A Profusion of Microhistories: The Historiography of American Business Fraud

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

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As I note in the introduction to *Fraud*, historians of the modern United States have explored the phenomenon of economic deception in numerous contexts and with a variety of methodological approaches. The resulting corpus of dissertations, articles, and books contains rich evidentiary details and much incisive analysis. Without this repository of historical knowledge, my task in researching and writing the book would have been far more difficult. Very few of these accounts, however, refer to the findings, questions, or interpretations of other works about the topic. One gets the sense that historians have mostly chanced upon an intriguing context of fraud allegations, dug into those particulars, but remained centrally focused on different topics and issues. As such, one cannot really speak of a cohesive “historiography” of American business fraud, in the sense of responses to a set of clearly identified debates that challenge, build on, and reference previous historical arguments. At least in English-language scholarship, moreover, historical analysis of business fraud in other parts of the world is even spottier and more disconnected, with the important exception of Great Britain.

One can nonetheless tease out a discrete number of approaches to the historical examination of business fraud in the United States. I see this scholarship as falling into one of seven analytical approaches: 1) case studies of individual fraud episodes or careers; 2) overviews
of business fraud in a specific sector of the economy; 3) cultural histories that focus on the
problems of deceit, deception, manipulation, and trust in modern capitalism; 4) investigations of
financial services that emerged to certify trustworthiness of firms; 5) considerations of the law of
business fraud in specific periods; 6) histories of regulatory institutions that discuss fraud as a
policy focus of those agencies or other bodies; and finally, 7) examinations of the international
dimensions of American business fraud. I draw on these strands of historical research
throughout Fraud, often in conjunction with related social science literature. In this essay, I
discuss each of these strands in turn, noting leading works, sketching overarching approaches
and shared preoccupations. Where appropriate, I also note pivotal scholarship about the history
of business fraud in Great Britain, as well as significant works that come from other social
sciences. A concluding section reflects briefly on the broader implications of this overview for
future avenues of historical research (a theme taken up at greater length in a companion essay).

**Case Studies of Fraud Episodes**

One common genre in the history of American business fraud presents detailed
examinations of specific instances of misrepresentation/deceit that made a big public splash.
Often these histories take a biographical approach, following the life and career of an
entrepreneur at the center of the action. There are many such accounts by professional historians
from the beginning of the nineteenth century through the mid-twentieth. Earlier figures
receiving book-length attention include Andrew Dexter, whose dodgy speculations resulted in
dramatic bank failures in New England and Detroit during the 1810s (Jane Kamensky’s *The
Exchange Artist: A Tale of High-Flying Real Estate Speculation and America’s First Banking
Collapse*, 2008); and Benjamin Rathbun, a Buffalo real estate developer whose overextensions
led to a fraudulent bankruptcy in 1836 (Roger Whitman, *The Rise and Fall of a Frontier Entrepreneur*, 1996). Later figures receiving such fulsome historical treatments include the failed financier Ferdinand Ward (Geoffrey Ward’s *A Disposition to Be Rich*, 2012); pyramid scheme promoters William Miller, who ran the Franklin Syndicate in Brooklyn during 1889 (V. G. Oltmann’s *William “520 %” Miller*, 2014), Charles Ponzi, who legendarily operated his Boston promotion in 1920 (Mitchell Zuckoff’s *Ponzi’s Scheme: The True Story of a Financial Legend*, 2006); and Leo Koretz, whose Chicago-based investment scam supposedly invested in Panamanian oil and collapsed in 1923 (Dean Jobb’s *Empire of Deception: The Incredible Story of a Master Swindler Who Seduced a City and Captivated the Nation*, 2016); C.C. Julian, the Los Angeles oil promoter (Jules Tygiel’s *The Great Los Angeles Swindle: Oil Stocks, and Scandal during the Roaring Twenties*, 1996); and Samuel Insull, the midwestern utilities magnate whose corporate empire careened into bankruptcy during the Great Depression (Forest McDonald’s *Insull*, 1962). A slew of monographic articles recount the exploits and downfalls of other boosters and businessmen who ran afoul of serious fraud charges, often after the failure of their firms. The fraud scandals explored in these essays typically had a more local character, often involving real estate development or natural resource extraction in a remote locale.¹

Almost all of these biographical examinations have been produced by scholars who lacked prior training in business or legal history. These historians came across an intriguing episode of commercial or financial deception and became fascinated by the rise and fall of the

pivotal entrepreneur in question. Their accounts probe the nature of their central protagonists’ ambitions, the circumstances that led them to mislead investors, creditors, and other counterparties, the economic, social, and cultural conditions to which they appealed in attracting capital, and the fallout that ensued after fraud allegations became public. In these histories, a common interpretive preoccupation is whether to damn the central protagonist or redeem him. Was the alleged (or actual) perpetrator of fraud an undoubted rogue who attracted investments and credit through charm, moxie, and a compelling vision of shared prosperity? Or was he rather an enthusiastic booster who found some degree of legitimate success, or who was on the cusp of translating shady beginnings into something more respectable, but then became mired in financial difficulties related to overextension, and undertook ill-judged steps to fend off bankruptcy that led to fraud allegations?

In the narratives about American fraud episodes, a further implicit theme concerns the magnetic pull of the American dream. These ill-fated entrepreneurs almost always came from humble families and embraced the country’s mythology of boundless entrepreneurial opportunity. They also sufficiently linked their enterprises to the aspirations and interests of others that they could count on significant allies when they confronted charges of misrepresentation and fraud. A common story here is the closing of ranks around a local promoter whose methods occasioned growing complaints from distant investors or creditors.

Most of these biographies also explore the pathos associated with dramatic falls from at least temporary high social status and public acclaim. The best of these works, like Kamensky’s biography of Andrew Dexter, and Tygiel’s biography of C. C. Julian, depict the complex nature of their central protagonists, while superbly conveying the economic, social, and cultural worlds that they traversed. Almost every example of this type of historical examination of business
fraud also offers a wealth of evidence about techniques of misrepresentation, the psychology of self-deception, and the challenges of bringing legal pressure to bear on those accused of fraud.

As yet, few historians have trained their sights on fraud episodes of more recent vintage. (One exception is my own set of business case studies on a healthcare reimbursement fraud scandal in the 1990s, *Scenes from a Corporate Makeover: Health Care Fraud and the Refashioning of Columbia/HCA, 1992-2001* [2003]). As a result, from the 1950s onward, book-length narrative accounts of such incidents have remained the province of journalists such as Norman Miller (*The Great Salad Oil Swindle*, 1965), Ronald Sobel and Robert Dallos, (*The Impossible Dream: The Equity Funding Story*, 1975), Kurt Eichenwald (*Serpent on the Rock*, 1995, and *Conspiracy of Fools: A True Story*, 2005), Erin Arvedlund (*Too Good to Be True: The Rise and Fall of Bernard Madoff*, 2009), and Jesse Eisinger (*The Chickenshit Club: Why the Justice Department Fails to Prosecute Executives*, 2017). For the most part, the interpretive inclinations and analytical dimensions of these more recent journalistic narratives parallel those by professional historians.

**Sector-based Studies**

Another batch of scholarship considers the dynamics of business fraud within specific economic sectors. These works investigate endemic duplicity in a given industry over a generation or still longer, often choosing a domain that developed a widespread reputation for flim-flam. Examples include: nineteenth-century urban retailing predicated on premiums (Wendy Woloson’s 2012 essay in *Enterprise and Society*, “Wishful Thinking: Retail Premiums in Mid-Nineteenth-Century America”); counterfeiting in nineteenth-century banking (Stephen Mihm’s *A Nation of Counterfeitors*, 2007); nineteenth-century patent medicines (James Harvey
Young’s *The Toadstool Millionaires: A Social History of Patent Medicines before Federal Regulation*, 1961; late nineteenth-century western mining promotions (Joseph King’s *A Mine to Make a Mine: Financing the Colorado Mining Economy, 1859-1902*, 1977); late nineteenth-century adulteration of food and medicines (Mitchell Okun’s *Fair Play in the Marketplace: The First Battle for Pure Food and Drugs*, 1986); the world of nineteenth-century gambling (Jackson Lears’ *Something for Nothing: Luck in America*, 2003); early twentieth-century Texas oil investments (Roger Olien and Diana Olien’s *Easy Money: Oil Promoters in the Jazz Age*, 1990); medical quackery in the twentieth century (James Harvey Young’s *Medical Messiahs: A Social History of Health Quackery in Twentieth-Century America*, 1967); the selling of automobiles (Steven Gelber’s *Horsetrading in the Age of Cars: Men in the Marketplace*, 2008); and twentieth sales culture in general (Arthur Leff’s *Swindling and Selling: The Story of Legal and Illegal Congames*, 1976).

In some cases, as with Dan Plazak’s *A Hole in the Ground with a Liar at the Top: Fraud and Deceit in the Golden Age of Mining* (2006), overviews of fraud in a sector merely expand the biographical impulse, with a series of shady promoters/entrepreneurs each receiving a chapter. More often, historians look to elucidate the dominant techniques of deceit in an industry, how they diffused from business to business and across regions, and the extent to which key interest groups came to view endemic duplicity as a threat to economic growth, in part because criminal prohibitions and other regulatory mechanisms proved to be ineffective. On occasion, authors show how such concerns contributed to the founding of industry-wide organizations (trade associations, stock and commodity exchanges). These exercises in self-regulation had at least the partial goal of combating fraud, as through the establishment of rules of fair trading by exchanges, and their enforcement through criteria for acceptance of proposed members and
expulsion of those who violated the rules. Particularly in the arenas of pure food and drugs, these works further track the creation of new regulatory regimes at both the state and national level, though they have far less to say about the operation of those regimes.


As is the case with case studies of fraud committed by specific enterprises, historians have thus far shied away from sector-based analyses of deception and misrepresentation in the last half-century. Journalists have again stepped into the breach, in such works as Ralph Lee Smith’s *The Bargain Hucksters* (1962), Stephen Pizzo, Mary Fricker, and Paul Muolo’s, *Inside Job: The Looting of America’s Savings & Loans* (1989), and John Cassidy’s *Dot Con: How America Lost Its Mind and Money in the Internet Era* (2002). These works offer deep engagement with ongoing diffusion of deceptive practices and offer at least some historical
context. A small number of legal and economic sociologists have also explored more recent examples of prevalent business fraud across an industry, particularly in the case of the Savings & Loan crisis of the 1980s and early 1990s. That spate of misleading accounting statements, managerial looting, and associated real estate frauds attracted several sociological studies, including Kitty Calavita, Henry Pontell, and Robert Tillman, *Big Money Crime: Fraud and Politics in the Savings & Loan Crisis* (1997), and William Black, *The Best Way to Rob a Bank Is to Own One: How Corporate Executives and Politicians Looted the Savings & Loan Industry* (2005). As compared to historical treatments of business fraud within specific industries, sociological accounts more directly connect their arguments to theories of social deviance and economic crime, first articulated by Edward Sutherland in *White Collar Crime* (1949) and Donald Cressy in *Other People’s Money: A Study in the Psychology of Embezzlement* (1953). A key theme here concerns the processes by which socially corrosive behavior becomes rationalized and normalized among economic subcultures.

In Chapter Two of *Fraud*, I argue that there are enduring patterns of deception suggested by both individual case studies and industry overviews of business fraud. In that chapter I both identify those patterns and connect them to research in cognitive psychology and behavioral economics. For entry accessible points into these burgeoning fields, I would recommend Daniel Kahneman, *Thinking, Fast and Slow* (2011); Dan Ariely, *The (Honest) Truth about Dishonesty: How We Lie to Everyone—Especially Ourselves* (2012); George Akerlof and Robert Shiller, *Phishing for Phools: The Economics of Manipulation & Deception* (2015); and Maria Konnikova’s *The Confidence Game: Why We Fall for It … Every Time* (2016).

**Cultural Histories of Deceit/Misrepresentation**
I spend a good deal of space in *Fraud* examining evolving cultural dimensions of economic deceit, and how popular understandings about the truthfulness of economic speech related to legal understandings and expectations. A number of historians have focused on the first of these two phenomena, especially during the nineteenth century, when prevailing modes of regulation emphasized the need for republican citizens to be able to look out for themselves in the marketplace, in part by maintaining appropriate skepticism in the face of all the dissembling and imposition that one could expect of strangers.

The central figure in much of this scholarship is the same person whom I use to frame my analysis of the nineteenth-century law of and cultural discourse about business fraud – Phineas Taylor Barnum. Several historians have engaged with Barnum’s artful elaborations of the public hoax, and his construction of a new form of entertainment business predicated on bamboozlement and humbug. Two leading works in this regard are Neil Harris’s *Humbug: The Art of P.T. Barnum* (1981) and Jay Cook’s *The Art of Deception: Playing with Fraud in the Age of Barnum* (2001). Although Harris and Cook provide extensive analysis of Barnum’s techniques of imposture, they each have particular interest in probing the wider cultural significance of his promotions. As they note, Barnum gave the residents and visitors to American cities repeated opportunities to grapple with elaborate fakes – to scrutinize those deceptions, argue over their authenticity, and take pleasure in their effectiveness, whether directly or through news coverage and word of mouth. In so doing, Barnum supplied a means for middle-class Americans to become more familiar with, and more savvy about, all the economic contexts in which they had to deal with challenges in ascertaining the legitimacy and quality of businesses, products, and services.
The cultural historian Karen Halttunen has explored a companion dilemma created by the growing size of nineteenth-century American cities and the remarkable geographic and economic mobility of their inhabitants. In her 1982 monograph, *Confidence Men and Painted Women: A Study in Middle-Class Culture in America, 1830-1870*, Halttunen demonstrated how anxious members of the emerging middle class became about identifying trustworthy individuals. During the mid-nineteenth century, rapid urbanization and the consolidation of a racially-defined democratic culture meant that it was increasingly easy to take on social roles, to look and act the part of an up-and-coming clerk or refined young woman, and so increasingly difficult to spot social fakers. This social reality created a voracious demand for guidance, especially in advice manuals and fiction, about how to detect those disreputable and ill-meaning individuals who passed themselves off as respectable.

A parallel impulse has influenced historical engagement with the emergence of an advertising industry. As late nineteenth- and early-twentieth-century firms struggled to sell the vast array of goods belching out of American factories, an expanding advertising sector embraced extravagant selling messages. Scholars such as Stephen Fox (*The Mirror Makers: A History of Advertising and Its Creators* (New York, 1984), Roland Marchand (*Advertising the American Dream, 1920-1940*, 1986), Jackson Lears (*Fables of Abundance: A Cultural History of Advertising in America*, 1994) and Irving Stole (*Advertising on Trial: Consumer Activism and Corporate Public Relations in the 1930s*, 2006) have probed the cultural debates prompted by these developments, which included intensifying attacks against advertising for claims that were exaggerated, misleading, or false. One key response by advertising agencies was the creation of self-regulatory bodies, such as the Better Business Bureaus (BBBs), to constraint the worst abuses. Another, however, was to draw on the new field of psychology to construct selling
appeals that emphasized mood, fantasy, and emotional associations, rather than deceptive assertions of fact.

In *The Science of Deception: Psychology and Commerce in America* (2013), Michael Pettit explores shifting cultural attitudes toward deceit from the vantage point of that emerging science of psychology. Noting that leading psychologists had to cast out practitioners of pseudoscience and outright charlatans to establish cultural authority for their field, he traces the field’s ironic dependence on deception/misdirection of subjects as a core dimension of much experimental research. He also shows how this research led to refined understandings of the “deceitful” and “deceivable selves,” which had eventually had important implications for some dimensions of American law, such as trademarks. In that domain, judges came to presume that consumers were easily misled by mimicry in packaging and advertising, and so proved amenable to expansive definitions of trademark protections.

Concern over a lack of candor in economic speech also had some impact on more diffuse standards of business ethics, at least within some sectors. Saul Englebourg’s *Power and Morality: American Business Ethics, 1840-1914* (1980) addresses this dynamic, with a particular focus on the implications of more anonymous relationships among counterparties. He shows that this development encouraged the fashioning of new norms about the treatment of economic outsiders. Similarly the rise of corporate behemoths prompted the articulation of new standards about the duties that agents and employees owed to their powerful employers. For a study that engages with the more recent history of business ethics from the perspective of a management scholar, including the emergence of the corporate social responsibility movement and the creation of corporate ethics and compliance offices, see Lynne Paine’s *Value Shift: Why*
Companies Must Merge Social and Financial Imperatives to Achieve Superior Performance (2003).

**Historical Accounts of Trust-Certifying Businesses**

As Englebourg stresses, the emergence of truly continental markets, more complex technologies, and more complicated modes of raising capital, organizing large-scale enterprise, and distributing goods, combined to heighten opportunities for fraud. With the resulting cascade of adulterated and shoddy goods, corporate embezzlements, commercial credit fraud rings, and swindling stock promotions, came strong demand for modes of verifying trustworthiness. Historians of entrepreneurial management have explored the creative responses to that demand in a more sustained and cohesive fashion than much of the other literature on business fraud.

Susan Strasser’s *Satisfaction Guaranteed: The Making of the American Mass Market* (1989), for example, offers an incisive overview of how consumer goods companies developed strategies of brand creation and brand management to overcome the suspicions of consumers. Rowena Olegario’s *A Culture of Credit: Embedding Trust and Transparency in American Business* (2006) provides the most comprehensive analysis of the rise of credit reporting as a check on duplicity by commercial borrowers, whether through private firms such as R. G. Dun or Bradstreet’s, or via the networks established by trade groups such as the National Association of Credit Men.

For analysis of the rise of the accounting profession as checks on occupational fraud within businesses, and on fraudulent financial disclosures to investors and counterparties, a useful point of entry remains Gary John Previts and Barbara Dubis Merino, *A History of Accountancy in the United States: The Cultural Significance of Accounting* (1998). With regard
to the early development of independent financial analysis and corporate bond rating, a helpful overview is Alfred D. Chandler’s *Henry Varnum Poor: Business Editor, Analyst, and Reformer* (1956). Ian Klaus’s *Forging Capitalism: Rogues, Swindlers, Frauds, and the Rise of Modern Finance* (2015) considers the links between nineteenth-century English fraud scandals and the fashioning of numerous institutional modes of trust verification – reliance on new technologies of printing to protect against counterfeiting and forgery of financial instruments; the maturation of a skeptical financial press; and mercantile bureaus to ensure the legitimacy of signatures on international bills of exchange. Paul Clikeman’s *Called to Account: Financial Frauds that Shaped the Accounting Profession* (2013) offers ten detailed case studies of American accounting frauds that prompted significant policy changes, either within the accounting profession or through governmental regulatory action.

One provider of information about economic trustworthiness that receives extensive consideration in *Fraud* is the American press, including urban newspapers, trade journals, and national magazines. My analysis in this regard borrows a good deal from James Taylor’s companion assessment of the British journalistic fraud beat, *Boardroom Scandal: The Criminalization of Company Fraud in Nineteenth-Century Britain* (2013). Taylor demonstrates the role that the British press played not only in ferreting out examples of corporate fraud, but also visiting informal reputational penalties on its perpetrators.

All of these trust-certifying enterprises took on roles as gatekeepers, and their capacity to serve that function depended on the maintenance of a reputation as honest appraisers/brokers. As Richard White demonstrates in *Railroaded*, however, and as I argue more broadly in Chapter Four of *Fraud*, intermediaries such as the press by no means always avoided corrupting conflicts of interest. The legal sociologist Susan Shapiro has developed a more general theoretical
assessment of the reputational dilemmas presented by private trust-certifiers. As she notes in her important 1987 *American Journal of Sociology* article, “The Social Control of Impersonal Trust,” every attempt to police impersonal gatekeepers to ensure their fidelity to the goal of guaranteeing trustworthiness will always raise new threats of corruption and breach of trust.

**Historical Studies of the Law of Fraud**

Despite Michael Pettit’s recent foray into the connections between appraisal of consumer deceivability and trademark law, scholars have covered less ground here, especially with regard to the United States. Tellingly, the indexes for the three volume series *The Cambridge History of Law in America* (2008) lacks any mention of business fraud as a legal category. Lawrence Friedman offers a brief assessment of criminal fraud in his *Crime and Punishment in American History* (1993), but draws solely on scattered primary sources.

Historians have spent more effort retracing the framework of post-English anti-fraud law. One leading example is Rande W. Kostal’s *Law and English Railway Capitalism, 1825-1875* (1994). Although Kostal casts a much wider analytical net, he engages extensively with the legal treatment of fraud allegations, particularly in the aftermath of the period’s stock crashes. Despite the insistent efforts of injured creditors and investors, he shows that English courts proved disinclined to facilitate civil suits predicated on fraud claims.

The most ambitious historical examination of modern English fraud law remains George Robb’s *White-Collar Crime in Modern England: Financial Crime and Business Morality, 1845-1929* (2002). Situating the evolution of English law within the context of rapid industrialization and the emergence of railway companies and large-scale banking, Robb charts the emergence of large-scale occupational fraud, chiefly acts of embezzlement by bankers and corporate managers,
high-stakes credit frauds committed by merchants, swindles masterminded by stock brokers, and fraudulent company promotions. He then shows how the accumulating costs associated with fraud scandals eventually triggered a series of late nineteenth- and early twentieth-century statutory reforms that established a public prosecutor for fraud cases, extended criminal prohibitions against some types of prohibited deceit, and tightened up the regulation of corporate financial disclosures. Nonetheless, into the twentieth century, Robb argues that criminal prosecutions in England remained rare, as did heavy sentences, with the exception of instances of embezzlement by lower level clerks.

James Taylor’s *Boardroom Scandal* picks up on these themes, drawing on a much wider array of fraud cases. Taylor shows that before the late nineteenth century, successful corporate fraud prosecutions almost always involved managers of financial institutions who failures had harmed working class savings or policyholders. But he also demonstrates that the introduction of public prosecution in 1879, which was accompanied by a concomitant shift in the views of judges, who began to see economic deception as a bigger threat to the workings of British capitalism, gave criminal fraud prosecutions a more substantial bite.

A small collection of monographic articles and books do trace significant developments in the American civil or criminal law of fraud, especially for the nineteenth century. Paula Dalley’s important 1995 essay in the *American Journal of Legal History*, “The Law of Deceit, 1790-1860: Continuity among Change,” offers an extensive overview of appellate civil fraud cases across the country. Dalley finds consistent application of common law expectations around allegations of deceit – that to sustain such allegations, litigants had to demonstrate a false assertion on which they had reasonably relied before entering into a transaction, as well as intent to deceive. At the same time, she found greater judicial concern for counterparties who lacked

My first book, *Navigating Failure: Bankruptcy and Commercial Society in Antebellum America* (2001), engages with the short-lived 1841 Federal Bankruptcy Act and its provisions to constrain credit fraud. William Novak’s *The People’s Welfare: Law and Regulation in Nineteenth-Century America* (1996) has a chapter that details many specific anti-fraud laws, but skirts issues of enforcement or impact. As part of a broader, ongoing research project on the legal treatment of fraud in the long nineteenth-century, Susanna Blumenthal has produced an incisive case study of the 1857 New York City forgery trial of Charles Huntington (“Humbug: Toward a Legal History of Fraud,” *University of Buffalo Law Review*, 2016). Blumenthal burrows into the particulars of this prosecution in order to elucidate wider legal currents and tensions, especially concerning the extent and limits of *caveat emptor* as a regulatory framework. Jennifer Trost has also produced a broader investigation of the eighteenth-century “impostor rule,” which governed liability occasioned by commercial transactions tainted by a counterparty’s successful misrepresentation as to identity (*Law & History Review*, 2017). Trost shows how concern for reducing transaction costs has limited civil fraud defenses for three centuries, until an explosion of identity theft cases prompted the adoption of new criminal statutes in the late twentieth-century.

As yet, however, we lack extensive historical engagement with the twentieth-century evolution of American civil and criminal actions related to business fraud. An important recent exception is John Coffee’s *Entrepreneurial Litigation: Its Rise, Fall, and Future*. Coffee charts the emergence of class action law suits seeking relief from alleged consumer or investor frauds
in the 1960s and 1970s, the rapid expansion of such suits in the next two decades, and subsequent statutory moves, both by Congress and in the states, to curb the use of this legal tool.

**Histories of Regulatory Institutions with Anti-Fraud Missions**

A number of historians have undertaken detailed studies of regulatory action against business fraud by both government and non-state organizations/institutions in the United States, though often as part of broader research agendas. At the state level, Alan Marcus provides an especially trenchant analysis of the origins and consolidation of anti-fraud regulation by postbellum agriculture departments. In his 1987 *Agricultural History* article, “Setting the Standard: Fertilizers, State Chemists, and Early National Commercial Regulation, 1880-1887,” Marcus shows how the diffusion of fertilizer regulation was shaped by a new national organization of professional chemists, who achieved national consensus on technical assessments of quality. Glenn Vent and Cynthia Berk offer a companion look at securities regulation in late nineteenth-century California in their 1993 essay for *Accounting Historians Journal*, “Insider Trading and Accounting Reform: The Comstock Case.” Vent and Berk investigate the impact of a series of late nineteenth-century fraud scandals and associated business failures in San Francisco on legislative reforms, as well as the limited capacity of state regulation to constrain a national investment market. Daniel Holt’s 2008 dissertation, “Acceptable Risk: Law, Regulation, and the Politics of American Financial Markets, 1878-1930,” covers that era’s mostly unsuccessful state efforts to cope with the burgeoning problem of fraudulent stock promotions and manipulation of securities markets, as well as a series of thwarted attempts to extend regulatory authority to the national government.
Much of the extant historical scholarship in this vein, however, considers national regulatory institutions, especially within the federal government. The most extensive discussion of mail fraud enforcement is Dorothy Fowler’s *Unmailable: Congress and the Post Office* (1977), which supplies an overview of the 1872 postal reform statute that gave a clear legislative basis for regulating mail fraud, as well as the evolution of administrative and criminal enforcement by the postal department. Anti-deception regulation by the Federal Trade Commission (FTC) has attracted a number of historical analyses. Richard Tedlow’s 1981 *Business History Review* article, “From Competitor to Consumer: The Changing Focus of Federal Regulation of Advertising, 1914-1938,” traces the expansion of the FTC’s work in this area from its inception in 1914 through the adoption of the Wheeler-Lea Act in 1938, which extended FTC jurisdiction to any deceptive business practice, regardless of its impact on competing firms. George Alexander’s *Honesty and Competition: False Advertising Law and Policy under FTC Administration* (1967) puts forward a comprehensive overview of how the Federal Trade Commission sought to curb deceptive business practices in interstate trade during its first half-century. Alexander emphasized that the FTC’s anti-fraud efforts often protected incumbent firms from competition. Daniel Pope’s 1991 essay in the *Journal of Social Issues*, “Advertising as a Consumer Issue: An Historical View,” furnishes a short synthesis of FTC anti-deception governance through the 1980s, stressing how pressure from the consumer movement encouraged more vigorous regulatory actions in the 1970s and a conservative deregulatory backlash during the Reagan administration. One should read Pope in conjunction with the policy memoir by Carter Administration FTC Chair Michael Pertschuk, *Revolt against Regulation: The Rise and Pause of the Consumer Movement* (1982).
Anti-fraud efforts by the Securities and Exchange Commission (SEC) has also been the subject of several historical overviews, sometimes as part of syntheses of securities regulation more generally. Michael Parrish’s *Securities Regulation and the New Deal* (1970) and Michael Perino’s *The Hellhound of Wall Street: How Ferdinand Pecora’s Investigation of the Great Crash Forever Changed American Finance* (2010) focus on how the 1929 stock market crash and subsequent congressional investigations deepened public awareness of deceptive practices on Wall Street, setting the stage for the construction of the SEC. Joel Seligman’s magisterial *The Transformation of Wall Street: A History of the Securities and Exchange Commission and Modern Corporate Finance* (3rd ed. 2003) covers that ground, along with the subsequent seven decades of legislative reforms and policy shifts, though he focuses far more on the SEC’s role in structuring capital markets than on its marketplace monitoring or handling of fraud-related cases.

In the realm of business self-regulation, Jonathan Lurie’s 1979 monograph, *The Chicago Board of Trade, 1859-1905: The Dynamics of Self-Regulation*, explores the wide latitude that the Illinois legislature and state and federal courts gave to the Chicago Board of Trade as it developed rules of fair dealing to structure the Chicago commodity markets. Lurie stresses as well the vigorous enforcement of these rules against member firms that engaged in rank duplicity dealt with non-member bucket shops, which at once constrained fraud and consolidated the hold of larger firms on trading. Daniel Holt’s dissertation, “Acceptable Risk,” traces the tightening up of self-regulation on the nation’s stock exchanges during the late nineteenth and early twentieth centuries, chiefly as a tactic to deflect calls for more stringent public regulation. Thomas McCraw’s 1982 essay in the *Journal of Policy Analysis and Management*, “With Consent of the Governed: The SEC’s Formative Years,” examines the extent to which SEC regulation, including its anti-fraud endeavors, depended on the quasi-public National Association of
Securities Dealers (NASD). As McCraw highlights, the NASD undertook the most direct oversight of the over-the-counter securities markets (dealing in most corporate bonds and unlisted stocks) and the brokerages that traded on them.

The domain of post-1975 tax fraud law, along with enforcement efforts within the Internal Revenue Service and the wider Department of the Treasury, have received detailed attention from legal scholars Tanina Rostain and Milton C. Regan, Jr., in their 2014 volume, *Confidence Games: Lawyers, Accountants, and the Tax Shelter Industry*. Rostain and Regan provide a superb account of the interrelationships among regulatory policy, business strategy by corporate gatekeepers, and the emergence of sophisticated tax fraud schemes.

On the whole, accounts of American regulatory bodies with anti-fraud missions do not engage much with social science research on regulatory governance. The one important exception is the literature on regulatory capture, such as the political scientist Marver’s Bernstein’s *Regulating Business by Independent Commission* (1955) and a series of essays by the economist George Stigler, of which the most influential have been his 1964 essay in *Business Lawyer*, “Public Regulation of the Securities Markets,” and his 1971 essay for *The Bell Journal of Economics and Management Science*, “The Theory of Economic Regulation.” These scholars and a slew of others who built on their premises argued that government regulation had a tendency to favor entrenched businesses at the expense of newer firms, whether because incumbents influenced initial legislation through lobbying, invested more in shaping ongoing agency decision-making, or enticed regulatory officials with the prospect of highly paid employment after they left public service.

There are, however, a number of ideas in the interdisciplinary literature of modern regulatory institutions that speak to the findings of historians who have researched anti-fraud
regulation. These include: the salience of focusing events such as the 1929 market crash in creating the political conditions necessary for significant policy reforms; the importance of “policy entrepreneurs” in developing innovative regulatory practices; the advantages and disadvantages of self-regulatory institutions as modes of achieving regulatory goals; and the importance of psychological framing to the effectiveness of disclosure-based regulatory policies. I discuss this literature at great length in two other essays – my introduction to Business Regulation (2015), a three-volume compilation of writings on regulatory governance since 1870; and “The Prospects for Effective Co-Regulation in the United States: A Historian’s View from the Early Twenty-First Century,” in Edward J. Balleisen and David A. Moss, Government and Markets: Toward a New Theory of Regulation (2010).

**American Business Fraud in Global Context**

This theme is less prevalent in the historical scholarship. Scattered studies examine late-nineteenth- and early-twentieth-century American stock fraud scandals that ensnared European investors, or fraudulent investment schemes that ensnared American investors. In both cases, scholars tend to focus on the remarkable gullibility of foreign investors eager for out-sized returns, as well as the growing role of investment bankers and the press as guarantors of trustworthiness. The former include: Clark Spence’s British Investments and the American Mining Frontier, 1860-1901 (1958); Gene Gressley’s 1970 article in Business History Review, “The French, Belgians, and Dutch Come to Salt Creek,” James Baskin’s 1988 article in the Business History Review, “The Development of Corporate Financial Markets in Britain and the United States, 1600-1914: Overcoming Asymmetric Information;” Augustus Veenendaal, Jr.’s Slow Train to Paradise: How Dutch Investment Helped Build American Railroads (1996); for an

A few historians have delved into the regulatory challenges posed by fraudulent schemes operating across national boundaries. In *Forging Capitalism*, Ian Klaus discusses a failed attempt just before the outbreak of World War I to create an international verification bureau to scrutinize the legitimacy of commercial bills, especially in the transatlantic cotton trade. The massive fraud scandal perpetrated by the Swedish match manufacturer and financier Ivar Kreuger, which included his American subsidiary, Kreuger and Toll, has received growing attention. The most substantial history to date is legal scholar Frank Partnoy’s *The Match King: Ivar Kreuger and the Financial Scandal of the Century* (2010). The business historian Chris McKenna has also produced an unpublished essay that traces the impact of the Kreuger frauds on corporate accounting practices. The movement of American boiler room investment operations to Toronto as a means of skirting oversight by the new Securities and Exchange Commission is the subject of Christopher Armstrong’s 1992 essay in *Business History*, “Canadian Promoters and American Markets: Regulating the Irregular,” as well as two follow-on books, the 2016 volume, *Blue Skies and Boiler Rooms: Buying and Selling Securities in Canada, 1870-1940*, and the earlier 2001 monograph, *Moose Pastures and Mergers: The Ontario Securities Commission and the Regulation of Share Markets in Canada, 1940-1980*.

One extremely important post-World War II development now attracting the attention of some historians concerns the rise of off-shore tax havens, which, along with the emergence of the internet, have greatly facilitated investment frauds occurring across international borders. Some recent overviews of tax havens, such as Nicholas Shaxson’s *Treasure Islands: Tax Havens*
and the Men Who Stole the World (2011) and Ronen Palan, Richard Murphy, Christian Chavagneux’s Tax Havens: How Globalization Really Works (2013), engage at some length with how these jurisdictions have facilitated a wide array of international financial deceptions and frauds. Oskar Engdahl’s 2001 research report for the Swedish National Council for Crime Prevention, “Offshore Financial Centres, Tax Havens and White-Collar Crime: Historical Developments and Contemporary Usage,” zeroes in on this connection, offering a series of detailed case studies, including the frauds committed by American financier and political operative Robert Vesco. The historians Tony Freyer, Christopher McKenna, and Vanessa Ogle are each pursuing research in this area, and the subject matter is sufficiently vast to support many more such studies.

**New Angles on the History of Business Fraud**

The foregoing suggests expansive research agendas around the history of business fraud. Chronologically, the abundant array of fraud scandals of the last fifty years is wide open for historical examination, as are the regulatory transformations of that era. Geographically, we could use many more historical studies of deceptive economic practices and anti-fraud institutions in other societies across the globe. Methodologically, we would benefit from historical research that more directly engages with conceptual frameworks developed by psychologists, economists, sociologists, management scholars, and political scientists. The emergence of digital access to vast new sources of evidence (databases of government documents, newspapers, trade journals, corporate financial reports, etc.) offers the prospect of new kinds of quantitative analyses. In my note, “Avenue for Further Research on the History of Modern Business Fraud,” I sketch out a number of more specific research agendas that strike me
as especially compelling. As that reflection suggests, the subject matter of business fraud offers excellent opportunities to deepen historical understandings of American political economy and economic culture, and to show that historical perspective can inform debates about behavioral economics, the institutions that underpin trust in capitalist economies, and the nature of effective regulatory governance.