

## **Avenues for Further Inquiry**

### **A Companion Note to *Fraud: An American History from Barnum to Madoff***

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As made clear by the bibliographic essay and wider bibliography on this site, there are scores of historical works that engage directly with the phenomena of economic misrepresentation and business fraud in the United States. Yet after completing *Fraud*, I remain impressed by the large number of questions and topics that call out for further investigation. This essay highlights many promising research avenues, some of which cut across the book's four chronological parts, and some of which are rooted more clearly in specific historical moments and places. One section emphasizes historical research agendas that would engage with debates across the social sciences about the bases of effective regulatory governance. This last domain strikes me as fertile ground for historians interested in the dynamics of policy-making, and especially regulatory policy-making.<sup>1</sup> Although my focus is on the American experience, I conclude with suggestions for studying American business fraud in global context and for exploring the historical record of business fraud and economic duplicity in other societies.

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<sup>1</sup> Elizabeth Brake and I have written on the potential contribution of historical expertise to regulatory decision-making. See our essay, "[Historical Perspective and Better Regulatory Governance: An Agenda for Institutional Reform](#)," *Regulation & Governance* 8 (2014): 222-45 (first published online, 2012)

## ***Case Studies of Fraud Episodes and Dodgy Businesses/Entrepreneurs***

As I stress in the note, “A Profusion of Microhistories: The Historiography of American Business Fraud,” there are numerous books and articles that focus on a single entrepreneur or business confronting serious fraud allegations, or the taking hold of deceptive practices throughout a specific economic sector during a given historical moment. Nonetheless, many of these individuals and episodes might warrant another look, with closer attention to the kind of analytical questions that I raise in *Fraud* and throughout this website. There are also many, many fraud episodes that have received little attention from historians, and that might structure compelling and important historical inquiry. The angles of vision here might engage with such issues as:

- the nature and socio-economic costs of economic deception;
- cultural attitudes toward it and its practitioners;
- the complexities of defining illegal misrepresentation and fraud;
- the challenges of inoculating investors, consumers, and business-owners against such duplicity by teaching them how to identify it;
- the obstacles to prosecuting and punishing those firms that engage in business fraud; and
- the impact of specific fraud scandals on shifts in anti-fraud policy.

Here I will highlight just a handful of intriguing contexts that could easily sustain more significant historical examinations. One such example would be the late 1830s fraud scandal that enveloped the failed Philadelphia private banker, patent medicine manufacturer, and theorist of education for manual laborers, Timothy W. Dyott. This episode raises issues about the relationship between financial difficulties and the turn to deception and misrepresentation, as the impact of the financial panics of 1837 and 1839 pressed at Dyott’s solvency, leading to the

actions that occasioned a criminal fraud prosecution. The Dyott case also reveals important evidence about the circumstances that prompt successful criminal prosecution of fraud, as well as the enduring limits on punishment in such cases. As a result of extensive coverage in the American press and court cases that presented detailed fact-finding, this potential case study could draw on an extensive body of available evidence.

Among serial promoters of fraud who demonstrated particular ingenuity across long careers, a number of individuals beckon for biographical treatment. These include Sarah Howe, whose affinity investment frauds fleeced unmarried working women in postbellum Boston and Chicago; George Graham Rice and Edgar G. Lewis, whose mixtures of legitimate enterprises and forms of imposition receive a good bit of attention in Chapter Six of *Fraud*; David Ratke, a New York-based purveyor of successive mail-order consumer frauds in the 1950s and 1960s, who ran afoul of the Federal Trade Commission, the BBB network, and the New York state attorney general's office; and Glenn W. Turner, whose multi-level marketing schemes eventually led to high-profile civil and criminal actions in the 1970s, at both the state and federal level.

The post-1975 period beckons for all sorts of historical case studies. The emergence of inexpensive long-distance phone networks, and then the creation of the internet, generated important new commercial platforms for consumer frauds and deceptive financial promotions. This era also witnessed significant pull-backs in regulatory authority and enforcement budgets, justified through the lauding of market dynamics to police misrepresentation while encouraging societally beneficial innovation. The result, as I argue in the last chapter of *Fraud*, was a dramatic increase in the scale and scope of economic deception and outright fraud, as well as its growing salience within large corporations.

We can, as a result of these developments, expect to see many historical investigations of fraud interludes in the late twentieth and early twenty-first century. Among the more obvious candidates:

- the explosion of telemarketing consumer frauds in the 1980s;
- government reimbursement fraud scandals in defense and healthcare during the 1980s and 1990s and the related emergence of corporate ethics offices;
- the specific corporate accounting scandals during the stock boom of the late 1990s and early 2000s (Enron, which has already received attention in several books by journalists, but also WorldCom, Tyco, Aldephia, Sunbeam, etc.);
- the many financial firms embroiled in the mortgage debacle that led to the global financial crisis of the 2000s;
- allegations of fraud by for-profit universities during the 2000s and 2010s;
- any of several affinity investment frauds over the last four decades (Bernard Madoff's scheme has received extraordinary attention, but not so a slew of companion frauds);
- the emergence of predatory lending scams; and
- the emergence of greenwashing, or falsified claims of environmental performance, as with the Volkswagen emission scandal of 2015.

### ***Cultural Depictions of Business Fraud***

Throughout *Fraud*, I engage with portrayals of swindling, swindlers, and suckers, through all the relevant media in a given era, and in both fictional treatments and through works of non-fiction. But one could envisage much more detailed assessment of specific authors, genres, and time periods, testing, for example, the staying power of cultural tropes about the

deserving or undeserving dupes, silent or indignant suckers, admirable or contemptible fraudsters, and bumbling or effective anti-fraud regulators. The potential scope for research here is enormous, given the breadth of commentary about deception within American capitalism, in fiction and non-fiction, through prose, dramatic performance, audio, and film.

One more circumscribed approach might focus on fictional treatments of economic duplicity that attracted a sufficiently large audience to prompt remakes in different genres. Thus the best-selling early twentieth-century short stories and novels that George Randolph Chester wrote about the fictional business grifter Get-Rick-Quick Wallingford inspired both a successful Broadway play and a 1921 film; this series deserves analysis. So too does the Green Hornet franchise, which recounted adventures of an anti-racket vigilante, first through a radio show in the 1930s and 1940s, then through a comic strip, and then a television series. (The Internet Archive maintains a [Green Hornet page](#) includes audio files for over fifty episodes of the radio show.)

Another promising avenue, given the centrality of religious belief within American society, would retrace evolving theological interpretations of business fraud. I explore these interpretations occasionally in *Fraud* (the evangelical critique of Barnum; the invocation of Protestant ethics in the mid-twentieth-century critique of deception by FTC Commissions and BBB leaders). But I did not pursue more systematic investigation of how religious leaders made sense of fraud scandals, or less dramatic forms of misrepresentation within the American economy. Sermons that reference fraud scandals would offer a potential lens on this issue; so too would the significant religious literature on business ethics.

Educational and documentary radio shows, podcasts, and films furnish another rich source of social commentary and cultural reflection on business fraud. Anti-fraud radio spots

date from the 1930s, most produced by local Better Business Bureaus. One readily available collection made available by the Internet Archive presents five digitized episodes of [“Hello Sucker,”](#) a regular radio show produced by the Chicago Better Business Bureau in the early 1950s. Anti-fraud educational filmstrips and films became increasingly common during the 1960s, and provide excellent evidence about evolving techniques of inoculating consumers and investors against the wiles of manipulative marketers. Documentary films that focus on business fraud have emerged only in the last few decades, including such works as “Enron: The Smartest Guys in the Room” (2005), a number of fraud-related investigations by the PBS show, *Frontline*, the recent documentary on the controversies surrounding the multi-level marketing company, Herbalife, “Betting on Zero” (2017), and the postmortems on consumer and financial scams produced by the MSNBC series, [American Greed](#). All of these works offer evidence about prevailing meta-narratives that account for the phenomenon of business fraud.

The most important avenues to explore, however, likely involve literary works of fiction and popular films and television dramas that reach the widest audiences. The former would include Sara Paretsky’s hard-boiled detective novels, whose protagonist, V. I. Warshawski, specializes in fraud investigations. The latter would include television series such as *White Collar* (which intriguing focused far more on instances of forgery than investment frauds) and cinematic depictions of financial depredations on Wall Street, including *Boiler Room*, *The Wolf of Wall Street*, and *The Big Short*.

### ***Jurisdictional Studies of Fraud Policing using Local and State Criminal Process***

Throughout *Fraud*, I present evidence about the capacity of Americans to use law to constrain deceptive business practices. But that evidence, for the most part, does not rest on archival examinations of local court records and the day to day operations of administrative

regulation. We could use many more studies of anti-fraud law in specific jurisdictions, especially at the level of police departments, administrative agencies, and trial courts, in both urban and rural contexts. Only through engagement with local criminal court records, for example, can we clarify whether the nineteenth-century statistics from the Baltimore police and the Michigan Attorney General's office, which I cite in Chapter Three of *Fraud*, are representative of other locales.

Aside from general studies of anti-fraud law in action, there are many more focused case studies that stand out as deserving close attention. During the early twentieth century, some leading examples would include:

- the origins and impact of state laws prohibiting false advertising and false statements to receive commercial credit;
- the extent and effectiveness of securities fraud enforcement under the New York state Martin Act (since this legislation represented unusually broad investigative powers, but still reflected the limitations of sub-national jurisdiction trying to deal with a national/international market);
- the work of early anti-fraud divisions within urban district attorneys' offices, such as New York City.

Between the start of the New Deal and the conservative turn in American politics at the end of the 1970s, fruitful topics for research in this area would involve local campaigns to target frauds in home renovation, car sales, and repair services, as well as national campaigns against credit frauds, fraudulent franchising promotions, and fraudulent interstate land sales. More recently, one could envisage investigations of the relatively expansive prosecution of bank managers during and after the Savings & Loan crisis, as compared to the blanket decision not to prosecute

individuals in the wake of the Global Financial Crisis of 2008. The contrasting tough prosecutorial posture toward insider trading calls out for historical examination, as do the periodic efforts to clamp down on identity theft and elder fraud. (Such examinations would need to engage with the arguments presented by Eisinger in *The Chickenshit Club* and Samuel Buell in *Capital Offenses: Business Crime and Punishment in America's Corporate Age*, 2016).

### ***The Evolution of American Civil Fraud Law***

In the nineteenth century and the first three-quarters of the twentieth, one key arena that merits study is the role of the holder-in-due-course doctrine in structuring consumer markets. Abusive retailing practices associated with this doctrine emerged with lightening rod sales in the mid-nineteenth century, and extended to the marketing of home renovation and consumer durables in the twentieth century. One especially important topic is the legal culture of retailing and debt collection in post-World War II inner city neighborhoods, identified by sociologists as a major contributor to racial tensions in the 1960s. Another compelling context is the elimination of the holder-in-due-course doctrine by the Federal Trade Commission in the 1970s.

As I note throughout *Fraud*, opponents of modern consumer fraud have always faced the challenge that the relatively small costs incurred by most fraud victims complicated efforts to obtain monetary redress through a costly and time-consuming legal process. The consumer fraud class action lawsuit, developed first in the 1960s in California, represented an innovative attempt to overcome those barriers to civil consumer fraud claims by allowing lead plaintiffs to file suit on behalf of similarly situated litigants. Soon thereafter, lawyers adapted this mode of proceeding to civil fraud suits alleging investment fraud. Legal scholars such as John Coffee have tracked developments with such lawsuits, including judicial cases and legislative reforms

that sought to limit their scope, paying closest attention to investor class actions. (See for example Coffee's 2015 book, *Entrepreneurial Litigation: Its Rise, Fall, and Future*). But historians have yet to probe the evolution of a plaintiff's and defense bar, compared the success of such suits brought by private litigants to those brought on behalf of victims by state attorneys general, or assessed the impact of attempts to reign in this form of civil justice, as through the introduction of arbitration clauses into basic consumer contracts. One can envisage studies of this sort that focus on specific states (Anna Johns Hrom is completing a Duke history dissertation that presents such a case study of consumer class actions in Alabama) as well as dynamics at the national level.

### ***Institutional Histories of American Regulatory Bodies with an Anti-Fraud Mission***

There is ample scope to craft research agendas around the evolution of anti-fraud rule-making, public education, monitoring, and enforcement by regulatory agencies/organizations. Within the federal government, each of the agencies that receive extensive attention in *Fraud* (the Post Office, the Federal Trade Commission, and the Securities and Exchange Commission) merit further attention, as do the anti-fraud endeavors related to federal housing programs, defense procurement, educational programs, drug and medical device regulation, and healthcare reimbursement. Specific angles of vision here might include:

- testing the presumed negative impact of mid-twentieth-century FTC anti-deception regulation on competitive dynamics in specific industries;
- explaining the Securities & Exchange Commission's de-emphasis of anti-fraud regulation, aside from insider trading, from the 1980s through the 1990s, and its

implementation of the Sarbanes-Oxley Act of 2001, which sought to curb deceptive corporate accounting;

- assessing the regulatory controversies over the marketing of franchises and multi-level marketing schemes from the 1960s through the mid 2010s, which left most multi-level marketing firms free to operate, as well as the FTC's more recent decision to clamp down on firms such as Herbalife;
- tracing how the SEC's handled the expansion of affinity fraud investment frauds; and
- considering the efforts of the FTC, SEC, and FDA to cope with the expansion of elder fraud, telemarketing fraud, and/or online scams.

At the local and state level, the emergence of consumer protection agencies prompted scattered analysis by sociologists in the 1970s, but the operation of these institutions has occasioned almost no sustained historical analysis based on archival records. The impact of the subsequent conservative turn in American electoral politics on consumer protection stands out as one compelling vantage point for research. Others include the implications of information technology, including the emergence of online commerce, for anti-fraud monitoring and enforcement, and how state and local consumer protection bodies responded to the growth of mortgage-related frauds in the 2000s.

Outside the bounds of the formal state, there are even fewer extant histories of institutions that deal with anti-fraud work. The National Association of Securities Dealers (now the Financial Industry Regulatory Authority) is one obvious organization deserving study, given its central role in policing the securities fraud that occurs on secondary markets. Others include bond rating agencies, the Association of Certified Fraud Examiners, accrediting bodies in education and healthcare, and consumer organizations, whether based nationally, such as

Consumers Union, Consumers Research, the Consumer Federation of America, and the American Association of Retired Persons, or on a local/state basis. In the last two decades, consumer complaint websites have also emerged as significant entities in the anti-fraud landscape.

Historical inquiry into such organizations might focus on the evolving nature of public education to wise up consumers and investors, as well as the consequences of a more conservative politics for self-regulatory organizations and consumer groups. A potentially rich study along these lines would compare the emergence and evolution of the more activist local consumer protection organizations, such as the Consumer Education and Protective Association (CEPA), which started in Philadelphia before spreading to other cities, and San Francisco's Consumer Action. An important challenge facing historians who wish to examine many non-state institutions (even those with quasi-public status) is the frequent lack of systematic archival records. (The extensive collection of papers from Consumers Research, housed at Rutgers, the BBB records at the Chicago Historical Museum and the Denver Public Library, and CEPA at Temple University, are important exceptions.) For the last five decades, oral history offers one way to compensate for spotty archival holdings, and the explosion of online resources another. The availability of massive online newspaper databases also presents great opportunities for amassing journalistic coverage of such entities.

Any in-depth historical examination of an anti-fraud regulatory institution, whether inside or outside of the formal boundaries of state power, and within the United States or elsewhere, would also present opportunities to engage with wider social science debates about regulatory decision-making. These range from:

- the comparative advantages of flexible as opposed to rigid modes of regulatory authority; the strengths and limitations of information disclosure as a regulatory technique, and the best practices for maximizing the impact of that technique;
- conduits through which private interests influence regulatory priorities and the choice of regulatory instruments, and so the degree to which one should see specific regulatory entities as “captured” by those interests;
- the cyclical/generational dynamics of organizational culture within regulatory bodies, which may redirect core missions and the balance among competing institutional objectives; and
- the conditions under which delegation of regulatory authority to non-state actors achieves regulatory goals.

For a much more detailed examination of these themes, along an extensive discussion of relevant scholarly literature, see my introduction to the three-volume Elgar research collection, *Business Regulation* (2015), [“The Dialectics of Modern Regulatory Governance.”](#)

### ***Business Fraud and Globalization/Societal Comparison***

Whether in the realm of fiction or cold hard social fact, the practitioners of economic deception have always taken advantage of jurisdictional boundaries and the ambiguities they create. One key interpretive thread in *Fraud* is the difficulty that state authorities had in policing deception that occurred in interstate markets. Modern business fraud, and particularly deceptive marketing of investments, has always had an important international dimension. On occasion, the narrative in *Fraud* takes account of this pattern, such as with the periodic nineteenth-century English complaints about the quality of American cotton, the movement of fraudulent boiler

rooms to Canada as a base of operations for stock promotions after the creation of the SEC, or the decampment of some post-World War II sellers of sham consumer goods to Mexico. But for the most part, the book maintains a national focus.

On the whole, the global dimensions of American business fraud and anti-fraud regulation remain open for exploration. The experience of recent decades loom large in this regard. With the intensification of globalization since the 1980s, and the creation of a global commercial platform with the internet, large-scale business frauds increasingly take place across national borders. Among the resulting lines of historical inquiry that beckon are: reconstructing the international pathways, especially those involving tax havens, through which major corporate accounting frauds (like those of the 1990s and early 2000s) brought losses to non-American investors; retracing the diffusion of deceptive practices with mortgage securitization from American to European financial firms, and the global dimensions of marketing the resulting newfangled securities; charting the emergence of a global cohort of forensic fraud auditors; and assessing the impact of efforts since the 1990s to fashion international governance networks among national anti-fraud regulators (the U.S. Federal Trade Commission, for example, has invested considerable effort in recent decades to share policy ideas, best practices, and intelligence about the evolving global consumer marketplace with their counterparts in Europe and elsewhere). Such studies would bring historical perspective not only to the way that globalization extended opportunities for business fraud, but also more general efforts to build transnational modes of regulatory governance, even in the midst of an ostensibly neo-liberal era.

By the same token, there are myriad compelling research questions that historians might ask about the impact of business fraud and the dynamics of anti-fraud regulation in countries outside the United States. One obvious set of questions concern the psychological dynamics of

business fraud. Have scams and frauds outside America also tracked the psychological patterns that characterize the investment pump and dump or the consumer bait and switch so prevalent within American business history? Other lines of inquiry would involve matters of cultural history, such as the nature of attitudes toward marketplace deceptions in other societies, and the representations of business fraud in popular culture, and the fall-out from major fraud scandals. Another important group of queries concerns the shifting policies and regulatory ecologies adopted by governments, whether in industrialized/industrializing countries, colonial settings, or emerging economies. At what points did anxieties over economic duplicity prompt legislative action or enforcement campaigns? To what extent have societies outside the United States relied on civil process or mechanisms of business self-regulation to tamp down business fraud? In what contexts have a given nation or colonial regime embraced disclosure regimes, imposed licensing mechanisms, tightened up criminal prohibitions, or turned to wide-ranging efforts at public education? How much have policy choices in one polity been shaped through mechanisms of policy diffusion from others? Historical examination of such matters outside the United States can clarify the distinctiveness of the American experience; they will likely also offer important new evidence for efforts to identify varieties of modern capitalism.