of World War I, Brown and the University of Pennsylvania revoked degrees they awarded to the Kaiser. They've been revoked for less, though; just last year, the trustees of Tufts University stripped Lance Armstrong of his honorary diploma after the seven-time Tour de France winner was found to have used performance-enhancing drugs.

Yale, so far, is standing by its decision.

“The decision to award this degree was made by a committee that considered Mr. Schmidheiny’s full record as a philanthropist who used his wealth to fund sustainable development in Latin America and elsewhere, and a path-breaking international advocate of change in the way businesses address environmental sustainability, as well as a businessman who inherited and dismantled a decades-old family asbestos processing concern,” University spokesman Tom Conroy said in an email. Referring to the pending appeal, he added, “Yale does not believe that the ongoing legal proceedings in Italy provide cause to reconsider the judgment made by the committee in 1996.”

Though few faculty or honorary degree committee members remembered Schmidheiny, and deferred to the University for comment, Reilly said he believed the degree was still merited.

“He’s a very self-possessed, thoughtful, intelligent guy,” Reilly said. “A statesman, not a malefactor.” Having traveled to Italy several times and witnessed widespread open burnings of garbage — a crime in Italy — go unpunished, Reilly said that he “was not an admirer of Italian environmental performance” and was deeply skeptical of the charges brought against Schmidheiny.

“I’m an American lawyer. I’d want to see if it stands up to scrutiny under American jurisprudence,” said Reilly. “To react *prima facie* to an Italian justice determination of criminal responsibility for something that happened 20 or 30 years ago would never be the basis for a revocation decision.”

Schmidheiny, for his part, has retired, and is said to by those who know him to be confident that the verdict will be overturned by Italy’s supreme court or by the European Court of Human Rights. Even if both courts were to let the present verdict stand, though, lengthy case backlogs mean that wouldn’t be known for years.

“Mr. Schmidheiny is doing fine and enjoying life as a retired person,” his representative wrote in an email. “He once said that he enjoys not being on stage anymore but rather sitting in among the audience where he can watch the world theatre, applaud the performers or leave at the interlude.”

But to Stephan Schmidheiny’s accusers, the show isn’t over. And he still has a role to play.