BIG BUSINESS, DEMOCRACY, AND THE AMERICAN WAY: NARRATIVES OF THE ENRON SCANDAL IN 2000s POLITICAL CULTURE

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ABSTRACT

ROSALIE GENOVA: Big Business, Democracy, and the American Way:
Narratives of The Enron Scandal in 2000s Political Culture
(Under the Direction of Dr. John Kasson)

This study examines narratives of the Enron bankruptcy and their political, cultural and legal ramifications. People's understandings and renderings of Enron have affected American politics and culture much more than have the company's actual errors, blunders and lies. Accordingly, this analysis argues that narratives about Enron were, are, and will continue to be more important than any associated "facts." Central themes of analysis include the legitimacy and accountability of leadership (both governmental and in business); contestation over who does or does not "understand" business, economics, or the law, and the implications thereof; and conceptions of the American way, the American dream, and American civic culture. The study also demonstrates how Enron narratives fit in to longer patterns of American commentary on big business.

Dedicated to the memory of my father Paul, 1954-2008
the only "Doctor Genova" I have ever known

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To a certain extent, the colleagues who have been making fun of me ever since I developed my dissertation topic are right: this research process has been different, shall we say, from that of most historians. While I didn't quite Google and DVR my way through this project, I have no curators or archivists to acknowledge. I must, however, thank the Reference and Microforms staff at UNC's Davis Library for helping me locate and access some of my news and congressional sources, and for advice at various points on developing database searches. For time in the form of money, I am indebted to the Scholars for Tomorrow fellowship program, generously offered by the UNC History Department and the Graduate School, which supported me through my two years as a masters student, and to my department as well for the Mowry Dissertation Fund grant.

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By far the hardest thing about this endeavor was losing my father roughly halfway through it. Since before I could even form letters correctly I have been showing him my writing, and everything produced since his death has finished with a sting as I've remembered once more I can no longer get his opinion. Such a trial leaves me with many people to thank, beginning with my Dad himself. He was a profoundly inspiring intellect and a raucously infectious anti-intellect. His expectations were impossible, and he loved people all the more for failing to meet them—proudly leading the way himself. He always encouraged me to proceed in work and life as if he was not ill and as if our time together was not limited. In the most transparent dream that I can ever remember having, my mother called me to say that, depending on the results of his latest test, Dad might be able to "come back" for a month or two. In that magical world I would be overjoyed even by a few minutes.

I thank my mother Noel and my siblings Pete and Marie, who counseled and comforted me and each other even while being devastated themselves. Thanks also to all the Genovas of New Hampshire, to the Jenningses of Boston, and to Lauren Hastings, the best thing that ever happened to my brother. We have a true family without denying the searing absence in it. Finally I must thank all of my friends, nearby and far away, who saw me through the worst of that experience.

One in particular—with me watching a devastating loss to Duke, in men's basketball, as I write—deserves his own paragraph. Through even the most unbelievably disappointing of seasons, Daniel Weger has cheered faithfully. He appreciates my quirks, puts up with my neuroses, and listens to numerous stray thoughts that are not necessarily right, or even interesting. Everyone knows he's a showstopper, but I know he's also a rock. It's a rare combination.

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Introduction

Those who passed through Enron's offices after the company declared bankruptcy on December 2, 2001, described an eerie scene reminiscent of the fabled ghost ship. It showed all signs of human occupancy; buzzing computer monitors, half-eaten snacks, and disarrayed papers all seemed to await the momentary return of people who had stepped out temporarily as if for a fire drill. Yet the 4,000 evacuees were gone forever—having been allowed only 30 minutes, on "Black Monday," to clear the building. Now the surreal lifelessness at 1400 Smith Street in Houston was as startling and disturbing as the spectacular corporate collapse to which it testified.[1]

This is one of several vivid images that have been strung together in an incoherent montage of the scandal: ominous trucks marked "Shred-It" and "Shredco;" the lowering of the "crooked E" logo from its perch above the Astros' baseball field; President George W. Bush speaking in front of a banner reading "Corporate Responsibility;" the car in which an executive's corpse was discovered; and those ordinary-looking Houstonians, crying and embracing, as they left their offices for the last time. In one sense, the Enron drama was over—yet on the national scene, its broader ramifications and meaning were still far from clear. Questions of business law and ethics and corporate influence on public policy were just as critical in American society before the Enron disaster as they are afterward. Such concepts may have been rather abstract, but the reality that thousands of employees and stockholders had lost their "nest eggs" now made them

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[1] Mimi Swartz with Sherron Watkins, *Power Failure: The Inside Story of the Collapse of Enron* (New York: Doubleday, 2003); *Enron: The Smartest Guys in the Room,* prod. Mark Cuban, Todd Wagner, and Joana Vicente, dir. Alex Gibney, 110 min., Magnolia Home Entertainment, 2005, DVD; Bethany McLean and Peter Elkind; *The Smartest Guys in the Room: The Amazing Rise and Scandalous Fall of Enron* (New York: Portfolio, 2003); Loren Fox, *Enron: The Rise and Fall* (Hoboken: John Wiley & Sons, 2003); David Kaplan and L. M. Sixel, "Enron Lays off 4,000," *Houston Chronicle,* 4 December 2001, 1A.

all too concrete. If only for a moment, the Enron scandal won for these issues the level of public attention that they had deserved all along.

From the company's bankruptcy through the criminal trial of its chief executives in 2006, strikingly different narratives would compete in the public sphere, vying for primacy in laypeople's understanding of "what went wrong at Enron."[2] Even the question, when posed this way, was rife with ambiguity. "Wrong" could have a moral meaning, making the inquiry an investigation into the greed, deceit and manipulation that caused or at least condoned the dramatic collapse. However, "wrong" could also be taken in its objective sense, referring to errors: human incompetence and misunderstanding. Like the notion of wrongness, so-called "fact" was critical in debates about Enron, but not always in the straightforward sense: "fact" was a hallowed concept, constantly invoked and just as constantly contested.

If there was any consensus amid the rhetorical din of this moment, it was simply that something had happened that mattered. Were it not so, conceptualization of the story would have been neither urgent nor contentious. But the story was being told and re-told, in forums ranging from the State of the Union address to jokes exchanged among friends. This is a study of those stories—of narratives of the Enron bankruptcy and scandal. I seek not only to identify themes within Enron narratives and to establish those narratives' significance, but also in summation to show how these stories about Enron fit in to much longer patterns of American commentary on big business.

I began with a fascination with how people perceive, understand, and talk about large corporations in the contemporary United States.[3] Yet as a research question, this interest was not only impossibly broad; it was also methodologically impractical. Most people do not generate a great deal of documents, under normal circumstances, about what they happen to think of this or that company, much less how they feel about anything as pervasive and yet as abstract as the

[2] This is the title of a book purporting to be "Everyone's Guide to the Largest Bankruptcy in U.S. History" (Peter C. Fusaro and Ross M. Miller, *What Went Wrong at Enron: Everyone's Guide to the Largest Bankruptcy in U.S. History* (Hoboken: John Wiley & Sons, 2002).

[3] A "big business" is usually defined as one employing 10,000 people or more. Enron certainly qualified, but at any rate I am more interested in how big business is perceived than in this technical distinction.

current order of corporate capitalism. This is partly because today big business is ubiquitous and largely taken for granted—though this was not always the case.

I realized that I needed to approach my question through some catalyzing event that brought ordinary people into the discussion about big business in American politics and society; something that inspired commentary from unexpected quarters and on which people were informed and impassioned enough actually to have opinions. Initially I thought Enron was too iconic, almost clichéd, but I came to see that as precisely the reason that it makes an apt case study. It was a scandal, yes, with all the inflated rhetoric and tawdry personal attacks that scandal usually breeds. But I find no anti-scandal that actually lasted: no nationally noted, protracted episode of trust, harmony and goodwill between US politicians, citizens, media and big business. Even if such an event did take place, it probably would be less interesting and less illuminating. A scandal, in how it is defined as well as how it is resolved, brings into relief a society's standards for behavior and accountability.[4] Because big business was at the center of this one, it prompted exactly the kind of reflection and debate that I sought.

The more I read about Enron from the inside—from compensation policies to office nicknames—the more skeptical I became toward the popular assumption that something unique about its corporate culture condoned or even encouraged fraud. I do not offer any formal argument to the contrary, much less would I contend that Enron was a prudently managed company or even a comfortable place to work. But I do suggest that people's reactions to Enron, as mounting facts and details about it became public, are more telling than we might think as to how they view big business as a whole. Many of Enron's practices at which people balked were standard—suggesting systemic rather than episodic problems. If not for the rest, the company could have gone on with staggering profits and without any real scrutiny. In other words, it was only because Enron was in some ways an aberration that people had occasion to learn about and comment upon the norm. Thus the extraordinary, in this case study, gives way to the ordinary—both in what goes on inside large corporations, and also in how people generally feel about it.

[4] See Ari Adut, *On Scandal: Moral Disturbances in Society, Politics and Art* (New York: Cambridge University Press, 2008).

Despite all that was unexceptionable I quickly came to understand *why* Enron is so iconic; how it became (as its leaders so loudly complained) the singular “poster child” for the spate of dramatic business failures during the first few years of this century. Enron’s plummet into bankruptcy was outstanding, to be sure, in its speed, its complexity, and its ramifications. Widely lauded and wildly successful, this company also had further to fall than some of its peers—and given Enron’s well-known political connections, there was genuine suspense as it falteringly attempted to get back on its feet.

But more important than any of these particular factors is the simple truth that Enron could make a good story. Its human interest intrigues included not only greed and deceit but also arrogance, grudges, cronyism, power struggles, sex, and suicide. It captivated me for many of the same reasons that it might captivate anyone else. Yet Enron’s appeal as a story did more than give it legs in the realm of journalism and punch in the political sphere. It also made Enron a ready case for the creation of narrative, which would in turn render this bankruptcy—dazzlingly complicated even to expert analysts—coherent and thereby contestable for just about anyone. It was the closest that the American public had come for decades to an inclusive, accessible national discussion on the practices and effects of large corporations and their top executives.

Public Perceptions of Big Business

Among ordinary Americans—for my purposes, people without particular business expertise or affiliation—the word “corporation” almost always conveys blame or suspicion.[5] Tack on “mega-” or “multinational” and it is even more certain, unless the context is technical, that we are hearing about something bad. It is as if the corporate form itself is tainted—and the larger the entity, the stronger presumption of guilt. Common journalistic substitutes like “giant,” “behemoth,” “juggernaut” and “Goliath” convey not only that the corporation is vast, but also that it should inspire fear. We stand in its long shadow and challenge it, if we dare, at our peril. Corporations themselves, due to these overwhelmingly negative connotations, apparently have learned not to call themselves such: formal statements and public relations communications much more often use terms like “company,” “group” or even “family”—if they even identify with a business entity at

[5] Jack Beatty, *Colossus: How the Corporation Changed America* (New York: Broadway Books, 2001), xix.

all. One poll in 2000 showed that 82 percent of Americans believed "business has gained too much power over too many aspects of American life," and that 74 percent agreed large corporations enjoyed too much influence in politics and public policy.[6]

Nonetheless, historical scholarship on American attitudes toward big business shows a general progression toward acceptance of, or at least resignation to, large corporations. Not only will such companies exist, people have come to admit: they will usually dominate their industries, and often hold great economic and political sway. Studies of non-corporate trade journals, the popular press, politics and entertainment from the 1800s to the present suggest a majority of Americans tended toward relative complacency on the issue by the turn of the twentieth century. By 1929, writes business historian Louis Galambos, most Americans "accepted the giant corporation as a permanent feature of their society."[7] In 1932, A. A. Berle and Gardiner C. Means published *The Modern Corporation and Private Property,* which affirmed for a wide audience the ascendancy of big business and revealed how it penetrated every mundane event in the reader's daily life.[8]

How, then, to explain the frequent complaining about mega- and multinational corporations and their unscrupulous ways? The resentment today is both impossible to ignore and also clearly (and often self-consciously) connected to the shrill protestations of Americans past. The historical trajectory of acceptance of and reliance on large corporations, of course, could never have been measured were it not for a strong and persistent tradition of criticism and resistance. Since the rise of big business most Americans have focused on exploiting the benefits it offered while simultaneously warning of its potential ills, and trying to curb or pre-empt them.[9]

To revisit old debates about big business in the United States is to hearken to constituencies and concerns that are sometimes grimly familiar, in context of current

[6] Businessweek/Harris Poll, 2000, cited in Beatty, *Colossus,*xix.

[7] Louis Galambos, *The Public Image of Big Business in America, 1880-1940: A Quantitative Study in Social Change* (Baltimore: Johns Hopkins University Press, 1975), 220.

[8] Adolf A. Berle and Gardiner C. Means, *The Modern Corporation and Private Property* (New York: Macmillan, 1932) quoted in Beatty, *Colossus,* 273-76.

[9] Jack Blicksilver, *Defenders and Defense of Big Business in the United States, 1880-1900,* American Economic History: A Garland Series, ed. Stuart Bruchey (New York: Garland, 1985), 398.

controversies, and at other times bewilderingly foreign. Small farmers of the Midwest and South, during the nineteenth century, feared that the trend of business combination threatened their way of life.[10] Voters questioned the integrity of government leaders who seemed amenable to favors, contributions and even bribes from railroad executives.[11] And most everyone recognized and resented that a dearth of competition in "natural monopoly" industries (such as oil, steel and rail transport) enabled large companies to manipulate markets and to charge unreasonable prices.[12] All of these complaints make as much sense now as they did then, and indeed some warnings of what might come to pass, if big business went unchecked, may now read remarkably prescient. "Under the American form of society, there is now no authority capable of effective resistance," wrote Henry Adams in 1886. "The national government, in order to deal with the corporations, must assume powers refused to it by its fundamental law…."[13]

Other strains of past discussions of big business are almost unrecognizable. Yet these too are instructive as to the contingency of American political economy: how people thought or sometimes feared that economy was developing during less stable times. Two patterns in commentary are perhaps counterintuitive, yet also consistent over many generations. First, there was a pervasive and firm linkage between big business and Christianity. In academia, the discipline of political economy first appeared, in the eighteenth century, within departments of Moral Philosophy. Many of the field's first scholars were recruited from the ministry.[14] From the church, clergy had much to say about large corporations, far beyond the pulpit of individual morals—and their comments were usually approving. "Captains of industry" such as George Baer and John D. Rockefeller, in turn, went out of their ways to discuss their careers and business strategies in a spiritual context.[15] As we shall see, disgraced executives often do this today when

[10] Galambos, *Public Image of Big Business in America,* 63.

[11] E.g. *ibid.,* 69-71.

[12] Blicksilver, *Defenders and Defense of Big Business,* 74, 79-80.

[13] Charles F. Adams and Henry Adams, *Chapters of Erie and Other Essays* (New York: Henry Holt, 1886), 134, quoted in Beatty, *Colossus,* 117-18.

[14] Irving S. Michelman, *Business At Bay: Critics and Heretics of American Business* (New York: A. M. Kelley, 1969), 24.

[15] *Ibid.,* 14.

they need political blessing or legal absolution, but most of these earlier cases were under entirely normal circumstances. It seems that in the infancy of big business, all parties considered commerce and church to be substantively similar, rather than awkwardly reconciled or strategically allied.

Meanwhile, a second connection also persisted, in historical consciousness, between big business and, of all things, socialism.[16] Most surprising about this theme is that it was advanced seriously both as a fear and as a hope. A detached analyst today might well understand the large corporation as a consummately capitalist entity—the product of private, competitive calculations in market penetration, distribution, economies of scale, and so on; one that would not have been possible under a more interventionist state. But many commentators, amid widespread fears of communism, have apparently seen its symbiosis with the federal government as a dangerous precursor to nationalized industry and a government-directed allocation of resources.[17] Likewise, we might assume now that large corporations, with their flexible, decentralized operations and strategically-oriented top brass, can reliably maintain leverage over their employees, or at least adapt readily to any insubordination and emerge more or less unscathed. Some labor activists, however, argued by the 1920s that as companies grew larger they would become more susceptible to worker takeovers.[18] The greater the concentration of means of production, they seemed to believe, the easier it would be to seize control from those who had done the concentrating.[19]

Extinct lines of thinking, like extinct species, are useful in studying the evolution of their form. First, to acknowledge ideas about big business that have *not* survived is to identify which

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[16] *Ibid.,* 166.

[17] As the New Deal's National Recovery Administration illustrated, this was not an entirely unfounded suspicion. Here an effort to bolster the American corporate-capitalist order took the form of government-sanctioned industrial cartels, encouraged—where they were not even supposed to be allowed—to cooperate in strategies of production, distribution, and price-setting (among others). The Supreme Court recognized the NRA as anathema and ruled it unconstitutional in 1935. Such a form of social organization was actually more in line with fascism than socialism. The fact that it was nonetheless more often associated with the latter may speak to Americans' relative confidence in private organizations as partners to the state—or at least to paranoia about industrial nationalization.

[18] Blicksilver, *Defenders and Defense of Big Business,* 67, 71.

[19] Galambos, *Public Image of Big Business in America,* 220.

ones have, or at least to trace the mutations by which current notions have descended from prior incarnations. Second, I articulate patterns in historical commentary on big business even when they seem unfounded because my study of Enron narratives calls for the same treatment of sources. Like the remarks, complaints and connections just outlined, no doubt some recent arguments about large corporations will, in the future, sound wiser and more reasonable than others. But all are relevant in synthesizing the historical moment. Therefore I have striven to understand each text's narrative or political angle before evaluating—if even I can—how plausible or justifiable it may be.

In the sum of historians' reports on Americans' resistance or acceptance toward big business over time, two factors emerge that have most often quelled public concerns and even fostered support. The first factor is good economic times.[20] Periods of stability and growth, from the later nineteenth century to the present, may or may not have been directly attributed (or attributable) to large corporations. But regardless, prosperity has usually won them approval—if partly at the prompting of their leaders. In the twentieth century, big business has been credited for employing people, often with better security and wages; for increasing output to meet increased demand and thereby keeping downward pressure on prices; and for innovating new technologies and modes of organization that made life, from household chores to organizational administration, easier.

The second factor most often driving public favor for big business—not unrelated to the first—is war. During and after World War I Americans tended to be complacent and even welcoming of big business, with the agitations of the Progressive era suddenly seeming passé.[21] Indeed this period's integration of industry and government for purposes of organization and logistics may have eased the way for the US' functioning as an "economic unit." That development would be hailed, and even furthered (though to varying success) by the Hoover and

[20] See *ibid.,*78, for one early example.

[21] Michelman, *Business at Bay,* 77-8; Galambos, *Public Image of Big Business in America,* 185.

Franklin D. Roosevelt administrations.[22] Then in context of the Depression, the industrial upswing brought by World War II was more than welcome. It led the way to the consumer-driven postwar boom and the ascendance of American corporations on the scene of multinational commerce—an important front, as it turned out, in the Cold War. As to direct symbiosis between business and national defense, despite Eisenhower's foreboding the military-industrial complex survived and flourished, facing no serious political or economic threat through the Vietnam War and into current conflicts.

These patterns point to another reason why the Enron scandal is illuminating as to public sentiment on big business: it happened at a time when circumstances should have discouraged a major hue and cry. This bankruptcy occurred on the heels of a fairly stable and prosperous decade for the American economy. For most of the 1990s, inflation was stable, unemployment was low, and productivity rose at an impressive rate. The bursting of the "dotcom bubble" in 2000 portended problems, but that incident was understood more as a just comeuppance for one young and pompous industry (and its giddy speculators) than as a sign of widespread systemic failings. Despite a brief recession during that year and a major decline on the NASDAQ index since its 2000 peak, the economic climate—always measured at least as much by crude psychology as by anything else—was in 2001 still relatively healthy.

Yet Enron, unlike so many doomed dotcoms, was neither a new nor an untested company. Moreover, after going down in disgrace it was followed by a number of other large and respected firms that were in completely different areas of business, such as Adelphia, Qwest, Tyco, and WorldCom. Thus from the Enron scandal's economic context we can infer that at that time, compared to other historical junctures, people were not necessarily spoiling for a fight against large corporations. But from its relative gravity we can see how prepared American citizens and public officials were, despite a period of prosperity, to take seriously a corporate bankruptcy that involved foul play. People who defend and advocate for big business seem always to be jockeying against others who criticize and seek to contain it. This struggle is

[22] Richard P. Adelstein, "'The Nation As An Economic Unit:' Keynes, Roosevelt, and the Managerial Ideal" *The Journal of American History* 78, no. 1 (June 1991): 160-87.

particularly evident among political leaders, and plays out both between and within the two major parties. Enron called attention once again to these ongoing negotiations—but also truncated them somewhat, as 2002 legislative reforms occasioned by the bankruptcy would demonstrate.

The variable of war, too, probably favored big business more than it had for over fifty years: Enron bankrupted less than three months after the terrorist attacks of September 11, 2001. The global war on terror was at this time still new and widely supported, and the "rally effect" had brought exceptionally high approval ratings to both president and Congress even on domestic issues. If large corporations in the United States have often been informally equated with a patriotic front, and formally involved in war efforts, then it seems Americans recognize them with increased faith and loyalty during times of national strife. Insofar as people were angry about Enron, then, they were bucking a historic trend—and indeed the post-9/11 discourse of national pride sat awkwardly alongside the rage and embarrassment surrounding the bankruptcy. This equation would only grow more complicated as war policies became more controversial, particularly after the Iraq invasion. The US involvement in Vietnam would become a better historical analog than World War I or II in terms of attitudes toward big business in national defense, though still not a perfect one.

The Enron scandal could have occurred during an economic slump when the United States had no foreign enemies to speak of. In that scenario, perhaps voices of protest and urges toward reform would have been a great deal stronger than they actually were. For every complaint aired and every reform enacted, after Enron, there were numerous arguments and proposals placed firmly outside the realm of consideration—for example, nationalizing the energy industry or forcing corporations to remain small and managerially simple. Here historical comparisons are again useful. Reactions to Enron's collapse were more impassioned than we might expect, but they were still relatively muted compared to what, in the hands of populists and socialists through the Depression era, they could have been. The calming effects of economic prosperity and war morale may have been overridden, but the long-term acceptance of big business was not reversed.

In reactions to corporate scandal specifically, Enron exemplified both continuity and change over time. After this disastrous bankruptcy many of the concerns that came to the fore were familiar from previous business scandals such as Teapot Dome in 1922-23, the electrical equipment price-fixing conspiracy of the 1950s, and the Savings and Loan crisis of the 1980s. Laypeople and politicians voiced worries about the treatment and well-being of lower-ranked employees and other stakeholders who had had no fault in the fray. Speculation and allegation ran wild as to the competence and especially the character of top executives. General anxieties about companies' size and sway, though sometimes only implicit, found their way into many complaints. Citizens questioned the integrity of political leaders, including legislators and the President, who appeared to have condoned, perhaps in self-interest, the practices leading to disaster. At the same time, they pushed these officials to implement reforms so as to avoid similar incidents in the future.

Yet a number of novel conditions at the turn of the twenty-first century also informed reactions to this business scandal, making this an interesting test case in a new civic climate. First, more Americans owned stock than ever before; about 50 percent of the population. Although many of these shares were through institutional investments—as in mutual or pension funds—the figure still represented a far greater proportion of the country with some direct interest in the stock market.[23] Meanwhile people could and did participate in financial exchanges without understanding their technicalities or even their fundamentals. While more and more Americans were investing in large firms and the markets on which they were traded, the internal structure of those firms and the regulations and models on which they worked had become more complicated than ever.

If business was more arcane by numerous measures, Enron epitomized complexity and opacity in all its forms. Not only were its management and financial structures incomprehensible to most outsiders. By the time the company bankrupted there was real confusion and controversy even as to what business Enron had been in. Lack of comprehension would become not only a

[23] Beatty, *Colossus,* xxii; David Skeel, *Icarus in the Boardroom: The Fundamental Flaws in Corporate America and Where They Came From* (New York: Oxford University Press, 2005) 210-11, 215.

problem in itself—as in the case of laypeople who struggled to understand what had happened—but also an issue of charged debate. With so much potential for confusion and ignorance, claims about who did or did not know what was going on at Enron became crucial in establishing or undermining credibility.

Norms and standards within large companies had changed as well, presenting not the first opportunities for fraud, but perhaps some new and different ones. Large modern corporations in the post-World War II era had initially thrived by legions of "organization men"—also called "sound men" and "yes men;" middle managers who faithfully submitted to the ideas of their superiors and the long-term interests of the company in exchange for career security. Here loyalty and a collective mentality were prized and rewarded.[24] Yet toward the end of the twentieth century, a new ethic of skepticism, contrarianism and even irreverence came into vogue. The ideal manager was increasingly an innovator; someone who would readily challenge those above him or her in the event of untapped profit opportunities or inefficient working models.[25] This is not to say that more conventional business structures and management cultures did not persist in the late twentieth century. It is, however, to say that they no longer represented the "cutting edge."

Again, Enron is an apt case in point. The company, whose slogan was "Ask Why," took pride in experimenting with new business strategies and even creating markets where none had existed before. Indeed even as it grew ever larger and more established, Enron consciously identified itself with the entrepreneurial wave of small, new economy start-ups. Top executive Jeff Skilling, who gained great fame and then terrible infamy, personified such daring throughout his management career. It began with an admissions interview for Harvard Business School in which he salvaged an initially lackluster first impression by declaring "I'm fucking smart." Skilling and his colleagues ultimately illustrated the dark side of exalted "innovation" in business culture at that time, and lay onlookers were quick to condemn their brash manners. The uncomfortable reality, however, was that this same audacity, translated into business strategy, had made millions. It had

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[24] William H. Whyte, *The Organization Man* (New York: Simon & Schuster, 1956; Philadelphia: University of Pennsylvania Press, 2002).

[25] See Skeel, *Icarus in the Boardroom*.

also been almost universally rewarded, including by those same investors who would later wrinkle their noses at these businessmen's indelicacy.

If Enron executives should have given people pause as to what the market valued in individuals, Enron itself should have cast doubt on the ways we have come to judge corporate performance. While familiar giants like Coca-Cola or IBM can generally attract and keep investors by maintaining a fairly stable value and paying reliable dividends, companies that espouse a growth model must ply their promise instead with a stock price consistently trending upward. Increasingly the latter scenario is normative, especially for younger companies. Thus partly by choice and partly by market pressure, these publicly traded firms face higher expectations over shorter increments of time. Meanwhile the growing emphasis on quarterly financial reports has forced management to make decisions on a closer horizon than ever, sometimes at the expense of longer-term care. These new standards, plus the premium on "innovation," certainly do not force fraud onto executives, but they might facilitate or even at times seem to justify it. They may also blur the boundaries that supposedly delineate which behavior is ethical, legal, or even competitively advantageous.

The direct connection between Enron and the White House was another distinguishing feature of this scandal as opposed to some preceding ones. The Bush family had longstanding ties to CEO Ken Lay and to his company, and those relationships flourished, to the benefit of all involved, after George W. Bush prevailed in the election of 2000. Past American presidents have treated big business as both friend and foe—and often cooperated with large corporations while pretending to condemn and chasten them.[26] However, by this time several terms had passed since the nation's highest officeholder had cultivated an image as corporate antagonist.[27] Indeed the White House, regardless of which party occupied it, seemed increasingly friendly to big business. If Ronald Reagan and George H. W. Bush had pushed privatization and rolled back regulation, Bill Clinton had adopted many of their approaches—and he too played golf with Ken Lay. When George W. Bush took office as the first president to hold an MBA, it was in general a

[26] Beatty, *Colossus,* 271; Michelman, *Business at Bay,*33.

[27] Jimmy Carter had cultivated this image somewhat, with his more obvious predecessor here being Franklin Delano Roosevelt.

culmination of business-government cooperation, and in particular a culmination of Enron-Bush synergy. For Americans who were uncomfortable with either one of these dynamics, the bankruptcy scandal may have helped to articulate why.

Thus the context of business fraud had changed—both in what might give rise to errant behavior and also in how people were likely to react to it. There were also much different constituencies, in 2001, by which to categorize those doing the reacting. First, some groups had shrunken or fallen quiet. To historians of public perceptions of big business, clergy, unions, socialists, and farmers left rich and abundant materials through the first half of the twentieth century. Yet none of these collectivities had much to say about Enron. To the extent that a few individuals did, they were so narrowly heard as to be politically ineffectual.

Meanwhile, other groups that had once deserved less study, being too small or too homogenous and rhetorically predictable, had grown far more capacious both in sheer numbers and also in variability of perspectives. The terms “investor” and “stockholder,” again, now applied to half the American population, and included millions of working people with a major stake but perhaps little understanding of big business or securities markets. Likewise as people identifying as farmers or union activists had dwindled in number, people who do some kind of office work in the ascendant “information economy” were more numerous than ever. This might have helped temper the reaction to Enron and other recent business scandals, for historical research has shown that the nearer someone’s own profession to the realm generally called “business,” the more moderate his attitudes toward it.[28]

But the most fundamental shift that made reactions to Enron unique to their own time involved no names, no numbers, nor even any single development in business or the economy. Rather, it was the reality that regarding big business, what was once new and noteworthy—whether for good or bad—had become so familiar as to be taken for granted. During historical debates about large corporations, the most consistent, and usually the strongest, argument in their favor was that they provided goods and services to the American people that would

[28] E.g. Galambos, *Public Image of Big Business in America,* 52-3, 59, 66.

otherwise be far more expensive, or not available at all.[29] Farmers of the 1880s appreciated the products on offer from large corporations, and praised the railroads for their competitive lowering of freight rates.[30] Skilled workers of the same period welcomed large companies' products and services, and even found that their wage scales and labor policies, in some cases, pushed change for the better.[31] Such sentiments led the way toward a modern consensus: that the costs and threats of big business were outweighed by its benefits. The benefits emphasized were not for the government, nor for the nation on the global economic scene, but rather for "ordinary" men and women as they went about their daily lives. As we saw, this view largely prevailed by the late nineteenth and early twentieth centuries.

Such an argument was viable for generations who could recall, or at least envision, a life without the conveniences wrought by big business. Roughly one hundred years later, in the aftermath of the Enron bankruptcy, a few of the company's leaders and champions attempted to defend it along similar lines, saying it had brought new amenities (usually energy sources) to people and regions who would otherwise have gone without. But overall, there was no groundswell of popular support for Enron or any companies like it on the basis of their gifts to humanity. Indeed, it seems that only for those large corporations whose core business is conducted directly with consumers—for example, Wal-Mart—do we still hear unaffiliated individuals arguing that big business has made them better off than before. Such an argument, rather than departing from populism, sometimes sounds more like a new rendition on it; one positing that big business can actually favor and empower the common people. But this debate is hardly resolved. Indeed, what few corporate defenders there are among the lay public, make these claims precisely because so many others disagree.

In most US industries, the presence and indeed the dominance of big business is a given. Huge, integrated companies control the markets for telecommunications, information technology, transportation, entertainment, and most other products and services used in daily

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[29] Blicksilver, *Defenders and Defense of Big Business,* 229, 241; see also Galambos, *Public Image of Big Business in America*.

[30] Galambos, *Public Image of Big Business in America,* 68-9.

[31] *Ibid.,* 72.

life—and people simply do not remember, and cannot imagine, what life would be like without them. For large corporations this signifies unprecedented acceptance but also, in another sense, new vulnerability: people are no longer thankful to big business because they no longer recognize what it provides. Especially for a company like Enron, which had little to do with consumers and by its peak dealt primarily in finance and information rather than anything tangible, the most reliable safeguard against public resentment was now unreliable at best. To the extent, then, that people's reactions to Enron were less radical than they might have been, it was partly because they no longer really questioned the right of large corporations to exist. But to the extent that the scandal did cause outrage and protest, it was partly because Americans had forgotten what was good about big business—and found themselves starkly confronted with a fairly thorough case study in all that was now wrong with it.

Methodology

There are numerous ways to study attitudes toward an entity or phenomenon (here, big business), or impressions of events and people (here, the Enron bankruptcy and characters implicated in it). Many of my secondary sources rely on opinion polls, letters and articles categorized either "favorable" or "unfavorable," and quantitative measures of the use of certain terms. My own analytic unit, built in to sources of all kinds but hardly lending itself to objective sorting, is narrative.

Nearly all public commentary about Enron, as with other events in news and politics, offered a story. I find stories more interesting and more instructive than self-evident means of analysis because they can be textured, engrossing, and poignant; they can also be inane, self-contradictory, and patently unconvincing. That is to say, they seem more representative of how people actually think and argue with one another. They contain more allowance for the kind of ambiguity and subtlety that, when not conveniently eliminated from historical evidence, often provide its most illuminating core. Narrative is also a very democratic form: almost anyone can understand a story or construct her own. This wider opening for participation and reaction is all the more valuable when the topic—accounting practices and political maneuvering around a huge "new economy" corporation—is so arcane.

Yet another advantage to the study of storytelling is simply that it comes so naturally to people. Human beings crave and revere narrative. We use stories to make sense of our world and of our place in it. We tell stories to explain who we are, and look to stories to understand the other. Narrative asserts or insinuates itself in every mode of communication; it may even affect the way we think. Indeed, narrative is so ubiquitous that in trying to define it, we would probably do better to establish what is *not* narrative, than what is.

Looking for a specimen of that strange creature, the non-narrative representation of events, Hayden White ended up in medieval Gaul. He described a document that listed consecutively the years 709-34, with roughly half of the annual entries followed by a terse caption such as “flood everywhere” or “Blessed Bede, the presbyter, died.” When White observed that this text had no “central subject;” no beginning, middle, or end; no sense of connection between its events; and no embedded judgment as to the significance, or even the relevance, of its various points; he was in effect defining narrative. It is that which has all of these things.[32] The account that lacks them is at best unsatisfying, and at worst, incomprehensible.

White made the important distinction between “narrating” and “narrativizing.” When we narrate, we tell a story from a particular point of view without feigning detachment or objectivity. When we narrativize, on the other hand, we construct the story without acknowledging its constructedness. We pretend that the narrative came into being naturally; that life “speaks itself as a story.”[33] In other words, the narrator admits that we don’t have to take his word for it, but the narrativizer by definition presumes this kind of trust. White was interested in narrativization because of its especial manipulative potency. When a speaker acknowledges his own position in his story, it is less threatening than when he claims to be the conduit for an organic reality seeking to communicate itself. I would classify most public dialogue surrounding politically salient events as narrativization. Here I explore the ways people narrativized Enron’s bankruptcy and the attendant scandal, from various angles and toward various goals. I identify distinct narratives and

[32] Hayden White, *The Content of the Form: Narrative Discourse and Historical Representation* (Baltimore: The Johns Hopkins University Press, 1987), 6-8.

[33] *Ibid.*, 2.

discuss how and why they competed with one another. Finally, I attempt to explain the implications and legacies of the stories people told about Enron.

These “people” include journalists; former Enron executives, employees, and investors; legislators and other civic leaders, and vocal members of the lay public. For the first three sets of subjects I draw heavily on print and internet news sources, and on congressional testimony and debate as well as the text of legislation itself. The source base for the last group is somewhat more limited given my lack of access to diaries or personal communications, less than ten years old, of private citizens who are still alive. Yet I have not relied solely on the self-selecting populations of opinion poll respondents and on those letters to the editor that enterprising and opinionated individuals, who had the time and inclination, elected to send in. There is also a lively (if anonymous) chorus of lay Enron commentators whose jokes, slogans, cartoons, and brazenly doctored photos provided me not only with a rare researcher’s out-loud laughter, but also with a crucial perspective on what sentiment was out there beside the better-publicized rage and posturing. In every source—from federal documents to web detritus—I looked for the underlying narrative, seeking to identify its motives, its assumptions, its assertions, its ramifications, and its holes.

Before I begin examining each party in the narrative struggle over how Enron should be understood, however, I must also acknowledge myself as a creator of narrative: this one. Like any other storyteller, I have emphasized some events at the expense of others. I have designated certain central characters and left others obscure. I have paired particular causes with particular effects. I have decided where to begin and where to finish. And most importantly, my narrative presents events via its own subjective interpretation; one that has potential implications as to how the reader should proceed. I contend that narratives about Enron were, are, and will continue to be more important than any associated “facts.” The distinction, here, is between interpretations of the bankruptcy as opposed to the numbers and information that, even when expertly compiled, fell short of a holistic explanation. Accordingly, people’s understandings and renderings of the Enron story have affected American politics and culture much more than have the company’s actual blunders and lies. This argument represents a road generally not taken, thus far, by business scholars, for in their emphasis on what actually happens in the commercial sphere they usually overlook what people *think* is going on. Both are worth our study, but the latter can have much further-reaching implications.

While historians differ as to whether or how much they should consider their writings works of narrative, I begin with the assumption that we are all narrators (narrativizers, per White) and that we should be free to embrace that role, responsibly. I have relished the task of crafting a good story; I think this makes history more engaging and more accessible. Yet I have attempted to exploit the benefits of the narrative form without compromising academic standards for questions, evidence, or conclusions. As a historian who studies something that happened in very recent memory, I am sometimes asked what distinguishes my work from journalism. With great respect to that field, to which almost all historians are indebted and whose mandate is simply different from our own, these standards constitute my answer.

Analytic Themes

Narratives of the Enron bankruptcy and scandal are remarkably varied. Yet from sobbing news testimonials, to indignant speeches in the halls of Congress, to irreverent amateur cartoons, to legalistic sentence-splicing, three consistent themes emerge as the points of most intense disagreement. These are also the three elements of this scandal—common to many others like it—that speak most directly to Enron's historical significance. All interrelated, they should be taken as an ensemble rather than in any prescribed order.

The legitimacy and accountability of leadership, within both business and government, fell into question immediately when the Enron scandal broke. In the case of business leadership, people debated (and most condemned) the role of the company's leaders in the bankruptcy and its fallout. How had the company failed, and why? What were the obligations of its top executives to employees, shareholders, and the public? Who had sufficient authority either to have fixed Enron's problems or to deserve blame for not doing so? Even beyond the company's internal operations and external communications, further arguments about business leadership were less explicit, but even more urgent. What kinds of people become celebrity tycoon power-brokers in the United States? What can the public expect of them? What happens when they fall short?

One area of discomfort, when the topic is businessmen of great influence, is the fact that they are not elected, nor are they public servants of any kind. They advocate in nobody's interest, reliably, other than their own, and (in theory at least) that of their shareholders. More self-evident, then, were the arguments over civic leadership in the Enron scandal; namely that of public officials. Controversy abounded as to the types and degrees of responsibility first of legislators and the Bush administration, who had allegedly coddled the company in exchange for campaign contributions, and also of regulatory agencies, such as the Federal Energy Regulatory Commission and the Securities and Exchange Commission, that may have allowed Enron to break rules. Were these leaders and regulators doing their jobs? Moreover, had they come into those jobs, in part, because money and favors from companies like Enron can circumvent the democratic process?

Though almost never articulated directly, there was also frequent contestation as to *who did or did not "understand" business, economics, or the law.* Even before its problems were exposed, Enron's business models, financing, daily functioning, and even its organizational structure were highly complex. To grasp what went awry could be more difficult still. The bankruptcy and its fallout witnessed a fascinating scramble over who was knowledgeable enough to make pronouncements on what had happened. When non-experts, from employees and investors to legislators, made judgments on Enron executives, they asserted that they understood enough to assign blame. For their part, these executives—once so revered for their expertise and ingenuity—alternately insisted that the people most angry with them did not understand relevant issues, and claimed (on strategically chosen occasions) that they themselves were unaware of key elements of their own company's business and accounting.

Meanwhile, there was no consensus that this kind of knowledge or understanding was even helpful, much less necessary, when interpreting and responding to Enron's collapse. Recognizing that exclusive standards of expertise are often used to silence unwelcome questions and opinions, some of the people most outraged by the bankruptcy (or who had reason to pose as such) framed narratives of it in moral rather than technical terms.[34] All that one needed to understand Enron, they claimed, was a sense of right and wrong. Yet another party of narrative makers—satirists—also rejected the premium on business arcana by contending that neither technicalities nor moral reasoning were particularly relevant here. Pragmatic common sense enabled anybody to get their jokes, and, in some cases, to envision change.

Finally, in making sense of the Enron scandal, people revisited and perhaps reconsidered *conceptions of the "American way" and US civic culture.* Here the issues under debate were most abstract, and invocations of them least direct. Part of the reason was that, if only on this set of questions, people had to think in terms of systems and processes rather than, as comes more easily, individuals and incidents. How much influence did large corporations enjoy over American government, society, and livelihood? Was this level of influence fairly earned and deserved? Was it for the best? Did it comport with the values of the nation's imagined community? What happens when traditional admiration for businessmen's ambition, innovation, and self-made success collides with traditional disdain for businessmen's greed, manipulation, and sense of entitlement?

Large Corporations in America: Reverence, Rebuke, and Something In Between

This last conflict in cultural beliefs leads me to the most general premise of this analysis. For my studies of business and attitudes toward it, from the era before independence through to the present, have consistently demonstrated this tension: On one hand, Americans respect—even sometimes idolize—individuals who achieve dramatic success and fabulous wealth through business enterprise. They have demonstrated time and again that the vast socioeconomic gulf between "average" citizens (such as, perhaps, themselves) and these celebrity executives is tolerable as long as the doctrine of the American dream lives on alongside it. Yet on the other hand, Americans have been suspicious of business from the very beginning—indeed, wary of the corporate form itself, from the earliest days of charter-granting in the American colonies.[35] With every development in business has come a wave of resentment and resistance, much of it

[34] For one approach to classifying explanations in technical terms as opposed to using "codes," "conventions" or "stories," see Charles Tilly, *Why?* (Princeton: Princeton University Press, 2006).

[35] Pauline Maier, "The Revolutionary Origins of the American Corporation," *The William and Mary Quarterly*, Third Series, 50, no. 1, Law and Society in Early America (January 1993): 51-84.

relating to the same mechanisms of concentrated money and influence that at the very same time earned admiration and applause.

The American colonies, as we know, were conceived as a profit-making project. The first Europeans who committed to settling here did so, at some risk, in hopes of making money—far more than the Old World offered to non-nobles. It should not be surprising that these people and their descendants would admire the spirit of enterprise. With the market revolution, again, Americans of all regions and stations routinely praised growing corporations for the amenities they offered, and at such prices, as well as for many of their provisions as employers. By the late nineteenth century it was also suggested—by business' biggest names, predictably, but by laypeople too—that corporate leaders served cultural betterment as well. By the logic that "material well-being must proceed (sic: precede) social and cultural progress," Morgan, Carnegie et al. might be more valuable than the nation's most esteemed thinkers and artists.[36]

The more people identified as consumers and as wage-earners, the more immediate their recognition of how big business affected their livelihood. Renowned for his innovations in manufacturing and labor policy, Henry Ford ranked slightly below Jesus and Napoleon in 1920s public polls concerning "the greatest men in history."[37] Philanthropic giving by famous executives has also been a constant, by which business leaders salve conscience and/or public image. Whichever it is, the recipients have been grateful for funding that was unlikely to come from anywhere else.

Even today, when the "question" of big business has obviously been settled in the affirmative, some scholars will be satisfied only with approval—as opposed to mere acceptance—of the role of large corporations in establishing the United States economy and society. For example, in "The Prospering Fathers" (1999), Paul Johnson argued that the same titans of industry and finance so often called "robber barons" were actually patriots—economic pillars and civic exemplars—to which Americans past and present owe a considerable debt.[38] Most

[36] Blicksilver, *Defenders and Defense of Big Business,* 248. Here I am quoting the author.

[37] Beatty, *Colossus,* 256.

[38] Quoted in *ibid.,* 159.

"household names" of the new economy, likewise, are recognized not only in association with their companies' successes, but also in connection with their (often massive) philanthropic efforts, the readiest example being Microsoft founder Bill Gates. Enron's best-known executives, Ken Lay and Jeff Skilling, were outright celebrities during the company's heyday, considered geniuses of trading and management, and consulted constantly on matters of business and policy. Lay's philanthropy would come to public attention primarily after his criminal indictment (and then again after his death), but it reflected the same tradition of *noblesse oblige*—and public appreciation thereof.

Yet beginning no later than Americans' zeal for commerce and the fruits it would bear was an intense skepticism toward the capitalist ethos and, as it developed, big business and its sometimes reckless ways. The Puritans' Calvinist doctrine admonished both idleness and over-commercialism, leaving in between a narrow strait of industrious piety that, as Perry Miller noted, ultimately proved too difficult for a bourgeoning (capitalist) society to navigate.[39] Anxieties ran rampant in the early national period about the Bank of the United States' consolidation of capital and power.[40] Mark Twain's 1873 novel *The Gilded Age* showed businessmen buying off legislators with nonchalance. Where they had appeared as "folk heroes" in many films of the 1920s, Hollywood during the '30s portrayed them much more often as villains.[41] Recent films such as "The Insider" (1999), "Erin Brockovich" (2000) and "Michael Clayton" (2007) carry on this tradition, presenting large corporations as unscrupulous, even violent, in their constant efforts to protect and enrich themselves.

This longstanding duality in American thinking about business and large corporations—admiration alongside suspicion—would be rich enough to sustain a study on its own, but I find there is also a third tradition in treatments of big business. I was not looking for it, but in my investigations of Enron narratives it became absolutely impossible to ignore. I determined over time that it was not only highly influential in this particular case study, but also that it too had a

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[39] *Ibid.,* 16, Perry Miller, "The Shaping of the American Character," *The New England Quarterly* 28, no. 4 (December 1955): 435-54.

[40] Galambos, *Public Image of Big Business in America,* 6.

[41] Beatty, *Colossus,* 275.

long history. Yet while business historians often acknowledge it anecdotally, they seem not to find it worthy of synthesis or even comment. When more academically inclined, I call it satire. At times it would be more accurate simply to say mockery. The overall pattern is the use of humor, with business itself unmistakably and invariably the butt of the joke. Americans who make fun of business and business people engage directly neither in admiration nor in derision. Indeed, satire seems simultaneously to reject both attitudes and also to sample selectively from each.

First comes mockery of the capitalist endeavor and its promises of wild success. In the 1605 play *Eastward Hoe!,* a tavern patron bragged that, thanks to profit-making ventures in "VIRGINIA, Earth's only Paradise," its denizens had "chamber-potts" of "pure gould."[42] A folk song from the early twentieth century had Jay Gould's daughter begging, before she died, to try the last two beverages in the world that she had never tasted: water and tea. There is also grim acknowledgment of the dehumanization (figurative and sometimes literal) that business logics could beget. Charlie Chaplin's 1936 opus "Modern Times," for example, satirized factory mechanization, featuring a boss who decided not to feed his employees via machine because its tendency to clobber them made it "impractical."

Moving toward more accusatory fun, Will Rogers said, around the same time, "A holding company is a thing where you hand an accomplice the goods while the policeman searches you."[43] Likewise on February 2, 1960, somebody bought advertising space in the *New York Times,* under fake sponsorship, to sneer at a recent price-fixing scandal that had germinated at the Barclay Hotel. "Antitrust corporation secrets are best discussed in the privacy of an executive suite at the Barclay," the "ad" said. "It is convenient, attractive and financially practical."[44] Finally, the effects of office work at a large corporation on social relations and personal values presented ample opportunity to make fun of people who seemed to take themselves excruciatingly seriously. Impersonating a high-powered manager in a large company, author Joseph Heller in 1974 described the ridiculous company politics that would become fodder for many later send-

[42] George Chapman, Ben Jonson, and John Marston, *Eastward Hoe!,* quoted in *ibid.,* 7.

[43] Michelman, *Business at Bay,* 188.

[44] *Ibid.,* 154

ups, including films like “Office Space” (1999) and TV series like “Arrested Development” (2003-06) and “The Office” (2005-Present, US). Heller also lampooned businessmen’s notorious self-importance. “I enjoy my work,” he wrote, “when the assignments are large and urgent and somewhat frightening and will come to the attention of many people.”[45]

Many Enron jokes, cartoons and satires are to follow, and on my premise of taking humor seriously each deserves independent examination in context of specific debates. However, solely to illustrate how Enron jokes carried on the traditions described, I will share one now. Jeff Skilling, so it goes, was propositioned by a sexy blonde while the two were alone in an elevator. His response: “What’s in it for me?” This scenario in some ways suggests admiration for Skilling—not only has he received quite the offer; he is prepared to decline what many of his counterparts might entertain as an impossible fantasy because it does not make rational sense. The joke might also be understood, however, to cast doubt on Skilling’s humanity. His hesitation is not due to any standards of public decency or morality (Skilling was attached, as everyone knew), but instead shows a split-second calculation. If it didn’t involve money, he was not interested.

If this joke sounds like it originated in a roomful of rowdy young men, that is probably because it did. Current among Enron employees long before the company’s troubles began, it smacks of the culture of Enron’s trading floor, which was almost unanimously described as a high school boy’s locker room with computers. (Accordingly it fostered banter much dirtier than this). Both the pride and the shame of the company, it would not be surprising if Enron’s traders were also its comic vanguard. However, like the historical gibes and satires described before, this joke is accessible—and, probably, funny—to anyone because it re-articulates longstanding ambivalence about corporate logics. It simultaneously congratulates the success and praises the discipline of a big businessman, while also sneering at his values and cynically insinuating that profit motives can blind a person to all other means of making decisions. The humor would become darker as Enron faltered and fell.

To mock someone who occupies a privileged place in society is to impugn, in one way or another, his or her right to be there. The grounds for doing so can be as superficial as poor looks

[45] Joseph Heller, “The Office in Which I Work,” quoted in Beatty, *Colossus,* 324.

or as serious as criminal allegations. But while satire, obviously, departs from praise when it describes high-profile executives and their world, it also avoids the tone of fear that characterizes straight polemic. To decry some public harm from commercial practices, or warn of its threat, one has to believe that people in business wield great power. It is only through the perception that "ordinary" people, by default, are at the mercy of corporate maneuverings that any complaint or resistive activism even appears logical, much less necessary.

Thus expressions of suspicion and anger toward big business actually share one important element with expressions of admiration: a sense of wonder. Both earnestly positive and urgently negative characterizations of big business attribute to its prominent characters special prowess and also a certain mystique. Successful businessmen may be exceptionally driven and brilliant, or exceptionally greedy and conniving, but both traditions in commentary agree that they are exceptional. Not so the concomitant procession of satire and mockery.

With humor, the world of business collapses into our own. It has no distinct or impenetrable language, logics and potencies. It contains neither heroes nor villains. There may be some action worth taking at a given juncture, but either way the first order of business is perspective. The subjects of these jokes are certainly not so lofty as to deserve our reverence. But neither are they imposing enough to disturb us—or even to be taken seriously, at least for now. I will attempt to demonstrate and validate each of these three views of big business, in the case of Enron: admiration for business success, outrage at business fraud, and amusement that encompassed both. But for their narrative ingenuity and for their resolution of the struggle between technicality and morality, I often endorse humorous accounts over the alternatives.

I find, perhaps ironically, that by my own standards of narrative the most snide interpretations of Enron were also the most capacious. They took into account myriad factors, insisting that business decisions and moral judgments were equally relevant; neither one all-encompassing. They offered a platform for a more inclusive discussion rather than excluding any amateurs. And moreover they approached the most powerful figures in the United States—in both the private and public sectors—as people rather than titans. One may notice that correctness or completeness did not figure in to these criteria. I am not sure either is possible—at any rate, I certainly have yet to see a perfect Enron narrative. For jurors and legislators, deciding who was at fault and determining what reforms to initiate certainly represented worthy reasons to organize this scandal into a coherent story. But for the rest of us, Enron narratives serve a more abstract function. My basis for judgment, then, is more on what a story does than on what it says. I am more concerned with what a narrative makes possible, than with what it claims has happened. Accordingly, I will suggest that making fun of Enron was in many cases the most serious, the most conscientious, and the most deeply considered response.

Chapter Overview

1) Laughter and Tears in the First Narratives of Enron

This chapter briefly describes Enron's business model and means of success before recounting the company's plummet into bankruptcy in late 2001. Drawing on media coverage, "insider" testimonials, congressional hearings, and informal documentation of jokes, songs and protest slogans, Part I identifies literary models in narratives of the Enron scandal; namely tragic, melodramatic, and satiric. Part II is an examination of the many invocations of September 11, 2001 in various Enron narratives. The political implications of each narrative are analyzed with an eye to the motivations of respective story-tellers—from radical anti-corporate activists to conservative legislators and the Bush administration.

2) "Never Again:" Post-Enron Legislative Reforms

Two major pieces of legislation were enacted in 2002 purportedly in response to the Enron scandal: the McCain-Feingold Bipartisan Campaign Reform Act (BCRA), and the Sarbanes-Oxley Act for Corporate Accountability. With the former, legislators awkwardly sought to address their own conflict of interest in regulating the same corporations that (indirectly) fund congressional campaigns. With the latter, Congress assigned blame and issued threats to vilified executives. This chapter analyzes how certain interpretations of the Enron scandal led to conclusions that BCRA and Sarbanes-Oxley would preclude a "repeat performance." It also establishes the historical precedent, in both campaign finance rules and accounting and securities regulation, for scandal provoking legislative reform. Finally, it discusses the new laws' practical impact, as well as their significance (or lack thereof) in the public sphere.

3) Enron Remembered

The years immediately following the Enron bankruptcy saw it referenced and recounted in myriad formats. From slapstick comedy to "talking-head" documentary, films offered distinctly different—but all to some extent misleading—accounts of the scandal. Meanwhile memoirs from former Enronians, vendors of Enron souvenirs, and various spoof artists all offered up their own stories. These retrospective narratives reflected not just distortions and omissions at the level of discrete facts but also much broader, and deliberate, compromised arcs of story. In this chapter I use the source base of Enron "memorials" to engage the concept and field of Memory Studies, arguing that we need new means of understanding collective memory to accommodate upheavals in business and the economy.

4) A Trial, a Death, and a Class-Action Lawsuit

In 2006, former Enron CEOs Ken Lay and Jeff Skilling finally went on trial. Media coverage was comprehensive, but the proceedings—which lasted several months—lacked the drama and moral cohesiveness that could have provided public "closure." This chapter recounts the legal fallout of the Enron scandal and public responses thereto, focusing on the trial but also including civil litigation, plea bargaining with the government, and some executives' apparent evasion of punishment. The chapter also analyzes how Enron narratives changed between the time when the bankruptcy was "news," and the eventuality, which perhaps came awkwardly late, of Lay and Skilling's formal reckoning. It concludes with responses to Ken Lay's unexpected death, and an analysis of fraudulent practices in shareholders' civil claims against Enron.

5) Epilogue: The Financial Crisis of 2008

Historians in generations to come who are interested in the business and economics of this era will likely not focus on the Enron bankruptcy or even the wave of corporate accounting scandals that crested in 2001 and 2002. These events will probably be eclipsed, in hindsight, by the mortgage and credit crises of 2008, which led to numerous Wall Street bankruptcies and controversial government bailouts. This epilogue compares accounts of corporate meltdown, portrayals of high-level executives, and debate about the role of the federal government between the Enron bankruptcy and today, placing both in context of a longer history of such narratives in the US. It also examines the recurrent strains of reverence, resentment, and cynicism, in Americans’ responses to this latest episode of infamy in the business world.

Chapter 1: Laughter and Tears in the First Narratives of Enron

"I'd like to take just a moment to read you, if I may, the final page of Hans Christian Andersen's story. I don't believe he's any relation to Arthur Andersen." The speaker paused to encourage the audience response he anticipated. After the brief laugh, he began reading aloud. "'The emperor shivered, for it seemed they were right. But what could he do? After all, he was the emperor, and people expected him to be dignified….so the emperor…stood up, just as tall, and his servants went on carrying the train that wasn't there.'"[1]

It was story-time in the US Congress. Sharing this fairy tale was Rep. Bart Stupak (D-WI); gathered around to listen, a sub-set of the House Energy and Commerce Committee dedicated to "oversight and investigations." The purpose for this day's hearing fell under the latter category, for by February 2002, the opportunity for "oversight" of Enron Corp. had long since passed. Legislators now sought to understand—or, more importantly, to explain—what had happened during the preceding six months as one of the nation's largest and most admired companies had hurtled into bankruptcy. Stupak's joke about Andersen provided some welcome comic relief, hinting at a potential conflict of interest between the Danish author of his nineteenth century children's story, and Enron's accounting firm Arthur Andersen LLP. Amid a scandal that had implicated so many individuals and groups, in both the private and the public sectors, this exaggeration plainly referred to that which, unfortunately, was not an overstatement. Around Enron even the most unlikely possibilities of illicit dealing, the joke grimly suggested, could not necessarily be ruled out.

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[1] Oversight and Investigations Subcommittee of the House Energy and Commerce Committee, *Financial Collapse of Enron: Hearing before the Oversight and Investigations Subcommittee of the House Energy and Commerce Committee,* 107th Cong., 2nd sess., 14 February 2002.

The function of Stupak's speech as a whole, however, was not humor. It was an attempt to translate an overwhelmingly complicated phenomenon of business, finance, and commercial regulation, into an accessible story, even one that his audience already knew. By alluding to this well-known parable Stupak compared Enron's wild success to the emperor's exquisite robe: onlookers who did not appreciate its splendor—or indeed who saw nothing material at all—had been told, and had usually believed, that this was due to their own lack of sophistication. Of course, there was no robe, and eventually someone dared say so. The mass charade had come to an embarrassing end: the emperor was naked; the company insolvent.

Yet the issues at hand in the aftermath of Enron were even less tangible than the emperor's invisible clothes. Common knowledge was fuzzy: something had happened, causing thousands of people to lose their pensions, their savings, and their jobs. The money seemed to have been stolen, but some claimed it had never existed. Shareholders were suing; employees were sobbing. One former executive had committed suicide; another was building a lavish new house. While Bart Stupak was the only person who saw fit to read aloud from a children's book on national television, nearly everyone who was talking about Enron at the time was trying to tell some kind of story. They were trying, for themselves and for others, to organize a mess; to make sense of gibberish. Enron needed a narrative.

Here were the first attempts to make sense of what was already clearly a socio-historic event. Legends and memories tend to carry greater impact than the actual events they claim to represent,[2] and this can only be more true in a case such as Enron's, which involved so many obscure technicalities of law, securities and accounting, unfamiliar to the lay majority. Yet "what happened at Enron"—as if everyone understood perfectly—was still constantly cited, in many contexts, as a reference point. The real reference point, of course, was simply one Enron narrative or another, not the agglomeration of numbers that alone represents the true story (insofar as there is one). Some narratives reflected literary forms reminiscent of nineteenth

[2] Two events, for example, about which scholars have made this assertion are that of the John Scopes trial (Edward J. Larson, *Summer for the Gods: The Scopes Trial and America's Continuing Debate Over Science and Religion* [New York: Basic Books, 1997], 244-45) and the Watergate scandal (Michael Schudson, *Watergate in American Memory: How We Remember, Forget, and Reconstruct the Past* [New York: Basic Books, 1992], 104, 124-25).

century theatre or even ancient drama. Other stories reflected the bankruptcy's unique timing by imbuing it with words and images from the events of September 11, 2001. In every case the creators of Enron narrative colored it with their own biases and shaped it toward their own purposes.[3] Thus if the Enron scandal mattered, its stories dictate why it mattered and what it meant.[4]

Everything You Always Wanted to Know About Enron (But Were Afraid to Ask)

When scandal first brought Enron's name into general news reports, many people were confused even about what kind of business the company had been in, and understandably so. Founded by Ken Lay in 1985, Enron began as a natural gas and oil supplier. By the late eighties, the company's business strategy was more complex; it now facilitated natural gas and oil trading, customizing contracts to minimize loss and, of course, maximize profit. It worked. Enron went on to launch many foreign projects and, in the nineties, expanded its business to include (among others) electricity, water utilities, and internet broadband services. Though still an "energy company," Enron was no longer defined by the "what" so much as the "how." The company used the trading model that it had developed for its original products, to enter (or even sometimes to create) markets that had nothing to do with energy.[5] The strategy was widely admired; *Fortune* magazine named Enron "The Most Innovative Company in America" every year from 1995 to 2000,[6] and its top executives became business celebrities. Only after the company's collapse was there much inquiry into the details of what exactly Enron had been doing.

This study will not attempt a comprehensive account of the circumstances surrounding Enron's bankruptcy; many such accounts, in the scope and detail that the event deserves, are

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[3] Hayden White, *The Content of the Form: Narrative Discourse and Historical Representation* (Baltimore: The Johns Hopkins University Press, 1987), ix.

[4] In *Watergate in American Memory,* Michael Schudson wrote, "I am not interested in the 'discourse' for its own sake, as if there were nothing but discourse, but for the sake of its role in social action, present and future" (4). Though referring to a different American scandal, Schudson's justification as stated here is essentially the same as my own.

[5] Peter C. Fusaro and Ross M. Miller, *What Went Wrong at Enron: Everyone's Guide to the Largest Bankruptcy in U.S. History* (Hoboken: John Wiley & Sons, 2002), 164-69.

[6] *Ibid.,* 172.

available elsewhere.[7] Rather, it will provide an overview of what is known in terms of, and, when necessary, in opposition to, the interpretations that most often found their way into Enron narratives of all kinds. It will summarize some of the most commonly cited of Enron's practices, with particular attention to aspects in which they were typical or aberrant for a company of its function and stature. As will be shown, "what happened at Enron" does not, or should not, refer to any one specific faulty practice; the company's problems stemmed from a variety of them.

Special Purpose Entities (SPEs) and financial hedging came to ignominy through Enron, but the fine distinction between accounting sleight of hand that is, for better or worse, legal, and illicit trickery, is sometimes overlooked. Large corporations routinely form SPEs, and Enron already had scores of them before creating the infamous ones known as LJM. SPEs can serve a variety of functions and, although obviously intended to benefit the company, they are required to have a certain degree of independence and investment risk. Hedging is another increasingly common business and financial strategy. Hedges consist in contracts or investments designed to offset potential losses within a single market—for example, that of a particular commodity or financial asset. Like SPEs, hedging is perfectly legal.[8] For years, however—beginning with commodities trading and then increasingly applied to investments as well—top executive Jeff Skilling treated this device as a panacea, summarily ordering his staff to hedge away all risks and losses, as if that were possible.

The hedging SPEs known as the Raptors, made famous by whistleblower Sherron Watkins' memo of warning to Ken Lay, were problematic by virtue of their peculiar characteristics, not simply because they existed. The Raptors were invested in a number of stocks that by 2001 were flagging. Yet under the "mark-to-market" financial statement policy, Enron had been allowed years before to report gains based on *expected* investment returns—long before these gains

[7] See Bethany McLean and Peter Elkind; *The Smartest Guys in the Room: The Amazing Rise and Scandalous Fall of Enron* (New York: Portfolio, 2003); Kurt Eichenwald, *Conspiracy of Fools: A True Story* (New York: Broadway, 2005); Loren Fox, *Enron: The Rise and Fall* (Hoboken: John Wiley & Sons, 2003).

[8] In the Senate Commerce, Science and Transportation Committee, *An Overview of the Enron Collapse: Hearing before the Commerce, Science and Transportation Committee,* 107th Cong., 1st sess., 18 December 2001, Chairman Sen. Byron Dorgan (D-ND) asserted in his opening statement that "This is not your average business failure…This is about an energy company that morphed itself into a trading company involved in hedge funds and derivatives." Dorgan suggested that Enron's "involvement" therewith, regardless of any details, was inherently unusual or suspicious.

actually materialized. As the Raptors failed to perform with the success that Enron's statements had already assumed, it became increasingly difficult to reconcile those statements with reality. Moreover, the majority of the stock that capitalized the Raptors was Enron's own. Few unbiased accountants would consider this strategy sound. As Enron went, so went the Raptors; yet as hedges, the latter should have been protecting Enron from losses. Instead, on the contrary, Enron was actually losing money through the funds.[9]

Enron managers are often imprecisely portrayed as having "stolen money." However, among the factors that caused the company to unravel, literal, direct theft from Enron by executives was comparatively minor. The singularly blatant, sustained instance was that of Chief Financial Officer (CFO) Andy Fastow, who designed and then directed the LJM private equity funds. These funds transacted only with Enron, and included the bare minimum of outside investment (three per cent) to be considered independent entities. The LJMs, Fastow claimed, because they required no negotiation, would streamline and expedite vital deal-closing processes.[10] The problem was that in such deals, he would be on both sides of the table—as CFO of Enron and director of the LJMs. A stark conflict of interest, this arrangement was specifically forbidden under the company's ethics rules, but the board of directors in a special resolution exempted Fastow.[11]

It might now be taken as a foreboding but ignored clue that the funds' acronymic names were the first initials of Fastow's wife and two sons.[12] At any rate, over a period of two years, he took home $60.6 million through work with the LJMs—work that he had insisted would only

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[9] Testimony of Sherron Watkins in Oversight and Investigations Subcommittee, *Financial Collapse of Enron;* Eichenwald, *Conspiracy of Fools*, 54-60; Watkins to Kenneth Lay, memorandum, 15 August 2001, Arthur L. Berkowitz, *Enron: A Professional's Guide to the Events, Ethical Issues, and Proposed Reforms* (Chicago: CCH, 2002), 137-40.

[10] The ostensible convenience of such a plan points to one of the central ironies of Enron particularly as related to the company's strategic use of SPEs. While any corporation that falls so far, so fast, can be said to have taken on too much risk, it was actually the *absence* of risk that in this area pushed Enron into danger. Real, quantifiable business transactions involve more than one interested party and by definition contain potential both for gain and for loss. Thinking it had found a way to deal with itself via SPEs, Enron was in one sense sidestepping risk but in the final analysis taking on unsupportable liability.

[11] McLean and Elkind, *Smartest Guys in the Room*, 189, 193.

[12] Fastow's wife was Lea, and his sons were Jeffrey (named after Jeff Skilling) and Matthew. *Ibid.*, 189.

require a few hours out of his schedule each week.[13] Alternate Chief Executive Officers (CEOs) Ken Lay and Jeff Skilling both deny having known of any mischief involving the LJMs; however, both supported Fastow's exemption from ethics rules, and Skilling thereafter appears to have either summarily approved LJM transactions or to have waived the requirement that he do so.[14] (Although the name of Skilling, and especially that of Lay, are most often associated with "stealing" at Enron, neither of them received any of the appropriated LJM money).[15] Fastow's siphoning of funds through the LJMs surely hurt Enron financially, but the worst long-term consequence may have been in terms of corporate image. After Fastow's activities came to light, many outside trading partners refused to do business with Enron. Fastow then had to be dismissed as CFO and on the day he was fired, Enron's stock price—which at its height scarcely over a year before had exceeded $90.00—fell from an already dismal $19.00 to $16.41.[16]

Perhaps the most palpable of Enron's publicized wrongdoings involved the California energy crisis of summer 2000. One popular understanding is that Enron caused the state's rolling blackouts, in which selected regions lost electricity, in order to spike energy prices in this recently deregulated market. There is some fairly compelling evidence to this effect.[17] However, some of Enron's other practices in California energy dealing, though they became notorious in part thanks to names like "Get Shorty" and "Death Star," appear to have been legally (if not ethically) defensible. Such strategies took advantage of inefficiencies and regulatory loopholes in the state's energy market, and in most cases, other trading entities would likely have used similar

[13] McLean and Elkind, *Smartest Guys in the Room,* 376; Eichenwald, *Conspiracy of Fools,* 554. These facts are uncontested; Fastow pled guilty on January 14, 2004 to conspiracy counts of wire and securities fraud, to reduce his forfeiture of assets and prison sentence in exchange for cooperation as a witness in the prosecution of other executives (Eichenwald, *Conspiracy of Fools,* 672).

[14] McLean and Elkind, *Smartest Guys in the Room,* 193, 310-11.

[15] This is not to say, however, that Fastow was the only executive who did. A number of others, most notably Michael Kopper and Ben Glisan, collaborated in the LJM schemes and profited from doing so (Eichenwald, *Conspiracy of Fools,* 667-68, 586). Glisan, at the time of this writing, is among the few former Enron executives who are actually behind bars ("Ex-Enron Executive Going to Prison," *Houston Chronicle* 10 September 2003).

[16] The date was October 24, 2001. Robert Bryce, *Pipe Dreams: Greed, Ego and the Death of Enron* (New York: Public Affairs, 2002), x; Bryan Cruver, *Anatomy of Greed: The Unshredded Truth from an Enron Insider* (New York: Carroll and Graf, 2002), 138; McLean and Elkind, *Smartest Guys in the Room,* 377.

[17] McLean and Elkind, *Smartest Guys in the Room,* 277-78.

strategies had Enron not beaten them to it.[18] Whatever Enron's role in the energy crisis, the incident points to the blurry line between capitalistic opportunism and illegal exploitation. The outcry over Enron's trading practices in California may be grounded more in moral conviction—however justified—than in technical certainty.[19]

It was only as the company began its precipitous decline that a few specific, pervasive practices made Enron distinctive; here the executives' crowning offenses came in the form of self-serving damage control measures. First, it is undeniable (for anyone other than the two men themselves) that Ken Lay and Jeff Skilling lied about the financial condition of the company in order to maintain investor confidence. Enron employees, whose pension funds were typically invested mostly if not completely in Enron stock, were not encouraged to diversify their holdings and may even have been deliberately "locked out" from selling during the critical time of October-November 2001. Meanwhile, many top-level executives were selling their own Enron stocks with the franticness that any informed shareholder would. As the financial community and regulatory agencies began formal inquiries into Enron, a massive destruction of documents (shredding of hard copies and deletion of electronic materials) appears to have been ordered at Arthur Andersen, the firm serving most of Enron's audit and account consulting needs. Finally, around the time of the bankruptcy many executives pillaged Enron's coffers for enormous "retention bonuses," while the same rank-and-file employees whose pensions had been decimated received roughly $4,500 each in severance pay.[20] Whatever factors brought about the Enron collapse, the manner in which it was supervised represents the indubitable scandal.

The scandal's crowning feature was the company's relationship to George W. Bush's presidential administration. Enron and the Lay family had been among Bush's biggest campaign supporters. Ken Lay was friendly with Dick Cheney when the latter was CEO of another Texas energy company, Halliburton. Lay was especially close to George H. W. Bush, but during the

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[18] McLean and Elkind, *Smartest Guys in the Room* 275; Jonathan Falk, "Substituting Outrage for Thought: The Enron 'Smoking Gun' Memos," *The Electricity Journal* (August/September 2002): 20-21.

[19] Falk, *Substituting Outrage for Thought,* 13-14; Fusaro and Miller, *What Went Wrong at Enron,* 93-94.

[20] David Kaplan and L. M. Sixel, "Enron Lays off 4,000," *Houston Chronicle,* 4 December 2001, 1A; Testimony of Sherron Watkins in Oversight and Investigations Subcommittee, *Financial Collapse of Enron*.

son's first term still received White House correspondence addressed to "Kenny Boy." [21] When as Vice President Cheney served as chair of Bush's Energy Task Force, he invited Lay to a closed-door meeting to solicit Lay's "ideas" for the new administration's national energy policy.[22] After the scandal broke, President George W. Bush would emphatically deny any recent contact with Enron executives.[23] His position on the larger issues at hand was unclear, however, because even in the months following the company's bankruptcy he fought against initiatives to increase "corporate accountability."

The outrage and desperation that punctuated Enron's bankruptcy were surely understandable. And in one sense, the drama of the moment had productive potential: it rendered a number of complex issues immediate and compelling in a way that everyday Wall Street news never could. Once alerted, the public might have been moved to new levels of political involvement—and some individuals and groups did seize the opportunity. However, by the same token the Enron story became prime fodder for manipulative narrativization by people who had power and wanted to keep it. More concerned with the contestation of stories that took place after Enron than with offering any single authoritative account, this chapter tells and re-tells Enron just as these struggling interests did.

PART I: POLITICAL THEATRICS IN THE AFTERMATH OF ENRON

This section will develop a taxonomy of Enron narratives based on literary frameworks, which can help to describe the stories' patterns and purposes. It identifies narrative veins that evoked tragedy, melodrama, and two forms of satire. To be sure, there were some that combined these literary elements or departed from them completely; no attempt is made to force neat classifications upon a debate that was chaotic and convoluted. Still, these four recurrent narrative

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[21] McLean and Elkind, *Smartest Guys in the Room,* 87.

[22] Cheney would later refuse to produce documents he had kept relating to this and other meetings with industry executives. (Eichenwald, *Conspiracy of Fools,* 441-42.)

[23] A reporter began, "Have you had any contact with Kenneth Lay or other Enron officials in the last six weeks—" and Bush interrupted by responding "No." The President then interrupted a second question to reiterate, "I have had no contact with Enron officials in the last six weeks." President, Address, "Remarks Welcoming General Tommy R. Franks and an Exchange with Reporters in Crawford, Texas," *Weekly Compilation of Presidential Documents* (GPO Access: frwais.access.gpo.gov) (week ending 28 December 2001): 1825-44.

structures are worth understanding insofar as they did pervade so much of the public discussion about Enron. The survey of narrative styles from various constituencies on the Enron scene will begin with the tragic perspective of former "Enronians."[24] They, after all, were supposed to be the primary focus of the national debate.

Enron as Tragedy

> …I had all of my savings, everything in Enron stock. I lost $1.3 million and I hope and pray that it can be recovered …it's just very touching…to be in a predicament like this, because a lot of people have asked me, "Charlie, why in the world didn't you get out beforehand?" I go back to that one simple word of loyalty: loyalty to a corporation, loyalty to something that I helped build, that I strived and worked a lifetime to build.[25]

When Charles Prestwood and several other former Enron employees testified before the Senate Commerce, Science and Transportation Committee just weeks after Black Monday, the story of the company's collapse was a tragedy. The workers spoke of Enron with reverence, emphasizing its business innovation, technological prowess, and financial prosperity. As proud and loyal parties to this flourishing enterprise, they had trusted its leaders. It would have been impossible, they suggested, to predict Enron's bankruptcy—but it also would have been ignoble. This hearing, held December 18, 2001, was the first of many. Billed "An Overview of the Enron Collapse," it opened with testimony from four rank and file technical employees; a 70-year-old self-described "little bitty shareholder" also addressed the committee. In his opening statement, chairman Byron Dorgan (D-ND) posed a number of questions about federal regulation, accounting practices, and Enron's board of directors, but these witnesses had obviously not been called to provide insight into any such topics.[26] Rather, the "overview" offered here was of the human hardship that Enron's bankruptcy had wrought.[27]

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[24] In Houston, "Enronian" has long been both a noun and an adjective.

[25] Senate Committee, *Overview of the Enron Collapse*

[26] Other witnesses who testified later in the hearing, including an Arthur Andersen executive and experts in stock analysis and business law, were in more of a position to do so.

[27] Those former employees who testified in Congress or even talked to reporters cannot be assumed representative spokespeople of this constituency. Nevertheless, because they did choose to speak publicly, their narrative was and will continue to be taken as the articulation of Enronians' experiences.

Tragedy depicts sympathetic characters brought to ruin by some cruel and unpredictable twist of fate. The tragic disaster must relate, however ironically, to the same values and traits that had promised good fortune; it interrupts a seemingly logical course of events that should intuitively have brought to the characters the success and happiness that their integrity or talents deserved. At its most poignant, tragedy suggests that the great achievements of its central characters had possessed an ominous underside all along. However, the devastating ultimate outcome never is, nor could it have been, foreseen—at least not by the characters themselves. [28]

A distinctly American tragedy shows that values of integrity, hard work and ambition, if misguided or corrupted, can, despite all good intentions, lead to misery. Much of Enronians' testimony and public statements to journalists might be interpreted as narrative in this tradition. They presented themselves with humility as ordinary honest and industrious Americans; "just working people" who "had no idea that our company was on the verge of collapse" because "the bookkeeping and the accountants and the way they done things was [sic] way over our heads." When challenged as to why they never questioned the statements of top executives, or sold off any of their Enron stocks before it was too late, employees cited loyalty to the company and thereby claimed the moral high ground. Though they usually presented themselves as helpless and desperate, they maintained that they wanted no "handout." Even in the face of tragic misfortune, these Americans were independent and self-sufficient.[29]

In an appropriately folksy encapsulation of this narrative as American tragedy, Charles Prestwood told the senators "it was from rags to riches back to rags" and that he intended his testimony to convey "the actual truth of what's actually is [sic] happening to us in this good old USA." These statements pointed to the broadest implications of the tragic narrative of Enron's collapse. Prestwood referred directly to the American dream, invoking its giddy cliché—"rags to riches"—but presenting his experience at Enron as an inversion of it. He had indeed, as he testified, been earning a comfortable living after nearly thirty years with the company; yet in just a

[28] Max Scheler, "On the Tragic," in Laurence Michel and Richard B. Sewall, ed., *Tragedy: Modern Essays in Criticism,* (Westport: Greenwood Press, 1963), 33-34, 38.

[29] David Kaplan and L. M. Sixel, "Enron Lays off 4,000," *Houston Chronicle,* 4 December 2001; Senate Committee, *Overview of the Enron Collapse.*

few months he'd "lost everything [he] had" and become "a very broke person." As if to ensure that his audience recognized his story as a challenge to one of the most vital of cultural axioms, Prestwood's conclusion, that this was the "actual truth" about "this good old USA," bluntly rounded out his indictment of the promise of upward mobility. [30] For him as for many other Enronians, the tragedy demonstrated that one could live and work faithfully by the tenets of the American "bootstraps" ideal and yet suffer for it instead of being rewarded.

It might be inappropriate to refer to top executives as Enron "employees," thereby grouping them together with the workers who, like Prestwood, could honestly say they were unaware of the company's impending doom, and had "lost everything" as a result. Needless to say, those at the company's helm experienced its fall differently: they suffered less financially, and it is difficult to argue that they were not, at least in part, to blame. Yet however the executives' renderings of the Enron story differed from those of their subordinates, their narratives possessed the same sense of tragedy, as well as, in some cases, an emotional authenticity that should not be dismissed or ignored.

High-profile Enron executives were at this time, in public, choosing their words very carefully (and with advice from a cadre of elite lawyers). Many feared, or knew, that they would face litigation, criminal charges, or both, and in such a position silence often seems the wisest statement of any. All of the big names of the Enron scandal received congressional subpoenas; all but one of them invoked the Fifth Amendment right not to incriminate oneself, and refused to testify. Here they followed the example of many previous generations of American executives, having scoffed at government authority during their (alleged) offenses and then reprising the same attitude when facing questions afterward. Not surprisingly, this tradition was entrenched during the Gilded Age. In 1889, for example, leaders of the nation's "Big Four" meat packing companies ignored congressional subpoenas regarding standards violations in their plants.[31] When finally induced to testify, the Secretary of the Chicago Union-Stock-Yards Company refused to produce crucial documents or to disclose key names—almost defeating the purpose of

[30] Senate Committee, *Overview of the Enron Collapse.*

[31] The Big Four were Hammond's, Fowler Brothers, Swift & Company, and Armour-Cudahy.

his appearance. The most significant players in Standard Oil, likewise, were notoriously enamored of the Fifth Amendment.[32] More recent in strategic silence were electrical company executives, subpoenaed for Congress' investigations into price-fixing scandals of the 1950s. Those who had nothing to lose—General Electric executives who had been fired and, in many cases, done jail time—agreed to testify, where those from Westinghouse, who had suffered no professional consequences, declined.[33]

Enron executives probably could not be blamed if they expected that appearing in Congress would be at best a waste of time and at worst a belabored public shaming. But their refusals further suggest they recognized the one function a series of showy Enron congressional hearings, "optics" aside, actually could perform: creating a permanent public record, however imperfect, of what had happened and who was involved. Again, history has borne this out. Despite witness' inconsistent cooperation, for example, the electrical price-fixing hearings are the singular means by which those events could be understood at the time and have been studied ever since. The same applies in the case of Credit Mobilier, in which bribery of congressmen by Union Pacific Railroad speculators came to light largely through congressional investigations in 1872.[34] In these business scandals, as in any, internal documents and hearsay were unreliable and inconsistent, if even available. Enron executives appreciated that a historical narrative was in the works, and also that its vital raw materials consisted in first-person statements. The facts on Enron, already obscure, would most likely become both less accessible and less coveted with the passing of time. The primary people whom those facts could implicate had no interest in hindering that process.

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[32] Chester McArthur Destler, "The Opposition of American Businessmen to Social Control in the Gilded Age," *The Mississippi Valley Historical Review* 39, no. 4 (March 1953): 641-72. 644.

[33] Irving S. Michelman, *Business At Bay: Critics and Heretics of American Business* (New York: A. M. Kelley, 1969), 169.

[34] Fletcher M. Green, "Origins of the Credit Mobilier of America," *The Mississippi Valley Historical Review* 46, no. 2 (September 1959): 238-51. 238.

The one exception to this logic—the sole Enron chief executive who accepted Congress' high-handed invitation—was Jeff Skilling.[35] In a characteristically bold and risky move, Skilling, reasoning that he had nothing to hide, actually testified twice. Apparently he had determined that rather than attempt to keep himself out of a burgeoning Enron narrative, he should propound his own; and, as he stated many times, he was confident history would prove him right. For the most part Skilling's own narrative was, like those of his former subordinates, tragic. But this tragic narrative, necessarily, differed from that of the rank and file employees in significant ways. Because he was painfully aware that many people blamed him and his colleagues for the Enron disaster, Skilling had to go on the defensive. Yet he also expressed bewilderment and grief—in part so as to appear allied with publicly untarnished lower-ranked workers.

Skilling repeatedly called Enron a "great company," and affirmed that it was with dedication and pride that he had worked there ten years, with six months as chief executive. His abrupt and ill-explained resignation from the CEO post in August 2001 had raised eyebrows, and in retrospect appears a key turning point at which the financial and business communities began seriously to question Enron's solvency. Skilling insisted he had resigned purely for personal reasons, and that he was fully confident, at the time, that Enron was as strong as ever. With an oft-repeated mantra, "I am not an accountant," he claimed to have been completely unaware that anything was awry—with the LJMs, the Raptors, or any of Enron's financial disclosures. The company's collapse, he said, was due to a "classic run on the bank;" a spontaneous and irrational investor panic brought on by uninformed and reckless journalists.

Skilling's tragic narrative of Enron's collapse differed most notably from those of his subordinates in its emphasis on technicality. Of course, there were all too many questions that, he maintained, he could not answer, but on subjects with which he was comfortable he implored his audience to rise above the sensationalism of the moment, to understand and assess the

[35] Skilling's testimony is not necessarily representative of Enron executives' narratives overall—and this has only become more obvious with time, as some of his peers, such as Fastow, have admitted guilt and professed remorse. However, Skilling's testimony is illuminating for the same reason that he alone chose to testify. He is perennially self-assured, and willing to "gamble" even, apparently, with his own livelihood. As such, Skilling personifies Enron more than any other individual—hardly a coincidence given his vital role at the company.

“facts” of the story. “The entire management and board of Enron,” he said in his opening statement before the Senate Commerce, Science and Transportation Committee, “has been labeled everything from hucksters to criminals, with a complete disregard for the facts and evidence assembled. These untruths shatter lives, and they do nothing to advance the public understanding of what happened at Enron.” He discussed the history of the “run on the bank” phenomenon, the technical complexity of the Raptor funds, and the recent trend in accounting that had produced “so many rules” that one “has to be a specialist to understand the mechanics of what’s going on.” He stated that his sales of his own Enron stock were routine and standard per the dictum of the diversified portfolio—and admitted that he didn’t “know what to say to the employees” whose entire savings were invested in the company when it collapsed.

Skilling acknowledged that “others [had] suffered far, far worse,” but testified to his own personal and financial difficulties in the wake of the bankruptcy. He felt that he had been unfairly smeared in the media frenzy of a scandal that was largely imagined. Most gravely, he spoke of losing his “best friend,” former executive vice president Cliff Baxter, who had been driven to suicide by the same feeling. Executives like Baxter and himself, Skilling suggested, were even more devastated by the tragic fall of Enron, because the company reflected their innovations and effort more than those of any other employees. Though much of Skilling’s testimony met with suspicion, and with good reason, in this last point he was probably sincere. In a moment of intoxication from boom times and booze, Skilling had once exclaimed, “I *am* Enron!”[36] A handful of executives, and none more than Skilling, had indeed won for Enron the awe and adoration it had enjoyed, and regardless of the circumstances of the company’s collapse, they still “were” Enron when it crumbled. The note that Baxter wrote to his wife before shooting himself on January 24, 2002, read in part, “Where there was once great pride now it is gone.”[37] All evidence verifies that Skilling had spent a great deal of time with Baxter both in and out of the office, and he is said to have cried through the entirety of Baxter’s funeral.

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[36] McLean and Elkind, *Smartest Guys in the Room,* 171.

[37] Cruver, *Anatomy of Greed,* 306.

Like the rank and file employees, Skilling played up the pathos of tragedy, but unlike them he found himself under an uncomfortable spotlight. He attempted to turn this to his advantage by presenting himself and his colleagues as tragic heroes; honorable people whose greatest strengths had ironically brought them to shame.[38] Skilling constructed a story in which, despite all of the executives' hard work and best intentions, Enron fell from glory to ruin. While the general employee narrative had emphasized unavoidable doom, Skilling's focus in stead was on a virtuous leader's defeat. It would be too simple to label this narrative true or untrue, but it is worth noting that even some of Skilling's most outspoken critics in some senses endorsed it. Since Enron's bankruptcy, even Bethany McLean, the *Fortune Magazine* journalist whose skepticism about the company once provoked Skilling to hang up on her, has called him "a tragic hero in the classic sense."[39] As she recognized, Skilling's exceptional talent was intimately connected to his downfall.

Although he is usually characterized as arrogant, presumptuous, and brash, it also appears that everyone who dealt with Skilling, in any capacity and at any point, thought him a genius. McLean said he was "luminescently brilliant," and she clearly referred to Skilling with a mix of sarcasm and admiration when she entitled her investigative book about Enron "The Smartest Guys in the Room." Skilling's onetime subordinate Sherron Watkins, even after publicly blaming him for the collapse and essentially calling him a liar, wrote that he was "the smartest man she had ever known."[40] Former energy trader Brian Cruver labeled Skilling "the smartest human being on the planet."[41] Anonymously, a former Enron executive and close colleague to Skilling called him "the smartest son of a bitch I've ever met."[42]

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[38] Northrop Frye, "The Mythos of Autumn: Tragedy," in Laurence Michel and Richard B. Sewall, ed., *Tragedy: Modern Essays in Criticism,* (Westport: Greenwood Press, 1963), 67, 69.

[39] *Enron: The Smartest Guys in the Room,* prod. Mark Cuban, Todd Wagner, and Joana Vicente, dir. Alex Gibney, 110 min., Magnolia Home Entertainment, 2005, DVD.

[40] Mimi Swartz with Sherron Watkins, *Power Failure: The Inside Story of the Collapse of Enron* (New York: Doubleday, 2003), 274.

[41] Cruver, *Anatomy of Greed,* 319.

[42] Bryce, *Pipe Dreams,* 48.

Skilling himself was always as ready as anyone else to exalt his own intellect. In his admissions interview for Harvard Business School, where he earned his MBA, he pronounced that he was "fucking smart;"[43] and around Enron's headquarters it was understood that he thought himself literally one of the most intelligent people alive. Tongue-in-cheek Enron employees had in the company's heyday nicknamed it the "Death Star" after the battle station of the evil army in the "Star Wars" series. Ken Lay was the "emperor," but Jeff Skilling was "Darth Vader;" this was to say, Lay was the official head of the imposing front, but it was Skilling who actually led its conquests.[44] Though he only served briefly as nominal CEO, it was widely acknowledged that Skilling had been "running Enron" for years before that promotion.[45] Thus to the extent that credit was due to any one individual during Enron's stint as a Wall Street darling, it was most likely due to Skilling. If he was a genius, however, it was his arrogant over-confidence in his intelligence, as well as the unscrupulous ways in which he used it, that ultimately jeopardized his career, his reputation, and his well-being. For in many ways, it was much more difficult for Skilling to present himself as a tragic hero than it was for others to cast him as a melodramatic villain.

Enron as Melodrama

In the aftermath of Enron's collapse, corporate executives were not the only people subjected to exceptional levels of public scrutiny and criticism. Elected officials as well came under attack due to increasing awareness of the campaign contributions that the company had made to members of both parties. As the scandal unfolded, politicians realized that they needed at least to distance themselves, in the public's view, from the company; many legislators who had

[43] *Enron: The Smartest Guys in the Room* DVD.

[44] Years later, during preparations for Lay's and Skilling's joint trial in Houston, the defendants' lawyers argued that the local population was too biased against Lay and Skilling to yield a fair jury. To prove it, they commissioned a survey of Houstonians that asked, "What words come to mind when you hear the name Jeff Skilling?" Responses included generic condemnations like "evil," "liar," and even "the devil;" but at least one respondent wrote "Darth Vader." ("Bias: Texas Barbecue" in "Readings," *Harper's Magazine* 312 [May 2006]: 29). Though defense lawyers apparently presented this as just another viscerally negative association, Enron insiders (including, most likely, Skilling himself) know that the sentiments behind it may perhaps have included a kind of admiration that died hard.

[45] Cruver, *Anatomy of Greed,* 10, 85.

received moneys from Enron hastened now to return them.[46] But better yet, some saw in this moment an opportunity more generally to denounce big business, rich executives, or other bogeymen, if it suited their purposes. It is perhaps toward this end that so many executives were subpoenaed; that Skilling was copiously if sloppily questioned; and perhaps even that some of the Enron hearings, in all their sound and fury, were held at all. They provided a forum for the construction of a different narrative of Enron's collapse: Enron as melodrama. This story, as rendered by politicians, featured few technicalities, but plenty of moralizing.

While tragedy provokes sympathetic reflection on disaster in terms of human failings and predestination, melodrama presents depthless conflicts for which specific (evil) characters are always clearly and directly responsible. In legislators' melodramatic narratives, the Enron disaster was wholly the fault of the company's chief executives, scheming villains who had ruined thousands of lives through theft and deceit. Melodrama's virtuous characters often use "tirade;" a "protracted, desperate and vituperative speech;" to establish a "moral distance" between themselves and the villains being addressed.[47] A similar strategy seemed to serve political purposes at the Enron hearings. In scathing fire and brimstone opening statements the legislators were able to berate even—or perhaps especially—the witnesses who refused to testify. Those who had caught the "Fifth Amendment flu;"[48] former CFO Andy Fastow (of LJM notoriety) and several of his now-known accomplices; appeared as silent subjects of fulmination. "I hope you, in the dark night of your own souls, think about some of the people who…literally lost their entire life savings, and whose lives effectively in many ways is [sic] destroyed because of your actions," Rep. Peter Deutsch (D-FL) told them.[49] Rep. Bobby Rush (D-IL) implored, "For those of you who refuse to testify and know your guilt, I ask you, Was it worth it? Was the selling of your morals

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[46] The funds went to the Ex-Enron Employees Fund, which within one month collected almost $1 million (Swartz with Watkins, *Power Failure,* 352).

[47] Jeffrey D. Mason, *Melodrama and the Myth of America* (Bloomington: Indiana University Press, 1993), 194.

[48] The phrase of Sen. Peter Fitzgerald (R-IL) as he thanked Skilling for having avoided the epidemic. Senate Commerce, Science and Transportation Committee, *Financial Collapse of Enron: Hearing before the Senate Commerce, Science and Transportation Committee*, 107th Cong., 2nd sess., 26 February 2002.

[49] Oversight and Investigations Subcommittee of the House Energy and Commerce Committee, *Finding of Enron's Special Investigative Committee: Hearing before the Oversight and Investigations Subcommittee of the House Energy and Commerce Committee,* 107th Cong., 2nd sess., 7 February 2002.

worth it? Was the selling of your souls worth it?"[50]

Skilling, the one top executive who took a speaking role, proved as formidable a villain as any melodrama deserves. When theater critic and historian Jeffrey D. Mason described the classic villain as "a sophisticated man shamelessly manipulating his text to gull the onstage listener,"[51] he could have been writing about Skilling's congressional testimony. Skilling dodged questions and twisted the words of others. He alternately claimed ignorance of technicalities, and expected legislators to defer to the set of arcane "facts" that he presented. He claimed to have been coincidentally out of the room during a crucial meeting—whose minutes reflected his presence—at the very moment when LJM issues came under discussion. Further, Skilling exhibited a remarkable amount of gall, when he testified, for someone in his position. "The framers of the Bill of Rights are watching," he warned the senators as they prepared to question him. He stated that the "politicized process" of his interrogation "should be cause for concern of every American." He criticized legislators whose questions vexed him, and smirked or balked at their accusations.[52] Like his former colleagues who had refused to testify, Skilling was following a long line of executive predecessors, who when they did appear in Congress were barely cooperative and often quite strident. Standard Oil's magnates, in the rare instances in which they testified, were known for their selectively foggy memories, and William H. Vanderbilt was similarly dodgy when speaking against increased railroad regulation in 1879. Vanderbilt even warned his congressional questioners that their project was destined to fail. Perhaps anticipating Skilling, he stated simply that the biggest businessmen of his time were "too smart" to be thwarted by government intervention.[53]

Skilling's detractors seem to bring out the worst in him, both by calling attention to his most regrettable words and deeds, and by inspiring him to new heights of audacity. Sen. Barbara

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[50] *Ibid.*; for additional damning opening statements see also Senate Committee, *Financial Collapse of Enron.*

[51] Mason, *Melodrama and the Myth of America,* 189.

[52] Senate Committee, *Financial Collapse of Enron*.

[53] Chester McArthur Destler, "The Opposition of American Businessmen to Social Control in the Gilded Age," 644, 659.

Boxer (D-CA) appeared determined to avenge her constituents for the California energy crisis of summer 2000 when she said,

> We were worried, Mr. Skilling, in the summer that elderly people in the inland parts of [California] might lose their air conditioning and face, literally, death. The agriculture industry in my state was fearful that loss of refrigeration would cause economic devastation. Silicon Valley put solving the energy crisis as its number one priority in order to keep the information economy flowing. In the winter months, then…we feared that freezing temperatures would harm our people, particularly the elderly and the frail…Mr. Skilling, you helped caused these anxieties while you laughed about it. The people of California were not laughing. They're not laughing now. Our state wants justice.

While California was suffering the conditions Boxer described, Skilling had rollicked a large Enron audience with, Q: “What’s the difference between the state of California and the Titanic?” A: “At least when the Titanic went down, the lights were on.” Though it would have been much wiser, politically, to apologize at the Senate hearing, Skilling defended this joke.

Perhaps most importantly, on the fundamental issue of money made and money lost, Skilling’s testimony corroborated his image as a greedy and amoral robber baron. After admitting that he had lost little of his own $66 million when Enron bankrupted, he said that he could not donate anything to the employees’ relief fund because he faced so many lawsuits and had so many legal expenses that he “[didn’t] know whether [he would] have anything” within five to ten years. If Skilling was the smartest human being on the planet, he showed he was not the most intuitive. The hard-heartedness and effrontery that he displayed in his testimony made him the kind of character an audience loves to hate.[54]

However, at some of the same moments in his testimony when Skilling may have appeared the embodiment of mendacity, he was actually presenting a valid point, if gracelessly. He explained his rude rebuffing of Bethany McLean, the *Fortune* reporter who was one of the first to voice doubts about Enron, by saying that the questions she was asking him would have been more appropriately directed to the company’s “accounting people,” “risk management people” or “finance people.”[55] He said that his ignorance of LJM transactions was reasonable given that two

[54] Senate Committee, *Financial Collapse of Enron*.

[55] In a double bungle, Skilling claimed that he hung up the phone on McLean in the interest of time. He had “carved fifteen minutes” out of his schedule—a “very tough thing to do”—to speak to her, and apparently regretted doing so when she began to pose her “very technical questions.” *(Ibid.)*

other executives who worked on them had a “process in place” that involved “organizations of several hundred people, probably in aggregate, several thousand controls people.”[56] In other words, in both of these instances, he didn’t know what he didn’t know because knowing it was the job of small armies of his subordinates. Skilling’s citing the complex compartmentalization of Enron should in no way have been, in and of itself, suspicious. He was describing the labyrinthine structure common to all firms of comparable size. The resulting lack of accountability was disturbing to many who heard Skilling, and perhaps rightly so. But the problem here was not with Enron; it was with the norms of contemporary big business. Overall, today’s “household name” corporations are so large and so compartmentalized that in some ways it is impractical even to conceive of them as unitary.

Cultural and business historian Roland Marchand showed that during the twentieth century, Americans began to feel increasing anxiety about the big-ness of big business. Public relations campaigns have striven ever since to shrink the corporation, in the public eye, back down to a comprehensible size.[57] If such manipulation of perception has worked, Americans may harbor some notion of the corporation as a group of individuals, limited in number, who more or less know and communicate with each other. Skilling’s references to legions of anonymous “people” with whose work he was unfamiliar gave the lie to this conception. This is not to say that Skilling behaved responsibly at Enron, or even that he testified honestly in Congress. It is, however, to say that some of his defenses backfired, in part, because he was expecting the same

[56] House Subcommittee, *Finding of Enron’s Special Investigative Committee*. Also, when asked about unnamed “partnerships” (by which was probably meant the LJMs), Skilling said, “Which partnerships specifically? I mean, Enron had literally thousands of partnerships, and they came from various business operating units.” *(Ibid.)*

[57] Roland Marchand, *Creating the Corporate Soul: The Rise of Public Relations and Corporate Imagery in American Big Business* (Berkeley: The University of California Press, 1998), 3. Marchand argued that by the 1940s, the American public had a degree of comfort with the vastness of the corporation, but there is much evidence today suggesting otherwise. Large companies today are often referred to as “giants,” “behemoths,” or “Goliaths,” and in advertisements and PR campaigns corporations still try to present themselves as modest groups, or even as individuals. *(Ibid.,* 358-60.)

public that had long been fed the *myth* of the unimposing, cohesive corporation, to suddenly accept the *fact* of its enormity and diffusion.[58]

To present Skilling as a melodramatic villain, the legislators needed to monumentalize his wickedness. The more outrageous the misdeeds they could establish, the better. Melodrama embraces the fantastical; the world it creates is one in which "anything good—or bad—might happen."[59] The characterization of a scheming Skilling at times reflected melodrama in its disregard for logic or common parameters of reason, and the far-fetched accusations leveled at him ranged from the laughable to the histrionic. For example, Sen. Dorgan mentioned a news report that claimed Skilling and Ken Lay had created a fake trading room to impress visiting analysts, complete with phones painted black "to make it look like a slick operation" (supposedly Skilling's own words). When specifically asked about such a covert operation in phone cosmetics, Skilling said, "I don't know how you paint phones black. I mean, we have standard telephones in the company. I'd imagine they're the same phones that we have everywhere else. If someone painted a phone black, I certainly didn't know about it." This response may sound ridiculous, but it only suits the question. The possibility of the fake trading floor was worth investigating—at least one former Enron trader has said that it did exist[60] —but Dorgan's pursuit, here, was misguided. The senator probably presented the image of painted phones to make Enron's deception vivid even for people with no background or interest in business. However, it was too easily brushed off. Skilling could dodge the substantive allegation behind Dorgan's question, which had very little to do with phones.

Most grave among the evils of which Skilling was accused was the murder of his friend, former executive vice president Cliff Baxter. Because whistleblower Sherron Watkins wrote to Ken Lay that Baxter had "complained mightily" about the LJM transactions "to Skilling and all who

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[58] For Skilling even to use the word "corporation" may have been ill-advised; the word "corporate" seems today to be an "epithet of odium." (Jack Beatty, *Colossus: How the Corporation Changed America* [New York: Broadway Books, 2001], xix.)

[59] David Grimsted, *Melodrama Unveiled: American Theater and Culture, 1800-1850* (Chicago: The University of Chicago Press, 1968), 195-96.

[60] Cruver, *Anatomy of Greed,* 273.

would listen,"[61] the discovery of Baxter's dead body after Enron's collapse triggered wild speculation about a corporate hit. Skilling had commissioned the killing, the tale went, because Baxter knew too much. Though some of the deeds that came to light in the Enron scandal could indeed shake one's faith in humanity, they did not include murder. All evidence confirmed that Baxter's death was, as ruled by the Houston police, a suicide.[62]

Melodramatic villainy must always be contrasted with virtue. The Enron congressional hearings were organized as if with this precept in mind. Skilling and a number of other Enron executives were called before the Oversight and Investigations Subcommittee of the House Energy and Commerce Committee on February 7, 2002, and this was the scene of the most damning of legislators' tirades. One week later Sherron Watkins, the Enron former vice president and accountant whose memo of concern to Ken Lay became famous, testified to the same body. She was cast as a melodramatic heroine; an innocent, virtuous woman who had discovered a villainous plot and confronted evil.[63] "You were the conscience of this corporation," Rep. Edward Markey (D-MA) told her. Rep. Billy Tauzin (R-LA) was comforted in knowing that there were "people like [Watkins] in this world." Rep. John Dingell called her "an extraordinary, courageous woman, who has been a bright spot in an otherwise sorry and outrageous saga." Rep. Richard Burr (R-NC) took the adulation biblical when he told Watkins:

> In the New Testament, when Peter stepped out of the boat and walked on water, the miracle wasn't the fact that he walked on water. No, the miracle was that he chose to put his faith in God and step out of the boat, a boat which was his protection but was bound to sink in troubled water. Thank you for choosing to step out of the boat today. [64]

As we saw, legislators sometimes cast themselves as melodramatic heroes through diatribes aimed at the so-styled villains. With the heroine on stage, who was supposed to be

[61] Watkins to Kenneth Lay, 15 August 2001, in Berkowitz, *Enron: A Professional's Guide,* 137-40.

[62] Not only had Baxter left a suicide note on the windshield of his wife's car; he was also seen driving alone just moments before his death (which came by gunshot to the head) by a Houston police officer (Eichenwald, *Conspiracy of Fools,* 662). To refute the murder theory in more cynical terms, there were a number of other former Enron executives and employees who would have made much more strategic sense as targets for such a "hit."

[63] Watkins' own memoir states that during this hearing, she "made the great American transition from anonymous American to national folk hero" (Swartz with Watkins, *Power Failure,* 353). She was later to be named a *Time Magazine* "Person of the Year" for 2002.

[64] House Committee, *Financial Collapse of Enron*.

brave but defenseless, they were able to go further by vowing to protect her against evil. By the same line of hyperbole that had suggested Cliff Baxter had been silenced by murder,[65] congressmen (and men they all were) insinuated that Watkins might be in danger because of her noble deed—but assured her that she would meet no harm. Rep. Markey told Watkins,

> I just want you to know…if actions that you feel are unwarranted are being taken against you because of what you're doing here, that you should let us know. They did the same thing to the Morton Thiokol whistleblowers that spoke of the O-ring, they demoted them, they punished them. But once Congress intervened, that was rectified within a day. So you should let us know that.

"Congress" was apparently a fierce and unfailing defender of virtue, and should Watkins ever find herself in distress, she had only to "let them know." Such pretense rang particularly false given the weakness of whistleblower protection laws at the time.[66] Rep. Greg Ganske (R-IA) assured Watkins that he understood she might fear for her "personal safety" because she was "dealing with a really powerful problem…and a really powerful company." [67] Such phrasing might be appropriate if addressed to a child, but not to a veteran accountant whose comprehension of the Enron situation was clearly more sophisticated than that of any of the legislators. The concerns for Watkins that the congressmen described were justified, but their bravado and condescension in promising to protect her were not.

In context of Watkins' personality, her characterization as helpless and innocent was especially absurd. At Enron she was nicknamed "the buzz saw," known for her foul language and the intemperate style of self-expression that she used even at formal meetings.[68] Further, an

[65] At one point a questioner appeared to be pushing Watkins to say that Baxter's death may not have been a suicide. Watkins finally changed the subject by saying, "it's just a sensitive topic that I'd rather not comment on." *(Ibid.)*

[66] John B. Chiara and Michael D. Orenstein, "Whistler's Nocturne in Black and Gold—The Falling Rocket: Why the Sarbanes-Oxley Whistleblower Provision Falls Short of the Mark," *Hofstra Labor and Employment Law Journal* 23 (Fall 2005): 235-67. 265.

[67] House Committee, *Financial Collapse of Enron*.

[68] For example, years before Watkins wrote her memo, at the end of one presentation made by executives her response was, "What the fuck is this? This thing looks like a circle jerk to me." When someone tried to defend the proposals, she cut in: "Let's not sit around blowing each other, okay?" Her language in this instance clarifies in a literal sense why some at Enron said she "tried too hard to be one of the boys" (Eichenwald, *Conspiracy of Fools,* 95.) Watkins should not be too quickly judged, however. This kind of behavior, albeit inappropriate, may have been Watkins' preference over the other unappealing options available to women at Enron.

objective look at the actions she took as a so-called "whistleblower" quickly reveals a story far more complicated than that of moral purity versus wicked deceit. First, Watkins' memo was addressed only to Ken Lay;[69] she did not bring her concerns to the government, any regulatory agency, or the media. Here as elsewhere, "loyalty" is the explanation[70]—but in the case of Watkins, who was aware of malfeasance within the company, loyalty may have been less admirable. The memo makes plain that her objective was to alert Lay to a potential "wave of accounting scandals" so that he could clean up or hide the worst of Enron's problems, particularly those of the Raptors;[71] not so that he could honestly announce the company's true financial condition and begin the fundamental overhaul that might actually have improved it.

There has been speculation that Watkins' motives were even less laudable than the whitewashing of Enron's corporate image. In her memo she was extremely critical of her direct supervisor, Andy Fastow, and his management of the LJMs. She had never liked Fastow and may have felt insecure in her job. Writing such a memo, because firing a "whistleblower" was impolitic if not illegal, was one way to ensure that he could not dismiss her. (Even if he hadn't wanted to do so before, he certainly did after reading it.) There was also a long-standing and well-known rivalry between Fastow and corporate treasurer Jeff McMahon, which was serious enough to have informally created two opposing camps among Enron's financial staff. Watkins had to know that, should Fastow be fired as a result of her memo, McMahon would likely take his place as CFO. (This is exactly what happened in the end.) Because she had always sided with McMahon, it might appear Watkins was doing her friend a favor—as well as replacing her boss with someone she liked better, and with whom she would be ingratiated. Finally, Watkins may have predicted the magnitude of the Enron scandal and intended the memo to serve precisely the purpose that it did: to appear a good deed in a naughty world and to win her the celebrity of a virtuous heroine. (Watkins has since become a nationally known writer, speaker and consultant

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[69] Watkins also provided a copy of the memo to corporate treasurer Jeff McMahon. Swartz with Watkins, *Power Failure,* 276.

[70] Swartz with Watkins, *Power Failure,* 274.

[71] Fox, *Enron: The Rise and Fall,* 250.

on corporate ethics.[72] Her prior position as an internal accountant was handsomely paid though surely less glamorous.) But whatever Watkins' motives—and she probably had more than one—the statements of her memo were right. And like the child who blurted out that the emperor had no clothes, she showed courage when she told Enron's CEO that the company's dazzling success was illusory.

As if concerned that the respective hearings in which Skilling and Watkins first appeared were not dramatic enough, the Senate found it necessary to bring the two face to face in a third hearing. Perhaps then more than ever, it was clear that the hearings were more for exhibitionary than investigational purposes, for there was nothing new to be learned simply by having Skilling and Watkins in the same congressional chamber.[73] By all reports, they avoided eye contact, and as much as the senators encouraged direct confrontation between villain and heroine, they were disappointed.[74] Reckless as Skilling was, at times, he was probably smart enough to know that to attack Watkins under these circumstances would have been stupid indeed. Watkins' possible reasons for not berating Skilling, on the other hand, may be more complicated.

Even at this point, having thoroughly denounced him, Watkins still considered Skilling "the smartest man she had ever known."[75] This may be but a clue as to the magnitude of her reverence. In the memoir she published after the hearings, she recalled several encounters with Skilling during her pre-memo years at Enron, and these anecdotes suggest she was in these moments acutely self-conscious and eager to win his approval. This appears to have applied especially to personal appearance. Watkins described being uncomfortably aware, upon one

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[72] Eichenwald, *Conspiracy of Fools,* 666.

[73] There was, however, a new opportunity for juvenile designation of "good" vs. "bad:" Senate staffers appear to have deliberately placed cushions on the seats of Watkins and Jeff McMahon, who was the third witness at this hearing—but not on Skilling's chair (Swartz with Watkins, *Power Failure,* 258-59).

[74] April Witt, "Skilling's Testimony Met with Criticism," *Washington Post,* 27 February, 2002, A1; John Lancaster, "Skilling Unrepentant Second Time around," *Washington Post,* 27 February, 2002.

[75] Swartz with Watkins, *Power Failure,* 274.

unexpected run-in with Skilling, that she was not wearing makeup.[76] She also remembered specifically the “short purple skirt” that she felt was appropriate for meeting with him.[77]

Yet such curious anecdotes were but a part of Watkins’ textured disposition toward Skilling. She concluded her memoir, “she had put her faith in the hands of important men [Skilling is among those named], and they had disappointed her.” The choice of the word “disappointed”—rather than “disgusted,” for example—as well as the profession of her “faith” in “important men” such as Skilling, may indicate a persistent deference to he who had long been, after all, her professional superior. On the other hand, Watkins could have sought, with this tone, to cultivate her image as an innocent, idealistic heroine—and to contrast herself all the more starkly with Skilling and the others she had helped to disgrace. Again, her motives were probably complex. But at any rate, Watkins’ comportment throughout the Enron chronology of events, as well as during the hearings, made her even less suited to a depthless role than was her villain counterpart.

From the condescension of male legislators, to the veneer of moral purity, to firsthand evidence of what might be interpreted as a reluctant crush on Jeff Skilling, Sherron Watkins’ role in the Enron story was not only that of a whistle-blower, but also, distinctly, that of a woman. This is but one case study among many in which these two categories, in narratives a business failure or financial crisis, have intersected and complemented one another. Aided by common melodramatic conceptions of gender reminiscent of the Victorian era, the script most often features on one hand reckless men whose competitive drive for money and status—often attributed in most unscientific terms to “testosterone”—begat macho business cultures that normalized and even rewarded rash decisions; and on the other hand temperate, beneficent women who intervened in the public interest (usually by reporting the wrongdoing to male authorities). Indeed, a vastly disproportionate number of corporate whistleblowers *are* female, and again, Enron makes a worthy “poster child” because the company’s two most prominent

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[76] Swartz with Watkins, *Power Failure,* 2.

[77] Swartz with Watkins, *Power Failure,* 54. Her references to “Enron blondes”—the anonymous beauties who as employees or otherwise always graced the company’s offices and social events—gesture at the office gender order recalled by many Enronians: men as doers, women as lookers (Swartz with Watkins, *Power Failure,* 9; Cruver, *Anatomy of Greed*, 38; McLean and Elkind, *Smartest Guys in the Room,* 71-72).

critics were Watkins and, at *Fortune*, Bethany McLean. However, just as Watkins' dramatic casting points up the gendered nature of such moral narratives, so too does it reveal their glaring inconsistencies.

First, the conceit that women are, by nature, *morally* "right" in times of crisis is an expedient reversal of the usual assurance that at most other times, by nature, they are *empirically* "wrong." As long as people in power (predominantly men) are benefiting from a certain arrangement in business or politics, protestations against questionable practices, often articulated by lower-ranked women, are almost invariably written off as uninformed and overly emotional. This applies within private companies as well as to the apparatus of government. Even when *men* express dissent, complaints are often dismissed on the grounds that they are irrationally worked up and, essentially, don't know what they are talking about.[78] Such characterization, when it sticks, can feminize anyone beyond credibility.

Yet once a consensus builds around the idea that a given status quo is unacceptable, this order can be upset. Particularly when scandal turns an issue moral, facts and technicalities, typically considered part of men's natural domain, fall by the wayside. Women's role as arbiters of the greater good suddenly becomes legitimate, and they may take center stage as serious players even with arguments that are entirely unchanged. Thus even as essentialist notions of gender remain, amid scandal, the values assigned to men's and women's supposedly innate traits can be switched. Such an abrupt shift begs the question of whether a greater variety of perspectives, regardless of gender, might have been useful all along—or might even obviate the need for such a damaging and embarrassing rupture, in the first place, to break down normal boundaries of legitimized participation.

Second, and more concretely, the casting of men as corporate miscreants and women as their virtuous chaperones is grossly reductive in terms of individuals' motives and even of individuals' behavior. Some of Enron's lesser-known episodes provide instructive examples. To begin, we have women acting out. For example, the only person at Enron ever to be called rival

[78] To name a few examples, business leaders and political elites use such a line to dismiss complaints relating to animal rights, wages and labor standards, emissions, world trade negotiations, defense contracting, and data mining.

to Jeff Skilling was Rebecca Mark, CEO of the Enron International division. In business tactics she was just as ambitious, and in personal attitude just as heedless, as he. Mark, however, knew when and how to turn on the charm, a valuable aptitude that by all evidence Skilling lacked. Appreciated for her high heels and short skirts, she also enjoyed another advantage over Skilling that she never hesitated to exploit.[79] During the late ‘90s Mark flew around the world in Enron corporate jets, negotiating the details of those “innovative” energy contracts for which Enron became famous, and even launched the company’s water trading operation, which she initially proposed to name after herself. She welcomed the gaping jaws of her dealing partners as a legitimate bargaining chip, as no doubt a female Skilling would have too, but like him she could also be intimidating and relentless when advocating new business models and promoting alternative methods of reporting assets’ valuation. Her office nicknames included “Hell on High Heels” and “Mark the Shark.”

Despite (or more likely because of) their many similarities, Mark and Skilling competed bitterly, for years, over professional promotions, recognition, and project funding.[80] Both evidently recognized that they had met their match, for the attacks were personal and the language profane. Company rumor had it that although at each other’s throats in meetings, these two were in each other’s beds after hours,[81] but that probably says more about generic corporate mythology than it does about this particular relationship.[82] At any rate, Mark was said to have had a number of strategic liaisons with Enron men, thus explaining her position as the only prominent woman of the company’s heyday. More important than the merit of such rumors, which is unknown, is the fact that they did not seem to bother Mark in the least; indeed she may have found it useful to let them proliferate.[83]

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[79] McLean and Elkind, *Smartest Guys in the Room,* 71-72.

[80] Eichenwald, *Conspiracy of Fools,* 71, 127, 131; McLean and Elkind, *Smartest Guys in the Room,* 71, 101.

[81] McLean and Elkind, *Smartest Guys in the Room,* 112.

[82] There may also have been genuine confusion here: Skilling openly dated another attractive and highly ranked female Enron employee whose first name was Rebecca.

[83] Mark’s one confirmed intra-office relationship was with John Wing, her predecessor as CEO of Enron International. Wing left the company, however, nearly ten years before Mark achieved her highest rank there. (McLean and Elkind, *Smartest Guys in the Room,* 44-45).

Furthermore, among the key accomplices to Andy Fastow's money-shuffling was corporate counsel Kristina Mordaunt. By her own account, Mordaunt knew exactly what she was doing, in all its illegality, when she not only signed off on numerous conflicts of interest among Enron's SPEs, but also personally invested (with formidable returns) in insider dealings via LJM.[84] Eventually she worked directly for Fastow; promoted, essentially, for her ethical pliability.[85] When Sherron Watkins shared her concerns, pre-memo, with Mordaunt as a company lawyer, the latter responded with "annoyance and skepticism." Asking "why are you doing this? Are you trying to bring down the company?" Mordaunt apparently tried to strong-arm Watkins out of pursuing her questions any further.[86] Even if the lawyer was not trying to protect Enron, she may well have been hoping to protect herself. Later, with an SEC investigation looming, it was Nancy Temple of Arthur Andersen's legal department who ordered that the accounting firm destroy all emails and non-essential records related to Enron.[87]

Ultimately even the good woman of the Enron story might have been, in some ways, bad: Watkins' heroic whistle-blowing act appeared to have had self-interested parameters—goals typically associated with machismo: recognition, self-promotion, and even winning the right to sneer at a longtime tormentor (namely Fastow). It is worth noting, however, that whatever the faults of Mark, Mordaunt or Watkins, incompetence was not among them.[88] Indeed, in each of

[84] Eichenwald, *Conspiracy of Fools,* 147-48, 324, 344. Mordaunt was only one of numerous lawyers implicated in the Enron scandal by faulty expert advice and, in some cases, by personal conflicts of interest. The other most notable instance was the investigation delegated to Vinson & Elkins, one of Enron's main outside law firms, which not surprisingly found little fault with the company at a time when it needed a thorough self-critique. The role of lawyers in the Enron scandal—ones both internal and external to the company—reflects a precedent of centuries in which businessmen have made it clear to hired counsel that the latter's job "was not to tell them that the laws prohibited a certain type of business activity, but rather to devise a means of attaining the desired end with a semblance of legality." (This particular formulation summarizes the orders of J.P. Morgan and Cornelius Vanderbilt.) Destler, "The Opposition of American Businessmen to Social Control in the Gilded Age*,* 647.

[85] Eichenwald, *Conspiracy of Fools,* 471.

[86] *Ibid.,* 494.

[87] Technically, this instruction was simply to comply with Andersen's document retention policy, but even at the time it seemed ill-advised. Numerous people who had to obey were uncomfortable with the decision, and some even told Temple so. When the SEC finally served Andersen a subpoena, Temple reversed her orders, but by then most of the document destruction was complete. Her timing may have been strategic. (Eichenwald, *Conspiracy of Fools,* 524, 610.)

[88] Perhaps the Enron media story's most complete (and most entertaining) inversion of the paradigm of irrational, uninformed woman vs. judicious, pan-savvy man is Jon Stewart's interview with Bethany McLean on "The Daily Show" of February 20, 2002. Stewart began by complaining that McLean's writing on Enron

these three cases it is the woman's incisive *understanding* of Enron's business, her own work, her place in the company, and her prospects for personal gain—by means that were sanctioned, illicit, or somewhere in between—that demand to be taken seriously and also to be scrutinized, just like those of the men around her.

In a more comprehensive picture of Enron, we also see men disrupting the conventional gender order by taking a moral stance—in the interest of others and at grave potential expense to themselves. Long before the scandal went public, Watkins and McLean were preceded by three would-be Enron whistleblowers, two of whom were men.[89] John Olson, a securities analyst on Enron with Merrill Lynch, cut his rating of the company as early as July 1998. Merrill suffered for this when Enron—at Andy Fastow's command, at this time on this issue—redirected some of its investment banking business elsewhere. Fastow made it clear he meant to "send a message" conveying "visceral" objection to Olson's research conclusions—namely, that Enron could not have as high a net worth as it claimed (and as everyone else believed).[90] Likewise Carl Bass, a partner at Arthur Andersen's Houston offices, was alarmed when he heard of LJM's conflicts of interest. After extensive independent research, Bass complained strenuously to Andersen's Professional Standards Group that Enron was wildly out of line and that Andersen was essentially risking its own name by kowtowing to this unscrupulous client.[91]

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should have included more pictures, and then made great show of attempting to take notes on her remarks before giving up, admitting "I don't know shit about this." The charming, pretty and soft-spoken McLean, for her part, tried to explain in manageable terms the role of offshore accounting and the complicity of securities analysts, but Stewart simply exclaimed that everything she was describing was illegal (or should be), and that the entire financial system was impossible to understand—by design. Laughing, McLean cautioned that his interpretation of events was overly "sinister" and patiently sought to distinguish certain illicit practices in accounting and stock trading as the exception, rather than the rule. Unwilling or unable to grasp any such nuance, an unmoved Stewart concluded their conversation, "I am putting all my faith in you." Stewart, as always, was putting on a show, and in this particular segment may also have been flirting. Even by the latter reading, however, per traditional roles he was playing the woman to McLean's man. The Daily Show, "Bethany McLean," http://www.thedailyshow.com/watch/wed-february-20-2002/bethany-mclean. Accessed 4 January 2010.

[89] The woman was Margaret Ceconi, who joined Enron Energy Services in November 2000. Ceconi anonymously emailed a hypothetical "question" to the SEC in late July 2001—weeks before Watkins sent her memo—that intimated huge losses were going unreported by her (unnamed) employer. An SEC officer called Ceconi to answer her question, but never pressed her to disclose why she had asked. (McLean and Elkind, *Smartest Guys in the Room,* 303).

[90] Eichenwald, *Conspiracy of Fools,* 182-83.

[91] *Ibid.,* 252-53, 427-28.

Although neither worked directly for the company, these men both risked wrath and retaliation by pronouncing, and then standing by their pronouncements, that something was wrong at Enron. Olson, in fact, was "reined in" by Merrill Lynch, and ultimately fired (with generous severance, that he might "leave quietly"). Again, the reason, explicitly given, was his skepticism toward Enron—and his replacement upgraded Enron's rating with haste.[92] Bass, for his part, was taken off all Enron consulting jobs at the insistence of Enron's Rick Causey, who said Bass' questions and demands showed he had "no creativity."[93] Olson or Bass may have acted on the same kind of mixed motives as did Watkins or, for that matter, McLean—though neither man sought or received much publicity at the time of his bold move. The point is that they did a similar thing to Watkins, with similar stakes. That neither man became famous may have been a matter of timing, but it also may have been a matter of gender. Watkins, even if a "buzz saw" in her everyday life, was better suited—partly by her own design—as moral champion in an Enron melodrama. By the time it appeared as national theatre, the varying meanings of men and women being "right" or "wrong" were, like Rebecca Mark, Kristina Mordaunt, Nancy Temple, John Olson, and Carl Bass, excluded from the program.

Melodrama concludes with the overarching message that good must always defeat evil.[94] It presents an "ideal" or "normal" state of affairs; the plot's driving conflict begins when that stasis is threatened, and resolves when order is restored.[95] Melodrama serves to "reassure the virtuous that though their fears be valid, their optimism is justified."[96] The "virtuous," presumably, are in the audience, booing the villain and cheering the hero. The Enron hearings as melodrama assumed an audience of virtuous Americans, and it is here that the stakes were highest in legislators' efforts to establish their own heroism. Peace and prosperity in the capitalist free market, per this melodrama, had been threatened by Skilling and his executive cronies. An

[92] *Ibid.,* 184, 186, 194.

[93] *Ibid.,* 406.

[94] Grimsted, *Melodrama Unveiled,* 222.

[95] Mason, *Melodrama and the Myth of America,* 16-17.

[96] *Ibid.,* 18.

innocent but morally determined heroine—Watkins was even blonde—had discovered their plot and confronted it, but on her own she would not be able to save the day. Just when she risked harm at the hands of the villains, Congress valiantly took the stage by subpoenaing everyone. Legislators wooed their audience by praising the “American people,” and repeatedly professed that it was they who were being represented, and like Watkins protected, in the congressional response to Enron.

From that moment on, there could be no doubt that the villains would be vanquished, and their threat to the norm eliminated. The overall “good”-ness of the modern corporate order could be affirmed, and the audience’s anxieties about it assuaged. The history of American melodrama includes a number of influential works that addressed bitter controversies of their times, such as *Uncle Tom’s Cabin* on slavery and *The Wizard of Oz* on monetary policy. Such stories could make statements challenging the status quo, and some did inspire sympathy for specific political causes. The Enron melodrama, however, like its predecessors offered a political vision that was deliberately contained: all things would be set right *without* change—or, at most, through bounded change. More radical narratives of the Enron scandal would draw on melodramatic tropes as well, but for legislators who worked in close symbiosis with big business, there were two critical goals: to define themselves in opposition to corporate fraud, and to affirm that such fraud was the exception, and not the rule. If they were able to achieve these objectives, politicians could emerge from the Enron melodrama personally untainted, and without having to consider any drastic economic or regulatory reform. Thus they steered Enron melodrama firmly away from the genre’s most potent possible messages: that no public official was fit to play the hero, for example, or that capitalism itself was the villain.

Like tragedy, melodrama leaves the audience with a strong sense of closure, and usually a “lesson learned” that can make for a brighter future. Both the tragic and melodramatic narratives—by former employees and politicians, respectively—emphasized the need to learn from the Enron disaster so that nothing of its kind would happen again. As if a hero speaking the final lines of his big scene, Rep. Billy Tauzin (R-LA) said at Watkins’ hearing,

> If there is any good news in all this, it's that we're finding out what went wrong. We're really getting to the bottom of it, and we're learning how we might turn the corner…to help

> make sure that no other company experiences this again…And there's one other good news…There may be other problems in other companies in America—this is incredibly an aberration. I have never in all of the years of watching companies succeed and fail and bankruptcies—and there have been some might[y] big bankruptcies in this country—seen anything like this. When we are through examining it and responding to it, I think the American public will be well-served by the process of learning from this experience and the changes we are going to make.[97]

The Enron disaster was unlike anything that had come before, and, it was promised, there would be no "repeat performance in corporate America."[98] Such definitive closure evaded any concerns that the scandal indicated systemic problems in government or business. Indeed the "changes" to be made in Congress, on the issues at hand, primarily consisted in the Sarbanes-Oxley Act, which though conceived in melodrama was hardly radical. Another narrative form, however, was able to give voice a much wider range of political possibilities, because it dispensed with moral absolutes and denied its audience consolatory closure. The next set of narratives to be considered are the satiric.

Enron as Cynical Satire

At the same time as the Enron collapse was being lamented, it was also being lampooned. If there is a constant cultural reflex to make fun of those in power, the arrogant and spectacularly rich Enron executives who now squirmed under the media microscope made especially tempting targets. Rep. Bart Stupak's depiction of Enron as the naked emperor, and his joke about Andersen, were about as far as someone in his position dared go in making light of this disastrous bankruptcy. Beyond the halls of Congress and the pressures of electoral politics, however, professional and guerilla satirists, whose only job was to entertain and to please, could join in the Enron frenzy in an entirely different way. They had an opening—perhaps even a duty—to satirize a situation that was in many ways acutely unfunny.

Obviously, laughter could never bring back lost jobs or vanished pensions, but it could serve as a comfort, or perhaps as a kind of psychological revenge, both to people who suffered directly from Enron's bankruptcy and also to people far removed from it who were nevertheless

[97] *Financial Collapse of Enron: Hearing,* 14 February 2002.

[98] The words of Rep. Chris John (D-LA), House Subcommittee, *Finding of Enron's Special Investigative Committee*.

appalled. Whether told to one person or to many thousands, jokes offered a less draining alternative to constant fury at the executives; one that may have given the laughers a feeling of empowerment. Satire not only assures audience members that they are right to see through the emperor's robe, but moreover sees to it that the emperor is duly embarrassed and ashamed when "exposed" in public. Some Enron humor was handed down from on high—if the likes of Jay Leno and David Letterman can be considered American institutions—but most often it surfaced in anonymous, anything-goes forums, particularly on the internet, if it was ever committed to text at all. Fortunately many jokes that circulated in conversation were also set down in memoirs or haphazardly compiled for publication. While congressional hearings were by definition exclusive, most Enron satire was by medium inclusive. And with this vast diffusion of participation came a gleeful eschewing of responsibility: anybody could enjoy a laugh, but nobody had to offer a solution.

In time-honored tradition, many jokes suggested that the businesspeople in question were simply rotten characters; thoroughly dishonest and immoral. Similar complaints surface often in anti-corporate polemics, but here, rather than conveying fear of the target, denigration happens by means of poking fun. "Why do they bury senior Enron executives at least 20 feet under ground?" One joke asked. The punch line: "Because deep down they are really good people."[99] Jon Stewart reported that an Enron "spokesperson" expressed regret for not firing thousands of employees closer to Christmastime, explaining that "their Department of Pure Evil" was in shambles along with the rest of the company.[100] Jay Leno said on *The Tonight Show,* "The wife of Enron CEO Kenneth Lay, Linda Lay, was on the 'Today' show yesterday. She said her husband is an honest, moral man who has done nothing wrong…She went on to say that they've lost all their money. Luckily, they've still got plenty of everybody else's."[101]

Many spoofs referred specifically to statements in Congress, and since Skilling was the only top-level executive who testified, they might as well have been mocking him by name. "How

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[99] Tim Barry, *The Totally Unauthorized Enron Joke Book* (Vancouver: IT Press, 2002), 42.

[100] The Daily Show, "Bad Company," http://www.thedailyshow.com/watch/wed-december-5-2001/bad-company. Accessed 4 January 2010.

[101] Barry, *Enron Joke Book,* 89.

can you tell when an Enron executive has started lying during his Congressional testimony?" One joke went. The answer: "When his lips have started moving."[102] Among the "10 Things Enron Executives Should Probably Not Say In Response To Senate Committee Questions:" number eight, "Please rephrase your question in the form of an answer…;" number seven, "I'm sorry, Senator, I didn't say 'Simon says ask questions.' You're out;" number five, "You think that excuse was bad? Let me read this list of worse things I *could* have said…"[103]

Tellingly, the number one item on the above list—the ultimate punch line in this countdown—was "Excuse me Senator, don't I remember you from the last fundraiser?" The point, of course, was well taken. Satire, unlike tragedy and melodrama as performed in congressional hearings, could attack politicians who were implicated in the Enron scandal. Because it did not have to strive for gravity or a moral conclusion, satire could create an Enron narrative in which the heroes and villains of the political melodrama were all part of the same despicable charade. Accordingly, in addition to government, the judiciary and law enforcement were fair game as well. To the proposition that corporate criminals would now be sent to the "tough" prisons, Jay Leno said, "you know, the ones that have only nine golf holes and not the full eighteen." To the promise that the punishment for such crimes would be "doubled," he said, "That means they will slap you on both wrists apparently."

Composed to the evocatively American tune of Simon and Garfunkel's "Mrs. Robinson," one song went in part:

> Hide it in a Cayman bank where no one ever goes.
> Pay it to the Congress for your projects…
>
> Coo coo ca choo, Enron managers, Cheney loves you more than you will know.
> Whoa whoa whoa…
>
> Sitting on a slush fund full of cash and other perks
> Paying it to candidates in crates.
> Democrats, Republicans, there's no need to choose.
> When the votes take place you never lose.

[102] *Ibid.,* 22.

[103] *Ibid.*, 67.

The ditty suggested Enron-style fraud and the corruption of public officials were familiar, if not entirely wholesome, pastimes—perhaps like having a mindless affair with someone twice your age. Regardless, the tone was cheerful enough for singing. Amid all the gibes even putative heroine Sherron Watkins was not safe. One compilation of statements by Enronians that compared "what they said" with "what they meant" asserted that when Watkins wrote, in her memo to Ken Lay, "I am incredibly nervous that we will implode in a wave of accounting scandals;" she actually meant, "you should be incredibly nervous that I will distribute this memo to reporters after Enron implodes in a wave of accounting scandals." In satiric Enron narratives, no motive was pure.

As with melodrama, Enron satire sometimes expressed disdain for practices and conventions that were part and parcel of contemporary corporate capitalism. The same vastness and compartmentalization of the corporation that Skilling had described, to his audience's incredulity, were spoofed in the following report on an imaginary addition to the Periodic Table, "Enronium:"

> This amazing element…has a nucleus composed of one enron…two executive vice-enrons, ten senior vice-enrons, 18 vice-enrons, and 36 assistant vice-enrons…Enronium is highly inert and does not decay. Instead, it institutes a continuing series of reviews and reorganizations, which continuously shuffle the positions of all particles. This guarantees that none of the particles really know what is going on throughout the rest of the atom. Atoms of Enronium spontaneously form into molecules known as "Business Units" by exchanging packets of "memos"…with each other.[104]

The ignorance excuse was certainly suspicious in the Enron case, but the kind of complexity and lack of internal cohesion being mocked above is simply a trait of the modern corporation. Save for the convenience of Enron's name in evoking particle terms (like "neutron" and "electron") this fictitious "element" could as easily represent the structure of any other large company.

Similarly misconceived, though undeniably elegant, was the following Enron haiku:

> Our profits are made
> at the consumer's expense.
> Pass the caviar.[105]

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[104] Barry, *Enron Joke Book*, 41.

[105] *Ibid.*, 18.

In a capitalist market, profits must be made. Often they are made by charging the consumer more, sometimes far more, than the product or service cost to provide. The California energy crisis represented an exaggeration of this system, and may have involved illegal activity—but the general principle summarized in the haiku's first two lines is accepted and practiced far and wide. As for the indulgence in caviar: again, it is laissez-faire capitalism that is being lampooned here, not just Enron. To allow the accumulation of wealth and to deny any radical re-distributive intervention is to guarantee that a few will eat caviar while the majority will not.

The reality of Enron employees' and investors' betrayal and devastating financial loss made the grimmest but perhaps most necessary humor. One Bill Shein uploaded to the internet a recording of what was supposedly Enron's new voicemail greeting:

> *Thank you for calling Enron. Please listen closely to the following options, as our menu has changed.*
> *If you wish to serve a subpoena on a current or former Enron executive, press "one."*
> *If you are an Enron shareholder and would like to learn how to turn your Enron stock certificates into decorative origami, press "two."*
> *If your Enron 401(k) plan is worthless and you would like tips on how to survive your retirement eating nothing but Mac 'n' Cheese, press "three."*
> *If you are an Enron executive and would like to find out which prison inmate will be making you his bitch, press "four."*
> *If you would like to invoke your constitutional right against self-incrimination, press "five."*
> *If you are Dick Cheney, press "six"…and thanks for nothing,* Dick!
> *If your company is looking to hire someone to record your voicemail message, press "seven," or stay on the line and an operator will assist you.*
> *Thank you for calling Enron, The World's Greatest Company.*[106]

Satire like this was cathartic, but otherwise unproductive. At best, it articulated fantasies of revenge. "Remember," wrote Leslie Woolf Hedley in a disclaimer for contemporary American satirists, "it's not the duty of satire to solve the problems we portray."[107] Enron satires such as those quoted above condemned business and government alike, but although sometimes quite eloquent in stating the issues involved in the company's collapse, they never advanced any proposals for change or offered hope for the prevention of "another Enron." The cynical satirist

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[106] "The Enron Voice Mail System," http://politicalhumor.about.com/library/blenronvoicemail.htm. Accessed 5 March, 2010; Swartz with Watkins, *Power Failure,* 351.

[107] Leslie Woolf Hedley, introduction to *Contemporary American Satire II* (Sonoma, CA: Exile Press, 1992), 9.

can encourage a kind of lighthearted despair.[108] An activist satire, however, can offer a similarly biting critique while raising the possibility that a better world is possible.

Enron as Activist Satire

At its best, satire exposes the follies of its society and offers a rational standard against which to judge them.[109] Ideally, it attacks certain behaviors, institutions, or groups because its authors believe they could be "otherwise than they are."[110] Some people who satirized the Enron disaster did so with sufficient factual grounding and political conviction to make an intelligent (if underappreciated) contribution to the public dialogue of the moment.

One might not expect to find poetry in the pages of a journal called *Critical Perspectives on Accounting.* However, at least one contributor was inspired to summarize "The Lessons of Enron" in verse. Michael Grayson's composition reads in part:

> …It is not enough simply to tell the truth;
> Otherwise you might end up in that witness booth.
>
> Preparers and auditors must tell everything needed
> So the financial statements can be properly heeded
> By people who are willing to put in the time
> To understand and interpret before they lend a dime.

Grayson here sought to rally his colleagues around the professional standards of thoroughness that he felt Arthur Andersen Accounting had abandoned. He also commented on securities trading, which is one of the arenas of American business with the dubious arrangement in which litigation has in effect been substituted for regulation:

> The holders who paid real money to buy their stock
> Do not get a refund. They just think, "Flock!
> We are being sheared like any old sheep
> And the only ones who will even make a peep
>
> Are the class-action lawyers who earn their pay
> By suing the bastards day after day."
> Maybe we would all be better off if
> The SEC got involved in many a tiff.[111]

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[108] Alvin B. Kernan, "A Theory of Satire," in *Modern Satire*, ed. Alvin B. Kernan (New York: Harcourt, Brace & World, 1962), 172.

[109] *Ibid.*, 153.

[110] Gregory Fitz Gerald, *Modern Satiric Stories: The Impropriety Principle* (Glenview, IL: Scott, Foresman, 1971), 46.

[111] Michael Grayson, "The Lessons of Enron," *Critical Perspectives in Accounting* 15 (2004), 1003-4.

Granted, the artistic merit of this poem is probably not its greatest strength. (Just as Jeff Skilling absolved himself by repeating time and again, "I am not an accountant," perhaps this accountant would plead that he is not a poet.) But Grayson succeeds in presenting proposals for change through a medium of amusement, and thereby exemplifies activist satire.

Meanwhile other Enron activist satire was being performed in person. The Billionaires for Bush, a network of activists against big business and its influence on the current administration, sarcastically took to the streets in tuxedoes and evening gowns. They used aliases like Monet Oliver DePlace and Meg A. Buck, and carried signs and shouted slogans such as "Corporations Are People Too!", "Make Social Security Neither!", and "Four More Years! Four More Wars!" Maintaining a more consistent stance toward Enron than did their namesake, in 2002 the Billionaires for Bush heeded the call to "Free the Enron Seven" and founded the (fake) Enron Legal Defense Fund. Their affiliate choral group, the Wall Street Singers, performed the following song (to the tune of "Mandy" by Scott David English & Richard Buchanan Kerr), "We're Enron:"

> We used to pump the natural gas.
> Then we started kicking ass.
> They states made us roar—they deregulated.
> So we devoured more—our stock was inflated.
>
> Then we started losing dough.
> But no one was supposed to know.
> How we cooked the books! And nobody caught it
> When our accounting crooks were shredding the audit.
>
> Just before our stock did tank,
> We sold and took it to the bank.
> The workers still got screwed—it was our intention
> To bilk the working dude right out of his pension!
>
> We're Enron
> When Dick Cheney needs power solutions
> We are there to discuss.
> Yeah Enron
> We gave Bush lots of big contributions
> He's been working for us!
> Oh Enron.[112]

[112] "Felonius Ax" [Clifford J. Tasner], "We're Enron," http://billionairesforbush.com/cds.php#enron. Accessed 5 March 2010.

Taken alone, this satire is more cynical than activist. In context, however, it was part of a shrewd political strategy in which the Billionaires for Bush could attract attention and elicit laughter from people who otherwise might not have been inclined to listen to their grievances. Over the course of George W. Bush's two terms the group became a burgeoning national phenomenon, with new "chapters" springing up constantly—probably because its street antics looked like so much fun.[113] But an official online "Do-It-Yourself Manual" advised protestors anywhere on how best to exploit an audience's amusement, once won:

> Let's have fun AND be effective messengers…Corporate takeover arguments resonate across the political spectrum…Leave social and ideological issues behind. Corruption is a winning issue, corporate cronyism is the best cross-cutting critique of this administration. Hence we don't do much on gay marriage, reproductive rights, the moral issues behind Iraq war etc.
> …It's not enough to say corporations have too much influence in government. We need figures…Enron's Ken Lay is George Bush's biggest lifetime contributor, and gave him more money than all 16 years of Kerry's special interest money combined. EVERY American should know that. Vague generalities preach to the choir, swing voters are concerned with facts…[114]

Thus the Billionaires' agenda transcended humor, and indeed transcended Enron and even Bush. They used laughter as a sort of Trojan horse, presenting it as a gift to their (hopefully) impressionable audiences before revealing that it was only a front for their real mission: to mobilize voters against what they called the "corporate takeover" of the United States government.

When demonstrating, the Billionaires for Bush may have had just as unique an effect on themselves as they did on their audiences. It seemed they had found a refreshing mode of social protest; one that relieved (if temporarily) the burdens of rage, despair, and polemic, and instead allowed someone quite unhappy with the government under which he lived to affect a carefree persona and a luxuriant life. Rather than articulating the harm that certain policies did the less fortunate, the Billionaires articulated the boon that those same policies gave the more fortunate—

[113] Full disclosure: when the President was re-elected in 2004 the Billionaires for Bush held a "Re-Coronation Ball" in Washington. The author attended as corporate counsel Sue Pina Yurass, along with financial advisor husband Rob Yurass and client Texas oil heiress Cookie D'Books. The Wall Street Singers performed, Monopoly money rained from the rafters, and the celebratory mood inspired many lucrative new conspiracies among the guests.

[114] "Billionaires For Bush Do-It-Yourself Manual, Version 2.000.000.000," http://billionairesforbush.com/diy_v2_contents.php. Accessed 5 March 2010.

which they found equally worthy of attention and concern. Such an alternative political manifesto was funny, the Billionaires suggested, without being any less true.

If the use of humor and the adoption of cavalier attitudes toward political problems, even the most serious ones, has ascended in popularity over more traditional methods of dissent and protest, it might be due to the widely observed disillusionment that set in after the Vietnam War and Watergate.[115] A certain scandal fatigue appears to have rendered anger and sorrow, whenever occasioned by the news, too exhausting for most Americans. By this time—the early 2000s—televised political satire was fast gaining favor, not only as entertainment, but also as information and de facto analysis. The left-liberal viewpoints of the likes of Jon Stewart and, later, Stephen Colbert, may not be diluted at all, but their cynical and mocking approach to the news is evidently palatable, even welcome, to a huge mainstream audience whose majority is neither activist nor radical.

Gregory Fitz Gerald has gone so far as to call the satirist a metaphorical "keeper of the tablets during a period in which the orthodox ministry seems in chaos and confusion."[116] Such praise may be grandiose. In the moment of the Enron scandal, however, the American "orthodox ministry" of official authority—President Bush's administration and Congress—did certainly appear to have been caught in a rather unorthodox position. The moral "tablets" might have been as safe with a gaggle of leftists playing dress-up as they would with anyone else. The wisdom in activist satire was that it combined amusing wit with knowledge and conviction. Perhaps surprisingly, while Enron satire was probably more enjoyable than Enron tragedy or Enron melodrama, it also had the capacity to articulate the issues at hand with compassion and complexity in ways these other narrative styles did not. It went beyond individual scapegoats and easy answers about right and wrong; it challenged audiences to think beyond the sensation of scandal and to conceive of Enron as the symptom rather than the disease.

[115] Julian Zelizer, "Seeds of Cynicism: The Struggle Over Campaign Finance, 1956-1974," *The Journal of Policy History* 14, no. 1 (2002): 73-111. 88.

[116] Fitz Gerald, *Modern Satiric Stories,* 46-47.

Finally, activist satire offered hope for change, and substantive ideas about how change could be achieved. More than any other Enron narrative, this one took advantage of the opportunity that the scandal presented: to tap into newly aroused awareness and anger about corporate fraud and the government-big business alliance. Enron as tragedy or even as melodrama could have included a pointed critique and a vision for change, but as has been shown, this potential was quashed by the political interests that such narratives might have threatened. The unfortunate thing about activist Enron satire, then, was that there was not more of it. The majority of Enron stories, whether they provoked laughter or tears, ultimately encouraged either resignation to, or a restoration of faith in, a relatively unchanged status quo. Perhaps this was the reason that despite all the bluster in Congress, not many substantive reforms were seriously considered—and even fewer were adopted—in the aftermath of Enron's dramatic collapse.

PART II: HOW ENRON COLLAPSED AT GROUND ZERO

Having taken a literary sampling of Enron theatrics, we must now acknowledge that throughout this variegated performance of Enron narratives and legislative showmanship, the audience was watching more than one program. Despite the appeal of drama and the comfort of laughter, at the time of Enron's bankruptcy there was a distinct pall of trauma hanging over US political discourse, and it shadowed Enron narratives of all kinds—even some of the funny ones. Enron, all along, was more distraction than main event. Coming in December 2001, the bankruptcy followed closely on the heels of a much more palpable event: the attacks of September 11.

This recent trauma—a real one—offered an even more immediate, timely way to make Enron stories coherent and meaningful. To be sure, there were still many unanswered questions about September 11 in the months that followed, but compared to the arcane technicalities of Enron's bankruptcy, the series of disasters known in shorthand as "9/11" could be grasped instantly. The attacks were all too physically real, and their effects all too obvious. 9/11 became all the more accessible, as a concept, as the collapse of the World Trade Center became its primary referent, with stories of the other hijacked flights—and their passengers—often played down in favor of the scene and the victims in Manhattan. The idea of a great and terrible collapse, then, was universally intelligible at the time of Enron's demise. Through the "borrowing" of 9/11 imagery to describe what had happened at Enron, just about anybody could impose a familiar story on the mess of numbers and business terminology that had left even experts baffled.

Moreover, an intense awareness of the attacks, though they were understood in different ways, permeated American life to a degree that would be difficult to overstate. Whether or not it was actually the case, many people felt that their lives, the country, or the world had fundamentally changed on September 11.[117] Especially so shortly thereafter, and especially on a political issue, discourse needed constantly to acknowledge this ferment. In other words, both for speakers and their (intended) audiences, if Enron was to make sense, it had to make sense alongside September 11. How was this accomplished? Or at least, how was it attempted, and with what political implications? Talking about Enron, a few people mentioned 9/11 explicitly. But more often, they invoked the attacks without acknowledging (indeed, sometimes without even being aware) that they were doing so. The result was a distinct narrative pattern that drew upon tragedy, melodrama, and even sometimes satire. It claimed a much more particularized (if artificially imposed) setting in space, time, and circumstances. And as always, the stories that took shape showed fingerprints from their creators, belying proclivities and partialities.

Narratives are never created in a vacuum. Their construction and reception take place in a wider context, which includes other goings-on and thus other narratives. Marita Sturken illustrated this brilliantly in *Tangled Memories: The Vietnam War, the AIDS Epidemic, and the Politics of Remembering.*[118] Sturken studied narrativization in the United States during the second half of the twentieth century, in relation to the two events mentioned in its title as well as others. One of her book's many valuable contributions is the metaphor of the "tangle." By my reading this term refers to the ways in which various narrative "threads" cross each other and become interconnected in such complex ways—some of which we cannot see—that they are impossible to isolate. On this premise Sturken showed, for example, how people understood the

[117] Fox News/Opinion Dynamics Polls, Fox Broadcasting Company; October 19, 2001.

[118] (Berkeley: University of California Press, 1997).

AIDS virus, biologically, through loaded analogies invoking the Cold War.[119] This concept holds immense promise in the study of narrative, and indeed it is surprising that it has not been more widely embraced. Not only does it make sense to study narratives in associational context; arguably it makes no sense not to. Why describe the thread as if it lay neatly on its own when it never has and never will? Thus as a study of Enron narrative, this must also be a study of the other major national narrative with which it was entangled from the very start.

Devastating Implosion

Houston, Texas, is far removed from New York City in the spatial sense, but for many at Enron, identification and connection with the “Big Apple” belied this distance. Never was this clearer than on September 11: At 1400 Smith Street, the toppling World Trade Center was associated with Enron almost immediately. Like everyone else receiving live news on that morning, Enron employees were shocked and bewildered. Yet some of them felt an additional anxiety. They imagined that as an American Fortune 10 company Enron was a plausible target for those whom, it was assumed, had directed the attacks: fundamentalist Islamic terrorists protesting capitalist greed and exploitation. Former Enron trader Brian Cruver recalled that when the speaker system in Enron Center North announced, “We have no reason to believe Enron is in any danger,” it seemed only to heighten this fear. It was the kind of statement that, if true, should have been unnecessary. As the company headquarters were frantically evacuated, one of his coworkers bluntly summed it up: “A lot of people hate Enron, so we’re leaving.”[120]

Of course, with the passage of time Enron employees were reassured that they were well out of (direct) harm’s way. Like many large corporate and financial organizations, Enron had representatives in the World Trade Center who were conducting routine business when the planes struck. But as a company Enron was no more affected by the attacks than any other; indeed, headquartered in Houston it was relatively well-situated compared to some of its counterparts back east. In the following weeks, nonetheless, darkness hovered over the

[119] Marita Sturken, *Tangled Memories: The Vietnam War, the AIDS Epidemic, and the Politics of Remembering* (Berkeley: University of California Press, 1997), 225. See also Susan Sontag, *Illness as Metaphor* (New York: Farrar, Straus and Giroux, 1988).

[120] Cruver, *Anatomy of Greed,* 97-98.

company. The stock price, which had been flagging, stabilized when the market reopened on September 17, yet Cruver remarked that this “great news” went practically unnoticed. Even some of the traders, typically rowdy young men whose devil-may-care tactics made Enron millions, paused to reflect on the state of the world, and even on the place of capitalism in its future.[121] Some Enronians seemed to recognize that the company epitomized American corporate capitalism in its current cutting-edge form, and thus felt doubly attacked.

Just a few months later, as bankruptcy loomed, most of these people found they had little work to do—and knew that soon they would have none. When someone posted a handmade sign next to a high-story window that read, “This is not an exit,”[122] the already dark humor was yet more chilling in context: live television broadcasts had shown people leaping out of the World Trade Towers as they collapsed. This joke could convey the anxiety that many Enron employees felt simultaneously for their company and for their country. For some, the two disasters; Enron’s folding and the September 11 attacks; were proximate not only in time, but also perhaps in meaning.

The official date for Enron’s collapse was December 2, 2001. Supervisors infamously waited until the last minute—almost literally—to inform the casualties of “Black Monday” that they were being laid off. Employees were rounded up for floor meetings, where “management” delivered the news, accepting no questions, and commanded them to clear the building completely within 30 minutes. This time, the evacuation of 1400 Smith Street *was* due to a disaster that had struck home.

The conceptual link to September 11 was much more openly articulated after Enron’s “collapse” was complete. Former employees may naturally have made the analogy because it was rooted in their emotional experience: imploding buildings could symbolize the abrupt demolition of “structures” once thought sturdy, such as that of the corporation itself, which was

[121] *Ibid.,* 99.

[122] *Ibid.,* 193.

supposed to reward loyal workers by guaranteeing professional and financial stability.[123] Pragmatically, the 9/11 analogy was also useful when former Enronians sought public validation and support. In the immediate wake of Enron's bankruptcy, their concrete goals included securing passable severance pay, maintaining benefits such as health insurance, and finding new jobs in a tight market and at an inopportune time of year. Thus while the employees may have wanted empathy for its own sake, they also hoped that it might win for them tangible consolations. Many of the people in their newfound audience knew little about Enron, and nothing about its descent into bankruptcy. But, again, everyone knew September 11th; thus the devastating fall was a convenient metaphor.

Former Enron employees described the "chaos and confusion" of "the final crash," which in "the sheer speed of the collapse" had "sabotaged" their lives. Common to many of their stories was a pathos of profound loss. When so many Enronians said that they, or others, had "lost everything," they were speaking not only in financial or professional terms, but also in terms of personal relationships. No one died on the day of the bankruptcy, but the phrases that former Enron employees used almost suggested otherwise. "Mourning" was a frequent phrase that they used to express their feelings. "I made some good friends at Enron," one wrote to the *Houston Chronicle,* "but I know I won't see many of them again." Specifically, employees described poignant farewells in context of the urgent and forced evacuation of the building, recalling stories from the World Trade Center. "I saw co-workers and friends hugging one another for comfort," a former employee said, "I saw tears in people's eyes as they bid 'goodbye and good luck.'" Another professed getting "choked up" when he thought about "the team that [he] was part of" being "scattered in the streets." A third remembered searching in vain for "friends and colleagues in the building." Elaborating the analogy between layoff and death, he went on to state that because he had been able to keep his job he had "survivor's guilt." He referred to dismissed

[123] Enron's collapse also provoked discussion around the policy issue of employee pensions, including separate congressional hearings that garnered little or no media attention. See House Education and the Workforce Committee, *Enron/Retirement Part I: Hearing Before the House Education and the Workforce Committee,* 107th Cong., 2nd sess., 6 February 2002. The concept of the corporate employer as benevolent guardian to all loyal workers was an innovation in twentieth century PR—though this is not to say that there was no truth to it, particularly in contrast to the norm of today. See Roland Marchand, *Creating the Corporate Soul*.

former co-workers as “missing,” but in his choice of words, “we mourn for those who are gone!,” he metaphorically consigned the “missing” to the same grimly ambiguous status as the “missing” of September 11.[124]

When confronted with the Enron bankruptcy, Congress was already quite busy with another matter: namely, responding to the first foreign attack on “American soil” since Pearl Harbor in 1941. These men and women may have been preoccupied; but then, in a sense, so were their constituents—and legislators knew it. With piles of rubble still to be cleared, the attacks on the World Trade Center loomed too large on the political scene to be compartmentalized or isolated, even briefly, while public officials addressed a different issue. Thus in dealing with the Enron scandal, a domestic affair seemingly unrelated to 9/11, congresspeople forged connections between the two events both out of their own predisposition and as a means of presenting themselves to the electorate in a flattering light. The latter was particularly critical because these legislators stood at the intersection of the two crises. As leaders and guardians of the homeland, they faced potential blame for allowing such an effective attack against it. And because so many in Congress routinely exchanged political favors for financial contributions—with large corporations generally and with Enron specifically—legislators appeared to have turned a blind eye on corporate misbehavior, leaving the American public now to bear its brunt.

Legislators’ speeches in the Enron hearings were rife with imagery invoking the September 11 attacks. Most glaring were the dramatic renderings of the company’s fall, from a great height, claiming thousands of innocent victims. First “tremors” had been felt in the buildings of 1400 Smith Street. Then came Enron’s “tumble;” “free fall;” “implosion;” “frighteningly swift collapse;” it had “cascaded downwards rapidly;” “precipitously dropping” or “crashing down” in “a state of complete collapse;” it was “carnage;” a “disaster of epic proportions by any measure;” the “impact of Enron’s collapse” was “the downfall of thousands,” whose plans and dreams had “gone

[124] Katie Walthall, Matt Hommell, Les Jackson, Mark Lindquist, and six Anonymous, “Enron Letters,” Letters to the Editor, *Houston Chronicle* 3, 4, 6, 7 December 2001, http://www.chron.com/disp/story.mpl/special/enron/dec01/1164650.html, accessed 4 November 2006; Kelly Merritt and six Anonymous, “More Letters from Current, Former Enron Workers,” Letters to the Editor, *Houston Chronicle* 11, 12, 13, December 2001, 11, 16, 28 January 2002, http://www.chron.com/disp/story.mpl/special/enron/1245679.html, accessed 4 November 2006..

up in smoke," leaving them "devastated." People's faith in the company or in corporate America generally, had been "shaken" or "shattered." Byron Dorgan remarked on "the height from which [Enron] fell, the speed by which it unraveled and the pain it inflicted." Rep. Peter Deutsch (D-FL) spoke of "thousands of real people" who were "suffering;" Wyden spoke of families in grief counseling. We have seen how time and again, legislators dubbed the Enron story a tragedy. When accompanying evocative descriptions like these, the concept moved from abstraction to application: the "tragedy" of September 11.

In her famous internal memo of warning to then-CEO Ken Lay, Enron "whistleblower" Sherron Watkins had chosen fortuitous phrasing: "I am incredibly nervous that we will implode in a wave of accounting scandals."[125] Of course, Watkins could not have been invoking September 11, even unconsciously, when she wrote this memo in August 2001. It is significant, however, that this single line was to echo back and forth in the congressional hearings, as well as in many mainstream media stories. It is possible that all of the same language would have been used even if the events of September 11 had not occurred. However, because they had, these relentless descriptions of a devastating fall had special resonance. Again, both for those who spoke and for those who listened, there had been a substantial and irreversible change of context.

Legislators wanted testimony from people who had been "[close] to the fire" at Enron; by this they meant top level executives. When former executives appeared at the hearings, the September 11 imagery persisted, but the tone changed from amazement at the "fall," to condemnation of those responsible. In its less severe form, the allegation was that of negligence. Rep. Richard Burr (R-NC), for example, said the executives had been careless and selfish, showing "no regard for human lives."

Jeff Skilling's resignation as CEO was a favorite case in point here, particularly in light of its timing: August 2001, which in retrospect was clearly, for Enron, the beginning of the end. Skilling claimed he left for strictly personal reasons;[126] repeatedly insisting that he had sincerely

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[125] Watkins to Kenneth Lay, 15 August 2001, in Berkowitz, *Enron: A Professional's Guide*, 137.

[126] McLean & Elkind, *The Smartest Guys in the Room,* 347.

believed the company was in excellent financial condition. But Rep. James Greenwood (R-PA) was unconvinced, and used the imagery of devastating implosion to accuse Skilling of negligence amid disaster:

> …People in far inferior positions to you could see cracks in the walls, feel the tremors, feel the windows rattling, and you want us to believe that you sat there in your office…and had no clue that this place was about to collapse.

In Greenwood's metaphor, Skilling must have known that the "building" of Enron was "about to collapse."[127] Out of cowardice and inhumanity, Greenwood suggested, Skilling decided to run for the door even as his subordinates stayed and worked on in spite of their (justified) worries.[128] Many depictions of the "heroes" of September 11 had featured people who risked or met death by remaining in the crumbling World Trade Towers, or even by rushing in, in order to help others in danger. This description of Skilling's actions, then, alluded to a potent moral distinction at the time: between people who, in moments of crisis, acted merely on self-preserving instinct, and people who placed others' needs over their own.

The worst analogies were reserved for executives who refused to cooperate with Congress. If Skilling's crime had been to allow Enron's implosion, or to pretend he hadn't seen it coming, some of his colleagues were said to have actively caused it. In one of a few explicit references to September 11, Rep. Mike Bilirakis (R-FL) compared them with the hijackers:

> …With the apparent type of mindsets that many of you must possess to have done what you have, maybe you really don't realize what you have done. You know, it took terrorists from other countries to tear this country and really the world asunder, and yet we have fellow Americans who have accomplished something that's almost as bad…

Bilirakis thereby suggested that the executives who declined to testify, like suicide bombers, were so irrational or immoral that he could not so much as guess at how they understood their own actions. In a vow that echoed those of President George W. Bush and other officials in response

[127] Greenwood's prior imagery around this section of the transcript had evoked an earthquake; the implications of this analogy were less damning of Skilling than that of the September 11 collapse of the World Trade Center. Nonetheless, Greenwood's description of a building about to crumble resonated with images and stories of 9/11.

[128] Another analogy used for Skilling's carefully-timed exit from the Enron disaster was that of a sinking ship—for dramatic effect, the Titanic—with Skilling its selfish captain, who fled in a lifeboat but left his crew and passengers to drown. See House Subcommittee, *Finding of Enron's Special Investigative Committee*.

to September 11, Rep. Burr said to the same group of silent men, “Let me assure you, the anger will not die, we will not go away, and America will not forget what has happened.” Such allusions and admonishments were subtle compared to the remarks of Rep. Bobby Rush (D-IL):

> Just as the World Trade Center bombers have shaken the sense of personal security for millions of Americans, the Enron catastrophe has left our public without a sense of economic security. At the center of this economic meltdown, we find a handful of economic terrorists. But unlike most terrorists who base their actions on twisted and perverse ideals of justice and righteousness, the economic terrorists at Enron had one cause: selfishness and greed.[129]

Legislators did have to share the stage, at the Enron hearings, with those who had “been there.” By offering effusive praise for former Enron employees, Members of Congress attempted to turn this potential threat into an advantage, and to position themselves as champions and avengers of the economically dispossessed. However, the ex-Enronian rank and file had representation, and an agenda, of its own. These employees emphasized that they wanted “no handout,” but under this tough veneer were some urgent concerns.

Recall as an example Charles Prestwood, who was one of the most eager spokespeople for the “victims” or “survivors” of Enron’s collapse. In the first “general overview” hearing, held just weeks after the company bankrupted, Prestwood testified that he had worked 33 years for Enron and invested in it all of his savings. Having been unable to sell company stock after its value began to drop, he stated that all that he and other Enron employees could do was “just sit there and watch [the company; their savings] melt down.” This devastating implosion, then, was a spectacle even for those directly involved. They were horrified but apparently transfixed. After losing $1.3 million, Prestwood now had to come out of retirement just to stay afloat.[130]

Outside of Congress, furious former Enron employees had publicly condemned specific top executives, occasionally comparing them to “terrorists” or “the Taliban,”[131] but those who

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[129] *Ibid.*

[130] Senate Committee, *Overview of the Enron Collapse.*

[131] Letter to the Editor: Mark Lindquist, former employee. *Houston Chronicle* 7 December 2001; Greg Hassell, “The Fall of Enron: The Culture: Pressure Cooker Finally Exploded.” *Houston Chronicle* 9 December 2001.

testified preferred a more measured tone.[132] Janice Farmer stated that she had been "lied to" and "cheated." Prestwood went no further than to declare "something stinks here."[133] And generally, employee witnesses did not name names in their testimonies. Rather than emphasizing feelings of anger or longings for revenge, they echoed the resolute and optimistic statements popular among post-9/11 morale-boosters. They called for justice and for affirmation that such a disaster would not be allowed to happen again, but they emphasized the redemptive potential in this collapse, insisting that the nation would emerge stronger from this—yet another—trying episode. The difference here between legislators and employees was the moral high ground. The former were potentially implicated in the scandal, and "at the end of the day" had suffered little. The latter, on the other hand, were in the opposite position: undeniably hurt, but safe from blame.

Charles Prestwood's forceful opening statement is worth revisiting for its echoes of September 11:

> …You know, it's just very touching…to be in a predicament like this, because a lot of people have asked me, "Charlie, why in the world didn't you get out beforehand?" I go back to that one simple word of loyalty: loyalty to a corporation, loyalty to something that I helped build, that I strived and worked a lifetime to build.[134]

The language of "getting out" anticipated Rep. Greenwood's later insinuation that the disloyal Jeff Skilling had fled Enron to save his own hide, leaving his faithful subordinates to be crushed in the collapse. Prestwood emphasized his own decision to stay at the company; thereby distinguishing himself from "a lot of people" whom he suggests would have made the more self-interested choice. Also, implicitly, Prestwood joined in condemning others who did "get out beforehand"—most obviously, executives like Skilling who knew what was coming and fled. Finally, it is worth noting that the imagery he used to describe his dedication and "loyalty," was that of *building*. The verb form of the word was there; the references to "getting out" suggested the noun as well: a physical structure within which one could not safely stay. Like that overnight icon, the gruff New

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[132] Before their congressional cheering squad, Prestwood and his counterparts certainly could have gotten away with such an indulgent analogy. However, they did not need it. Again, former Enron employees stood (rightly or not) on the highest moral ground that was available on the post-Enron scene. Most likely they simply recognized the numerous and obvious differences between despicable corporate leadership and suicide hijackings, and decided not to affect an equation where there was none.

[133] Senate Committee, *Overview of the Enron Collapse*.

[134] *Ibid.*

York City firefighter, Prestwood had pressed on at his own risk. He and other virtuous Enronians thereby embodied American bravery and valor.

The cognitive conception of the World Trade Center's collapse was inextricable from its emotional resonance; one could not speak of September 11's "devastation" in strictly material terms. Here lay the special opportunity, in their Enron narrative, for congresspeople to present themselves positively. For if the disaster they were confronting was a collapse that had harmed thousands of innocents, then implicitly, like New York firefighters and police, President Bush, or Mayor Rudolph Giuliani, these legislators were there to comfort the afflicted, capture the perpetrators, and restore the peace. (This was a modification of, but by no means a departure from, legislators' self-promotion as melodramatic heroes.) Echoing the speeches that sought to console and rally the populace in the wake of September 11, congresspeople, while acknowledging the devastation wrought by this new, *metaphoric* collapse of Enron, insisted that Americans' pride and morale would never falter. Indeed, that which did not kill (corporate) America, would make it stronger. Rep. Billy Tauzin (R-LA) said:

> We are learning from these hearings….And I truly believe…when we complete them, we will, together…be able to propose a set of reforms…that is going to build better, clearer, more responsible lines of communication and information and disclosure and investor confidence in this country. If that's a result of this mess, then perhaps our country will be much better for it in the end.[135]

If imagery of September 11 pervaded discussions about Enron, the narrative about 9/11's ramifications likewise informed people's statements—not only as to the meaning of Enron's collapse, but also as to how the nation might begin to recover.

Sifting Through the Wreckage

Almost from the very moment the first plane struck the World Trade Center on September 11, a story was born. Such a disaster, in its shocking devastation, certainly needed some account to least approach coherence—first, simply to convey urgent and terrible news, and later as a means more generally to understand.[136] Any narrative of a far-reaching event gives rise to

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[135] House Committee, *Financial Collapse of Enron*.

[136] In his extensive historical studies of American responses to crisis, both natural and man-made, Kevin Rozario finds enough continuity to conclude that storytelling has always been crucial both conceptually and

counter-narratives, and the 9/11 case, with all of its political, cultural, racial and religious fetters, was certainly no exception. Nonetheless, the mass media and elected officials did present an "official" narrative of the attacks, and thanks to what has been called the rally effect[137] there was a fair degree of consensus around this narrative. It went something like this: Out of the (literal and figurative) clear blue sky, a group of terrorists descended upon the homeland to strike at its heart. Motivated by hatred of the United States and all it stands for—including democracy, material progress, enterprise, and individual liberties—these Muslim fundamentalists murdered thousands of innocent Americans. They hoped to instill fear and, ultimately, to pressure the US into bowing to their global political agenda. Though devastated, the intrepid American people would remain faithful to their nation and its values. Osama bin Laden and other associated terrorists would be "brought to justice" (whether the judge be earthly or divine), and "America" would return to peace stronger than ever.[138]

Though the events of September 11 were constantly described as "tragic," this narrative actually failed to qualify as tragedy in the classical sense. Its woeful climax was not due to the human failings of sympathetic characters. Indeed, because those characters would likely have included the President and intelligence officials, such a premise might have provoked more anger (directed at the wrong targets) than pathos. Instead, 9/11 here represented a momentary victory for forces of plain evil. Likewise this narrative's resolution was too optimistic to befit a tragedy, for it promised not only restoration but indeed some kind of holistic social betterment. The scale of

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emotionally. He further argues, however, that just as disasters need narratives, narratives in a sense need disasters, which operate in their middle segments as "principles of transformation." Kevin Rozario, "Making Progress: Disaster Narratives and the Art of Optimism in Modern America," in Lawrence J. Vale and Thomas J. Campanella, ed., *The Resilient City: How Modern Cities Recover from Disaster* (New York: Oxford University Press, 2005), 32-34. See also Kevin Rozario, *The Culture of Calamity: Disaster and the Making of Modern America* (Chicago: University of Chicago Press, 2007).

[137] Michael A. Genovese, "The Transformations of the Bush Presidency: 9/11 and Beyond," in Richard S. Conley, ed., *Transforming the American Polity: The Presidency of George W. Bush and the War on Terrorism* (Upper Saddle River, NJ: Pearson Prentice Hall, 2005), 16-17; Roger H. Davidson, "Americans' Beliefs About Themselves, The World, and War: Before and After 9/11," in Conley, ed., *Transforming the American Polity,* 30; Maggie Wykes, "Reporting, Remembering and Reconstructing September 11, 2001," in Steven Chermak, Frankie Y. Bailey, and Michelle Brown, ed., *Media Representations of September 11* (Westport, CT: Praeger, 2003), 133.

[138] Kelly R. Damphousse, Kristen S. Hefley, and Brent L. Smith, "Creating Memories: Exploring How Narratives Help Define the Memorialization of Tragedy," in Chermak, Bailey, and Brown, ed., *Media Representations of September 11,* 139.

9/11's destruction notwithstanding, the state-sanctioned account of these so-called tragic events was actually more similar to melodrama.

One of the first and most critical elements of the 9/11 narrative was that of surprise. The attacks were presented as a shocking rupture, incomparable with any other event in the history of the world and "at the origin of [a] causal chain" rather than having any of their own. This foundational premise of the 9/11 narrative allowed no acknowledgment, much less analysis, of the terrorists' possible grievances. It also preempted any suggestion that a more vigilant or responsive state apparatus might have been able to prevent the crisis. It cast the United States as the pure and innocent victim of a fateful but completely arbitrary attack.[139] Thus when they invoked 9/11 with reference to Enron, certain crafters of the Enron narrative were borrowing the tenet of surprise and with it a mandate for self-absolution.

Legislators insisted Enron's collapse was unlike any other business scandal in American history, implying that they never could have been expected to see it coming. Furthermore, by harping constantly on executives' deceit, congress people as well as President George W. Bush glossed over two important and embarrassing facts. First, as mentioned before, some of Enron's most problematic practices had been entirely legal. Second, those activities that were illicit could have been caught much sooner—not only by private auditors and analysts, but also by the government, as represented by regulatory agencies and the SEC.[140] In other words, had certain responsible parties, including agents of the government, performed the very functions for which they had been designed, then the Enron bankruptcy might not have been a surprise. Indeed, under such circumstances it may even never have happened at all, or at least not with such grim consequences for so many people. For their own distinct reasons, Enron employees too played

[139] Angelica Nuzzo, "Reasons for Conflict: Political Implications of a Definition of Terrorism," in Tom Rockmore, ed., *The Philosophical Challenge of September 11* (Malden, MA: Blackwell, 2003), 131-36.

[140] Agencies regulating the energy industry, on the federal level as well as specifically in California, conspicuously failed to identify or address problems with Enron earlier on. Likewise, the SEC had granted Enron special approval to use "mark to market" accounting; this was the official veneer for Enron's infamous practice of reporting anticipated revenues before they actually materialized. As one would assume, or at least hope, mark to market accounting carries many caveats, and stringent rules with which financial statements using this method must comply. Had the SEC monitored Enron's use of mark to market accounting, it might never have been allowed to turn into abuse. For a brilliant discussion of Enron's financial shenanigans as fully visible for years prior to the bankruptcy, see Malcom Gladwell, "Open Secrets: Enron, Intelligence, and the Perils of Too Much Information," *The New Yorker* 82 (8 January 2007), 44-53.

up the element of surprise in their accounts of the company's bankruptcy. Though employees *were* in many ways unsuspecting and innocent victims, those who did so should have known better than to invest their entire savings or pensions in Enron stock.[141]

Also central to the 9/11 narrative was the concept of the "American way" under attack.[142] President Bush's speeches in the days following September 11 described the hijackers as "enemies of freedom," declaring that the liberties Americans enjoy, such as freedom of speech and of religion, were the main reason for Islamic fundamentalists' hatred. A worldlier component of the American way, however, was at least as relevant as these. It seemed the terrorists had targeted the World Trade Center not only for its height but also for its significance as a symbol of American commercial capitalism—appropriately located within its urban epicenter, New York City. As cultural historian Max Page has shown, the demolition of New York—as imagined in popular culture before 9/11 and as broadcast in news afterward—fascinates and captivates due to American's longstanding ambivalence toward all that the city represents. In Page's words, New York has long been "the symbol of the best and worst of everything, the barometer of the nation's health and sickness, poverty and wealth."[143] (The same might be said of the booming twenty-first business culture of which Enron went from crowning jewel to festering shame.)

Beverly Gage's account of the 1920 Wall Street bombing likewise illustrates that September 11 was not the first time terrorists, motivated at least partially by hostility toward American industrial capitalism, violently shook the confidence of even its fiercest proponents. Gage points out that by that time the United States already had a "legacy of anti-capitalist terrorism," including the Haymarket riots of 1886 (though who actually provoked that violence

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[141] One employee who stayed on past Black Monday pointed this out in a frank open letter to his colleagues and former colleagues; the letter stated essentially that those who had invested disproportionately in Enron should have known better, and that everyone who had suffered in the company's collapse should take responsibility for their own poor judgment. (Letter to the Editor: Anonymous, current employee. *Houston Chronicle* 13 December 2001.) Here we see another mythical ideal of capitalist markets impugned: that the consumer is reliably rational and informed.

[142] Thus implicitly, what was *not* the provocation of attack was any action or policy that the United States had undertaken. This logic fits in with the broader conception that the masterminds of 9/11 could not have had any rational or even comprehensible complaints about the US government (Davidson, "Americans' Beliefs About Themselves, The World, and War" in Conley, ed., *Transforming the American Polity,* 34-37).

[143] Max Page, "The City's End: Past and Present Narratives of New York's Destruction," in article in Vale and Campanella, ed., *Resilient City,* 79, 84-86.

remains controversial), and nationwide dynamite attacks in 1919. Yet in retrospect she suggests that Americans can no longer imagine this time, when financial and corporate institutions were regularly attacked by means both rhetorical and physical.[144] If Gage is right, this may be one reason why Americans experienced September 11 as such a shock, even if they shouldn't have.

Thus another aspect of the "American way," the spirit of enterprise that had earned the nation's economic hegemony, had been assaulted, primarily in New York, on September 11.[145] It is also significant but rarely remarked that, for all the longstanding patriotic symbolism attached to the "homeland," and for all the piety surrounding hearth and family, most everyone who died on that day died at work. From high financiers to maintenance staff, those American martyrs at the World Trade Center did not spend their last moments at home, nor, in most cases, in the company of loved ones. They were making or exchanging money—a national tradition no less hallowed. As the 9/11 narrative intertwined with stories of Enron, the notion of an embattled American way pervaded both, with commerce undeniably, if sometimes awkwardly, at its core. Each narrative held that a peaceful and flourishing status quo—either a generalized "America" as it bustled on September 10, or the US stock market and corporate capitalism—had suddenly been forced onto the defensive.

The situation called for a reaffirmation of unity and collective ethos. President Bush urged all those who were grieving after September 11 to continue living proudly by their American values. Likewise in the one speech that he devoted specifically to the issue of "corporate responsibility"—delivered amid the series of scandals that followed Enron in summer 2002—he expounded on the "American way" that would endure both the "war on terror" and the economic fallout of several large corporate collapses. First, he made much of his location, which he called "the financial capital of the world:"

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[144] Beverly Gage, *The Day Wall Street Exploded: A Story of America in its First Age of Terror* (New York: Oxford University Press, 2009), 2-8.

[145] President, Address. "Freedom at War with Fear: Address to a Joint Session of Congress and the American People." *Weekly Compilation of Presidential Documents* (GPO Access: frwais.access.gpo.gov) 20 September 2001.

> New York City is a unique symbol of America's creativity and character and resilience.[146] In the last 10 months, New Yorkers have shown…a spirit that honors the loss, remembers its heroes, and goes forward with determination and with confidence…all Americans are proud of New York.[147]

Bush had come to Wall Street to call for "a new era of integrity in corporate America." He advocated, among other things, longer prison terms for financial fraud, greater transparency in accounting, and stock analysis untainted by conflicts of interest.

However, he said, "The ethics of American business depend on the conscience of America's business leaders." Here Bush cited the same "character and resilience" shown after September 11. Having cited the American spirit from one narrative, he applied it to another:

> We will show that markets can be both dynamic and honest, that lasting wealth and prosperity are built on a foundation of integrity. By reasserting the best values of our country, we will reclaim the promise of our economy. [Business] leaders in this room help give the free enterprise system an ethical compass, and the nation respects you for that. We need that influence now more than ever. I want to thank you for helping to restore the people's trust in American business. I want to thank you for your love of the country.

Bush thus affirmed that executives, the "vast majority" of whom were "honest," like the heroes of New York were allies of "the people" in the struggle against threats to the American way.[148]

A third defining component of many 9/11 narratives was their emphasis on the attacks' perpetrators. It was not that Osama bin Laden or even Al Qaeda were assumed isolated actors. On the contrary, the "war on terror" was predicated on the idea that plots like that of September 11 came out of cooperative global networks. Nonetheless, the mystique surrounding bin Laden

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[146] Max Page points out that in the wake of disaster, "resilience" can mean "renewed vitality"—real progress—but it can also refer to "elasticity" and a return to the prior state of things. After September 11, he recounts, some more radical thinkers in New York offered proposals for renewal by means of urban reform. Yet it is the latter definition of "resilience" that largely applies to post-9/11 New York; the consequences of a political process similar to Congress' response to Enron, in which the dominant melodramatic narrative left room for only limited change. Page, "The City's End," in Vale and Campanella, ed., *The Resilient City,* 90-91.

[147] This last statement, "all Americans are proud of New York," might sound now like generic jingoism, but prior to September 11 it would have been most unlike Bush to make such a remark. Politicians of both parties who sought association with "middle America" or the "Heartland" had long known that many Americans do *not* admire the metropolis of the northeast, nor its stereotypically liberal and effete inhabitants. Bush in particular, with his Texas drawl and down-home veneer, had appealed to voters by invoking traditional populist ideals. To observe him in 2002 not only professing his own reverence for the city but also confidently asserting that he spoke for "all Americans" in doing so, is to suggest a drastic change in attitudes toward New York. It may be, then, that the post-9/11 "rallying effect" had regional as well as political dimensions.

[148] President, Address. "Remarks on Corporate Responsibility in New York City." *Weekly Compilation of Presidential Documents* (GPO Access: frwais.access.gpo.gov) 9 July 2002.

and a few of his close associates implied that there was something unique about them, perhaps in motives or psyche. Their individuality was part of 9/11 as we know it—suggesting that the event and its consequences would have been different had other people been responsible. The analogy between the hijackers of September 11—or at least an amorphous enemy of the American way—and Enron executives, yielded the same deceptively comforting conclusion to the narrative of corporate scandal.[149] With all manner of scathing epithets, from “pinstriped crooks” and “robber barons,” to “con men” and of course “economic terrorists,” Enron’s former leaders were so closely identified with the scandal as to be conceptually synonymous with it. And like the 9/11 attacks, the Enron bankruptcy, such narratives suggested, would have happened differently or not at all if not for these particular bad men.

Here again we see strains of melodrama, whose basis is always a (villain-perpetrated) conflict that can be resolved by individual punishment and the restoration of order. There were no fundamental problems or unjust systems underlying the Enron collapse. Therefore this threat would be gone once the authorities disposed of the bad guys. Thus the 9/11 and Enron narratives, entangled, each attempted a presumptively triumphant tie-off, affirming the righteous strength of the American government, and the enduring faith of the American people.

A Moment of Silence

Numerous narrative crossovers between September 11 and Enron have been identified thus far. But for all the eagerness with which people borrowed images and assumptions from the 9/11 narrative to describe and explain the Enron bankruptcy, these analogies failed at least as often as they succeeded. There is, therefore, much to learn through examination of which 9/11 invocations “worked” in the Enron narrative, and which did not. “Failure” and “success,” here, refer to the extent to which an analogy caught on and proliferated. For example, the image of “implosion,” which Sherron Watkins happened to use in her prescient memo to Ken Lay, echoed back and forth in Congress, the media, and employee accounts. It seems people judged it an appropriate and helpful way of thinking about Enron. By contrast, Bobby Rush’s term “economic

[149] Some commentators correctly pointed out the complicity of many investment banks, auditors and analysts, but in the official Enron narrative, blame never spread any further than that.

terrorists" appears to have been too much of a stretch. Explicit comparisons between Enron executives and the 9/11 hijackers were rare; the specific phrase "economic terrorists" never showed up anywhere again.

Despite the ubiquity of words like "implosion" and "collapse," the conflation of Enron's "fall" with that of the World Trade Center had its limits. Part of the appeal of the imagery of a devastating collapse was in its accessibility: the concept of a crumbling building was not difficult to grasp. The immediacy of the September 11 disasters, however, was not transferable. In other words, Enron narratives could invoke them conceptually, but not experientially. 9/11—as witnessed and recorded in Times Square at least—was visual, visceral, and traumatic. One only had to see footage or a picture—both of which were everywhere—to understand immediately what had happened (plane crashes) and what it meant (many deaths). Indeed such value as spectacle is probably one reason why "September 11" so often denotes only the attacks on the World Trade Center, to the exclusion of the crashes at the Pentagon and in Pennsylvania, which offered less to see and were not thoroughly recorded. 9/11 was also firmly bound by space and time, known ever after by the date of its events and also converting the phrase "Ground Zero" from a general means of referring to a bomb site to a term assigned only to the area where the World Trade Center had stood. [150] The metaphor became more common after September 11—but its referent was now unique.

The Enron disaster, on the other hand, had no iconic representation. The closest that the mass media could get were photos of distraught employees outside the company headquarters on Black Monday. As horrible and as "tragic" as Enron's collapse had been for many people, the trauma was not physical, nor, generally, was it even visible. Moreover, the "implosion" had actually taken place over a period of several months, with no particular punctuating moment;

[150] Elaine Tyler May, "Echoes of the Cold War: The Aftermath of September 11 at Home," in Mary L. Dudziak, ed., *September 11 in History: A Watershed Moment?* (Durham, NC: Duke University Press, 2003), 36. May points out that the term "ground zero" was initially used to refer to Hiroshima and Nagasaki. She argues that the 9/11 narrative dodged the "obvious" analogy between these bombings and the September 11 attacks, by instead offering Pearl Harbor as an analogy—one in which the United States played victim in stead of perpetrator.

indeed by the time the company officially declared bankruptcy it was already old news to anyone who had been paying attention.

The sense of discrete place in the September 11 narrative was particularly difficult to match with application to Enron. Obviously, certain key conversations occurred, and people raised some of the first warning signs, at the base of the company's headquarters: 1400 Smith Street in Houston. It was a sleek, blue-toned tower of sixty floors, shaped like an oblong cylinder. It had a series of circular crowns that, lit up, were visible as part of the Houston night skyline. The tower's external walls reflected the images of other buildings around it, which included two other cylinders—smaller but still avant-garde—also part of the corporate property. Employee anecdotes described the bankruptcy with abundant reference to these buildings, and through metaphor Enron was often equated with its headquarters, with the bankruptcy posited as something enacted physically upon them. Years later, representations of the Enron campus would appear in visual media recalling the scandal. Often, photographs and video featured most prominently two of Enron's tallest and narrowest buildings, standing side by side, in what might be read as yet another subtle analogy to September 11.

All of this granted, the events of September 11 were not as physically defined as narratives typically assumed. "9/11" came to refer, more often than not, to the collapse of two buildings in New York—again, playing down the similar attack on the Pentagon and the other hijacked flights. The most obvious reason would be that the World Trade Center disaster was the most theatrical and the most deadly. But there are other possible factors at work here as well; ones that relate to narrative and its political parameters. For example, to emphasize damage done to the Pentagon would be to admit its vulnerability, and moreover to draw attention (and journalists) to an institution famous for its meticulous standards of secrecy and supposedly airtight security. Thus the firm association of September 11 with one distinct place was in this sense false, or at least overly simplistic. To tie the Enron scandal to a specific location, however, was more specious by far. The company's "collapse" itself really happened on the stock market, which does not physically exist. The market is either "located" diffusely in the financial centers of New York, Tokyo, London and the like, or it is not located anywhere.

In sum, 9/11 became the kind of psychologically acute conception, fixed in space and time, that prompted people to ask each other, “Where were you?”[151] (One year later, 95 percent of Americans claimed to “remember exactly.”)[152] Trying to similarly commemorate the Enron collapse, one would have to ask, “Where were you when the Raptor funds started losing money?” or “Where were you when the Dynegy merger fell through?” Even if the person somehow had an answer, it wouldn’t have the same affective value.

The “official” narrative of September 11 was based on something cultural critics have called the “war framework” or “war narrative.” Essentially, through choices of terms and images, the 9/11 story posited the attacks as an act of war (as opposed to, for example, a crime); and constructed a logic by which the United States’ appropriate response was military, rather than legal or diplomatic.[153] In some ways, particularly in a time when September 11 and its consequences are still so salient, this framework may not be obvious. It might be said, ironically, that the war framework in the 9/11 narrative could elude conscious recognition precisely *because* its influence was so overwhelming. Even those most critical of the Bush administration and the “war on terror” tended to frame their protests using much the same language. It is a sure sign of a narrative’s power when people are unable to think or at least to speak of its events in any other way. The only surer sign, perhaps, is when a narrative proves to be self-fulfilling; in this case, by the pronouncement that 9/11 had begun a “war.” Robert Fulford defined the “master narrative” as one that “swallows us.”[154] The 9/11 master narrative, then, may have been more prescriptive than descriptive: even if “war” was not the most appropriate term for the attacks of September 11, it certainly applies to the actions that the United States then took (ostensibly) in response.

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[151] Randy Frances Kandel, “Narrative Reconstruction at Ground Zero,” in Chermak, Bailey, and Brown, ed., *Media Representations of September 11,* 188-89.

[152] Associated Press/ Ipsos-Public Affairs Poll, 9 September 2005.

[153] Davidson, “Americans’ Beliefs About Themselves, The World, and War” in Conley, ed., *Transforming the American Polity,* 34-37; Lawrence C. Dodd, “Entrapped in the Narrative of War: Reflections, Questions and Commentary,” in Conley, ed., 149.

[154] Robert Fulford, *The Triumph of Narrative: Storytelling in the Age of Mass Culture* (Toronto: Anansi, 1999), 32.

The foundational framework of the "official" Enron narrative might be called "outrage and reform." The bankruptcy was presented as an "outrage," unprecedented and inconceivable; "outrage" also describes the dramatic fury that often pervaded the narrative. "Reform" refers both to the call for moral correction of the offenders, by way of seized assets and jail time; and to proposals for new legislation to preempt "another Enron." If the 9/11 war narrative can be called, albeit dubiously, a success, Enron's parallel did not fare as well. The problem with the outrage and reform narrative was that people saw through it too easily.

For one, many of the same legislators who were so incensed by the Enron scandal had for years been accepting campaign donations from the company; this is to say nothing of the longstanding friendship and political-monetary symbiosis between Enron and the Bush family. After the bankruptcy most politicians returned Enron moneys or contributed them to the former employees' relief fund, and President Bush visibly distanced himself from Ken Lay. Politically speaking, however, this was too little, too late. The overarching and enduring issue was the position of Enron and other large corporations in the American halls of power. The depiction of this (or any) company as an outrageous bunch of rogues answerable to a stern federal policeman was unconvincing. Thus where the 9/11 war narrative featured an alien "enemy" that many people recognized as such, the Enron narrative was unable even to distinguish its heroes from its villains in any clear or consistent way.

A particular strength of the 9/11 war narrative was in its perpetuation of a longstanding American myth Roger Davidson has dubbed that of the "optimistic tinkerers." This cultural touchstone is the idea that Americans always learn from struggle and adversity, and will not only right that which is wrong but will actually somehow benefit from all difficulties in the end.[155] Cultural historian Kevin Rozario observes that this line of thinking fits well into a "(business) culture" positing crisis and destruction as cues to eliminate obsolete products and outmoded methods in the name of streamlining, innovation, and growth.[156] Chester Destler pointed out that

[155] Davidson, "Americans' Beliefs About Themselves, The World, and War" in Conley, ed., *Transforming the American Polity,* 24.

[156] Rozario, "Making Progress," in Vale and Campanella, ed., *The Resilient City,* 31.

Andrew Carnegie believed mankind was innately disposed toward linear progress, and felt that principle applied equally well to the evolution of the species and to his own steel business.[157] In this mode of thinking as in others Carnegie has many successors in more recent generations—not all of them tycoons or even businesspeople of any stature.

Like the 9/11 war framework, the myth of the optimistic tinkerers may be so pervasive that we cannot readily recognize it. In a previous incarnation, as part of Calvinist doctrine, it was popularized centuries ago with the first settlements in New England. The Puritans did believe some experiences were pure suffering, but they also attempted to make theological meaning of every hardship that God wreaked. To this day the same basic notion, if secularized and brightened, is at work every time someone ends a complaint of struggle with "But…" and an affirmation that she will emerge stronger and wiser. The myth's appeal is in its denial that anything categorically bad can ever happen. And this idea of betterment through adversity was as useful after September 11 as it ever had been before, for it led Americans firmly away from the thought, perhaps unbearable, that there was absolutely no consolation. Leaders of all kinds, as well as survivors, the bereaved, and "ordinary" citizens, constantly averred that the nation would learn and grow stronger from this trauma. President Bush even called it "the greatest chapter in our nation's history."[158] There is at least some indication that this idea was widely embraced: in the weeks after September 11 nearly 80 percent of Americans in a *Newsweek* poll said that as a result the country would "change for the better."[159]

The Enron narrative's "war" corollary, "outrage and reform," was less convincing in defining the threat and promising victory. Americans also had less emotional inclination and little logical rationale for adopting the betterment through adversity idea with reference to the Enron scandal. First, for most Americans the Enron disaster was not sufficiently somber to prompt a search for a deeper meaning and redemption. Second, legislators and President Bush vowed that the nation would learn and benefit from the scandal, but due to the same problem of ambiguity as

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[157] Destler, "The Opposition of American Businessmen to Social Control in the Gilded Age," 649.

[158] President, Address. "Remarks on Corporate Responsibility in New York City."

[159] Newsweek, Inc. Poll; 22 September 2001.

to which "side" the government was on, Americans probably doubted (and with reason) that much real change would be made—at least, of a kind that would actually benefit them. Moreover, if September 11 encouraged Americans to close ranks, rally around the government, and affirm a positive collective identity in the face of attack, Enron reminded Americans how deeply divided their society was, by disparities in money and power. It may have led people to question the very same "American way" that they were supposed to be defending.[160]

In addition to establishing emotional immediacy and a sense of moral coherence, the violence and trauma of September 11 allowed its narrative to take on philosophical and spiritual dimensions. In the face of death many people turn to certain precepts for comfort—affirmations of transcendence between this world and the next. This might mean that the bereaved will ultimately be reunited with the dead, or that the souls of loved ones stay with us even after their bodies expire. The catastrophic quality of 9/11, by which so many lives were lost so quickly and by such surreal means, evoked another axiom of spiritual faith in times of grief: that even the most horrible trials are part of an order beyond human understanding. Somewhere between vengeance and forgiveness,[161] such an attitude may allow people to accept tragedy and go on with their lives without denying their own suffering or excusing those who caused it. Compared to hysteria, which was certainly one understandable reaction to September 11, these kinds of affirmations were productive. Perhaps more than any other element in the 9/11 narrative, its philosophical-religious component served a genuine and urgent emotional need.

Of course, everyone could be grateful that Enron's collapse did not directly claim any lives. For the purposes of the official narrative, however, this disaster's relative lack of impact, in essential terms, posed a challenge: this deathless "tragedy" was difficult to dignify. As we saw, some Enron employees adopted language that suggested death, seeking to do justice to the

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[160] Similarly, historian Richard P. Adelstein has shown how leaders, particularly Herbert Hoover and Franklin D. Roosevelt, sought to liken the Great Depression to World War I. The comparison was intended to justify centralized organization and powers, which would be better able to combat an unseen and incomprehensible enemy. In Adelstein's estimation, however, the American public largely rejected this analogy. Richard P. Adelstein, "'The Nation As An Economic Unit:' Keynes, Roosevelt, and the Managerial Ideal" *The Journal of American History* 78, no. 1 (June 1991): 160-87. 162, 180.

[161] This phrase from Martha Minow, *Between Vengeance and Forgiveness: Facing History After Genocide and Mass Violence* (Boston: Beacon Press, 1998).

emotional intensity with which they had experienced the bankruptcy. Additionally, however, the invocation of death might work to vindicate the Enron "survivor." To state that he was "mourning" a profound "loss" in the wake of a "devastating tragedy" sounded nobler than simply to say that his employer company had folded, leaving him to deal with the unsavory consequences—some of which he might have been able to avoid. Images of death in the Enron narrative worked to politicians' advantage as well. The associated spiritual gravity as a unifying tone for the Enron story was preferable over themes of embarrassment or shame which, were it not for political posturing, would have come more naturally. This was hardly the first time that religious precepts of life, death and disaster had been applied to fluctuations in the American economy. By the turn of the twentieth century nearly all academics still applied the Bible to economic theory with what business historian Irving Michelman has deemed "unbelievable smugness and certitude." Financial busts and depressions were likened to lean years in the Pharoah's time and thereby rendered natural as the wilderness.[162]

However, when the Enron narrative tried to parlay imagery of death into the same philosophical and spiritual discourse of 9/11, again the analogy was stretched too thin. Rep. Greenwood called the corporate collapse "biblical in scope;" Rep. Deutsch appealed to the executives' "souls." A few legislators referred to the scriptures at length during the Enron hearings, but the sermons fell flat. In stead of life and death, this disaster was prodigious only in the banal terms of solvency and bankruptcy. And because the Enron narrative was hard pressed to take on a spiritual cast, it could not provide the kind of solace that some were able to find after September 11. Lost savings and pensions were not still present "in spirit," nor would they ever be reunited with those who missed them. Likewise God must have been indifferent to Enron, for it was difficult to argue that any higher wisdom governed how corporations rose and fell.

President Bush joined many other civic and religious leaders in encouraging Americans to pray in the wake of September 11, for the families of the dead and for their own strength to endure. It seemed a reasonable response to tragedy and chaos. The prospect of prayer after Enron, however, was more ambiguous. The stock market may have moved in mysterious ways,

[162] Michelman, *Business at Bay,* 105.

but it was not supposed to. The wills and actions of powerful people in business and politics may have transcended mortal understanding, but they shouldn't have. In other words, it is not necessarily intuitive to pray to an omnipotent higher power when the struggle one faces so obviously resulted, arbitrarily, from the carelessness of fallible humans and the injustices of their society.

The most profound prayers are sometimes unspoken. At many ceremonies honoring the dead, it is acknowledged that some grief defies words; that some mourning is completely private. In a collective "moment of silence," those assembled are encouraged to pause and reflect, alone, before sharing their own thoughts or hearing more from others. While tranquility for many was difficult to find in the wake of September 11, what moments of silence there were could be put to their traditional spiritual purpose. This experience of death, like any other, indeed had dimensions beyond verbal expression. In Enron's postmortem, however, some solemn officiators were at a loss for words for reasons more mundane. In stead of being too awed by tragedy or too emotionally unsettled to speak, they fell silent when at last their pretenses failed them.

Jeff Skilling, for example, for all his verbose equivocation finally had to admit that he didn't "know what to say" to the employees devastated by Enron's collapse.[163] President Bush in public said remarkably little about the scandal, only discussing Enron in response to specific questions and only speaking about "corporate responsibility" in response to intense political pressure. In an unexpectedly revealing exchange, Sen. Barbara Boxer (D-CA), one of the most relentlessly scathing legislators to participate in the Enron hearings, appeared to have much to say, but was ultimately forced to acknowledge the limitations of speech:

> SEN. BOXER: …Let me say that this is an incredible [witness] panel. I would like to take Ms. [Mary Bain] Pearson home with me, because she—
> MS. PEARSON: Well, that could be arranged.
> *(Laughter.)*
> SEN. BOXER: Well, good.
> MS. PEARSON: You can take us all home with you. Do you have any Enron stock?
> *(Laughter.)*
> SEN. BOXER: That's another story, maybe for another day, but we'll talk.
> Here's the point. These people have been deeply, deeply, deeply hurt, their dreams

[163] Senate Committee, *Financial Collapse of Enron*.

> shattered and they're here helping us and it's kind of the American spirit and I want to thank you so much.[164]

Pearson, an elderly widowed Latin teacher, had invested in Enron stock as her "long-term health care" plan, and frankly told this Senate committee that she didn't know how to proceed now that the stock was worthless. When Boxer "wished" out loud that she could bring Pearson home (as a souvenir of American civic virtue?), Pearson used humor to point out the Senator's insincerity and condescension without stepping out of line. Sen. Boxer attempted a benevolent evasion—"we'll talk"—and faltered.

Ultimately Boxer redoubled her lip service to the Enron "survivors" with the clumsy affirmation that their appearance in Congress embodied "kind of the American spirit." The transcript shows that the Senator had the last word here, but in effect Pearson had revealed the emptiness of her statements. Boxer's and other politicians' expressions of rage at the Enron executives, and empathy for former employees, meant little in the context of chronic systemic inequality. Thus if the "moment of silence" after September 11 was for reflection, affirmation, and prayer, the "moment of silence" after Enron's collapse was one of awkward and embarrassed confusion. Underneath all the superficial blustering, nobody knew what to say.

Let's Roll

If the official Enron narrative had serious weaknesses from the start, the 9/11 narrative began over time to show significant problems as well. Its promise of triumph in the newly minted "war on terror" fell into doubt as, in the months that turned into years following the attacks, the United States failed to capture or even locate Osama bin Laden. Moreover it was clear that the threat of terrorism was not traceable to any identifiable individuals in particular. The 9/11 narrative's simplistic (sometimes melodramatic) presentation of a "war" between good and evil, or between "freedom" and "fear," was also complicated by controversial domestic policies that abridged Americans' civil liberties and, in 2003, by a questionable invasion of Iraq that alienated many of the nation's usual allies. The political "rallying effect" of September 11 by that point had

[164] Senate Committee, *Overview of the Enron Collapse*.

clearly begun to wear off.[165] Legislators and vocal citizens in increasing numbers raised the possibility that the federal government or the Bush administration could have done more to prevent such a tragedy. Skeptics also impugned the justifications for many of the United States' post-9/11 foreign and domestic policies.

Over time the already flimsy official Enron narrative only continued to droop further. Its most despicable villains, including Ken Lay, Jeff Skilling and outright thief Andy Fastow, had forfeited their careers and reputations but otherwise faced little immediate punishment. These three executives were expected to become cautionary tales in the tough new regime of corporate accountability, but instead, they would enjoy free and opulent lives until their trials in 2004 (Fastow) and 2006 (Lay and Skilling). Meanwhile disastrous corporate frauds and collapses continued, with the consequences for culpable executives being no less ambiguous.

Like the 9/11 war narrative, Enron's "outrage and reform" framework denied the possibility of underlying systemic problems. "Victory," in the Enron narrative, should only have required some stiff prison sentences and a few prudent regulatory adjustments. As we have seen, politicians in particular had emphasized the renewed strength of the American market after the Enron lesson was learned—yet even years later it is still far from clear that this battle has been won. Thus if anyone was ever convinced in its aftermath that Enron's spectacular collapse provided an effective "wake up call" to federal regulation, that belief probably fell into doubt fairly quickly. One opinion poll indicated that nearly three fourths of Americans thought the Enron scandal was indicative of "broader problems" in how companies reported their earnings, as opposed to being an "isolated incident."[166] Because it was conducted in January 2002—after Enron's collapse but before Tyco, WorldCom, and other such sequels—the poll revealed in effect that most Americans actually expected those additional bankruptcies. Thus even if the perpetrators were to be caught, and legislation was to be passed, to prevent a "repeat

[165] Davidson, "Americans' Beliefs About Themselves, The World, and War" in Conley, ed., *Transforming the American Polity,* 31.

[166] *Washington Post*/ABC News Poll, 28 January 2002; 1 July 2002.

performance" after Enron, the greater part of the population still did not accept this as a proper end to the story.

The entanglement of the 9/11 and Enron narratives took an especially bizarre twist on the issue of personal values: namely, the selfish and material versus the altruistic and moral. In President Bush's State of the Union Address in January 2002 he had reiterated a version of the "betterment through adversity" idea, stating that the nation would benefit from the September 11 attacks by renewing its guiding principles:

> None of us would ever wish the evil that was done on September the 11th. Yet after America was attacked, it was as if our entire country looked into a mirror and saw our better selves. We were reminded that we are citizens, with obligations to each other, to our country, and to history. We began to think less of the goods we can accumulate, and more about the good we can do.
>
> For too long our culture has said, "If it feels good, do it." Now America is embracing a new ethic and a new creed: "Let's roll." *(Applause.)* In the sacrifice of soldiers, the fierce brotherhood of firefighters, and the bravery and generosity of ordinary citizens, we have glimpsed what a new culture of responsibility could look like. We want to be a nation that serves goals larger than self. We've been offered a unique opportunity, and we must not let this moment pass. *(Applause.)*[167]

"Let's roll" were the last known words of Todd Beamer on the hijacked United Airlines Flight 93, as he apparently directed fellow passengers in foiling one part of the September 11 plan. The plane may have been intended to strike the White House or the Capitol, but instead Beamer and his seatmates forced it down in an unpopulated area in Somerset County, Pennsylvania—certain of their own deaths but trying to keep others to a minimum.[168] Thus Bush in his new "creed" was referring to the kind of "ordinary" self-sacrifice that Beamer exemplified. While the victims of the World Trade Center bombings did include a disproportionate percentage of corporate capitalists, those 9/11 narratives also stressed that they met their fates as equals to the maintenance workers, vendors, and cleaning staff with whom they shared the buildings. Depictions of heroism focused on more modest types—especially police officers and firefighters. No doubt some men in

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[167] President, Address, "State of the Union Message." *Weekly Compilation of Presidential Documents* (GPO Access: frwais.access.gpo.gov) 29 January 2002.

[168] Jim McKinnon, "The phone line from Flight 93 was still open when a GTE operator heard Todd Beamer say: 'Are you guys ready? Let's roll.'" *Pittsburgh Post-Gazette* 19 September 2001.

suits ran out of the World Trade Center without even looking back, but that would not make an inspiring story.

In the months that followed, however, Bush began calling on Americans to spend more money. The Ad Council, which in Sandra Silberstein's words is "as close as the US comes to having a national propaganda organ," moved from urging racial and religious tolerance in the wake of September 11 to encouraging shopping and tourism.[169] Though officially rationalized to stimulate a reeling economy, this multi-level campaign also recalled cold war-era exaltations of capitalism that were used in ideological attacks on the Soviet Union—the most recent in a long succession of political attempts to equate commerce and consumption with patriotism.[170] Consumer advertising specifically played on the 9/11 narrative by suggesting the nation could recover from the attacks, in part, by shopping. More than one car promotion, for example, played on Beamer's words with the slogan "Keep America Rolling." This reversed the original, sacrificial spirit of the "let's roll" doctrine, for people were now apparently expected to serve the country by indulging themselves. It also sat uneasily with the grief and reflection that for many Americans lasted more than a few months after September 11. The tragedy, at least for some, really had prompted a shift away from selfish and material priorities; thus when the master 9/11 narrative took its curious turn toward consumerism it was in some senses going against the collective emotional grain. [171]

At the same time Americans encountered these exhortations to patriotic spending, the ugliest details of the Enron scandal were coming to light. Mobilization for the war on terror, like many US war efforts prior, may have encouraged more support or at least acceptance of big business as an integral part of the nation's battle front—but the bankruptcy was ill-timed to contribute to any public goodwill. Matched only by deceit, the overwhelming theme in people's disgust toward Enron executives was greed. After all, the men who had designed these nefarious schemes for self-enrichment had already been wealthy beyond most people's imaginations.

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[169] Sandra Silberstein, *War of Words: Language, Politics, and 9/11* (London: Routledge, 2002), 108.

[170] See for example Gary Cross, *An All-Consuming Century: Why Commercialism Won in America* (New York: Columbia University Press, 2000).

[171] Silberstein, *War of Words,* 125.

These “most people” included Enron employees, who as front pages across the country demonstrated were now suddenly and severely impoverished, probably forever. The implicated Enron executives epitomized the kind of careless and self-serving behavior that seemed most unforgivable in a time of crisis; images of Jeff Skilling dashing out of the figurative collapsing building were one illustration.

The Enron narrative absolutely needed to maintain a consistent stance on the vice of greed—namely, against it—and if nowhere else it did manage coherence on this point. Here Enron actually exposed a problem with the 9/11 narrative, for while the story of corporate scandal condemned self-indulgence the September 11 story was trying awkwardly to promote it. People may have been inclined to judge Enron executives especially harshly in the wake of September 11. If so, the same conviction against greed upon which they were operating probably did not mesh well with the “keep America rolling” ad blitz and the assertion that purchasing was patriotic. Here was yet another inconvenient and impromptu confrontation with capitalism in some of its less savory components. The despicable “selfishness and greed” that Rep. Bobby Rush had attributed to Enron executives, as well as the metaphorical caviar that some satirist complained they enjoyed “at the consumer’s expense,” are both constant, even indispensable elements in a market of competition and private ownership.

Here economic actors need to be motivated by self-interest and a (preferably infinite) desire for gain, and the tastiest rewards of success can only go to a fortunate few. Likewise, a drastic drop-off in consumer spending after September 11, even if due to some mass shift in personal values, would indeed have compounded the damage of the attacks in economic terms. The government’s bald efforts to avoid such an outcome may have struck a dissonant chord with Americans at the time, but given the nation’s commitment to commercial prosperity, which dates back to its inception, such campaigns should be expected.

All of this is to say that ultimately, both the 9/11 and Enron narratives were undermined by internal contradictions and ongoing challenges. Both had attempted to impose order on chaos, coherence on ambiguity, and closure on unresolved problems. But over time, details of both “collapses” and their fallouts cast the federal government in an unflattering light. It increasingly appeared that longstanding fundamental issues were involved in Enron's bankruptcy and the September 11 attacks. And on the most concrete point, upon which there could be no debate, both bin Laden and Ken Lay were still at large, walking free and unrepentant, years after their respective assaults on the "American way." It seemed that transnational terror networks and multinational corporations, which were both faceless, diffuse, and unaccountable, were presenting new challenges to the American government apparatus. It was ill-equipped to deal with them. Two of the nation's first twenty-first century political narratives, inter-tangled, had thus eroded beyond credibility. Their affirmations of national strength, unity and purpose consequently began to ring hollow. America was still "rolling," but it was not necessarily clear where to.

Conclusion: Reflections on Narrative in the Age of Enron

Some scholars and theorists have declared that the postmodern era sounds the death knell of narrative. They argue that contemporary technologies, particularly the internet, with their compression of space and time and their infinitely fragmented frames and perspectives, will render storytelling impractical, irrelevant, or obsolete.[172] Though we are certainly witnessing changes in the modes and media of narrative, it would be naïve to conclude that the form itself will soon (or indeed ever) disappear. Moreover, as has more than once been pointed out, the argument for the end of narrative actually proves itself untrue; it is a kind of rhetorical contradiction in terms. For one of the essential elements of narrative is a coherent sense of developments in chronology, concluding in a definitive "ending." These commentators have created a narrative about narrative, complete with its final episode. Obviously, the human impulse to narrate/narrativize is alive and well—and those who have tried to deny this provide an excellent case in point.[173]

In historiography, the narrative form has of late come under intense fire. Such attacks are warranted. The historian as story-teller risks presenting the past as a neat chronology of events progressing logically toward a predetermined outcome, and for too long this paradigm has prevailed by virtue of the false comfort it affords to writer and reader alike. Far from being a

[172] Richard Kearney, *On Stories* (New York: Routledge, 2002), 10-11, 128.

[173] *Ibid.,* 127; Mark Currie, *Postmodern Narrative Theory* (New York: St. Martin's Press, 1998), 11-12.

strictly academic problem, the larger construction of “History” as a set of authoritative narratives has been invoked in the service of many shameful political agendas seeking to rationalize and legitimate forms of oppression. In response, the first step of deconstruction was to impugn the story’s content. The second step was to impugn the story’s form.

We now know that reductive narrative does great injustice (in both senses of the phrase) to the past. But if history is not a story, what is it then? Discouraged and nonplussed, we might be tempted to conclude simply that it is a senseless mess. Some postmodern theory seems to offer few other possibilities! But while such resignation is understandable, it should not be allowed to stand. I would argue that the idea of history as mess is not only analytically paralyzing; it is moreover innately wrongheaded in the same way as the conceit of history as grand narrative. The grand narrative model forces too much order upon the world, but the mess model, if it can be so called, ignores what order there is.

To be sure, the struggle over how to understand Enron was messy. This narrative contestation also illustrated order, however, in the surprising predictability of its literary styles: tragic, melodramatic and satiric storytelling. As to the frequent invocations of September 11, fraught though they were, here still order can be found, for a tangle is different from a mess—it is made up of discrete strands. Though we cannot really isolate any of these, we can identify places where they cross and encircle one another, and by carefully loosening here, prodding there, we can imagine how such knots might have formed. An event such as Enron lacked the obvious narrative ingredients of a discrete time, place, or cohesive succession of events easily understood. It carried little of its own emotional meaning without borrowing from cultural tropes or another more immediately affecting incident. Nonetheless, from tragedy, to comedy, and back to trauma in a much more immediate context, we have seen the myriad ways that people found to translate and interpret the Enron bankruptcy through story. Thus Enron may illustrate well, as a case study, the persistent impulse—mental, political, emotional, even spiritual—to make a narrative of everything, even in the dazzlingly fast-paced and complex society in which the ancient storytelling tradition now finds itself.

Chapter 2: "Never Again:" Post-Enron Legislative Reforms

"The more we learn, the more nauseating the whole story becomes," said Rep. Charles Bass (D-NH). Such proclamations of visceral disgust, particularly with selected Enron executives present and forced to listen, were easy and near universal in congressional chambers directly following the company's bankruptcy. Sometimes, however, they came attached to affirmative and forward-looking statements that held more substance. It had seemed that the first order of business, in Congress' treatment of Enron, had been polemic, but lawmakers also conceded that they had another job to do. Even now, at the opening of one of their first investigative hearings, congresspeople were beginning to posit Enron's collapse as a call to legislative reform.

Bass went on: "I hope that after we get beyond the question of who wrote what memo to who, who put whose signature on a memo, [and] the complexity of all the transactions …we really ask…what we can do…to make sure that this tragedy perpetrated by these business cowboys never happens again."[1] By coining yet another creative epithet for Enron executives, Bass signified that he certainly bore them no sympathy. At the same time, however, his ambition to "get beyond" the intricacies of their nauseating misdeeds suggested that ultimately, the task before him and his colleagues was not to analyze technicalities in this particular "corporate disaster," as he referred to Enron. Rather, they were to prevent something similar from happening again. The phrase, in various permutations, appears scores of times in these congressional transcripts.

Soon after it concluded hearings on Enron's demise, Congress began considering reforms to prevent what one of Bass' colleagues called a "repeat performance." By establishing the primary factors in such a disaster, Congress would identify where and how to implement

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[1] Oversight and Investigations Subcommittee of the House Energy and Commerce Committee, *Finding of Enron's Special Investigative Committee: Hearing before the Oversight and Investigations Subcommittee of the House Energy and Commerce Committee,* 107th Cong., 2nd sess., 7 February 2002.

legislation to pre-empt those ominous circumstances that first enabled Enron's deceptive success, and then made its bankruptcy so damaging for so many. The objective was no longer simply to understand what had happened at Enron; now legislators were to extract principles from it. Overall, two major conclusions emerged: that big business enjoyed too much political influence, and that publicly traded corporations could issue fraudulent financial statements with relative ease and impunity. Congress' dual conceptualization of what kind of a problem Enron was begat two major reforms, both enacted in 2002: the McCain-Feingold Bipartisan Campaign Reform Act, or BCRA (March), and the Sarbanes-Oxley Act for Corporate Accountability (July).

However, the main principles that legislators came up with to explain Enron were not so much developed through analysis of its collapse, as they were revived by using it as an excuse. The exigencies for reform, both in campaign finance and in corporate accounting, hardly arose out of nowhere as answers to the Enron failure. Rather, they represented longstanding initiatives in search of a catalyzing event. This claim need not be abstract: both the BCRA and Sarbanes-Oxley bills had been written years before Enron went bankrupt. That the debates surrounding these reforms (and indeed in Sarbanes-Oxley's case the very text of the bill) mentioned the company by name, was therefore misleading. These laws could be, and were, framed as a response to Enron specifically, but the "response" preceded that which it responded to. This was but one of many instances in legislative history when a publicized incident exposing weaknesses in one system or another—here, campaign finance or corporate financial disclosure—seemed to vindicate a pre-existing movement for reform.

At this point, then, Enron had become less salient as a bankruptcy and more salient as a scandal. This shift partly signified Enron's translation from a business phenomenon—understood and discussed from a business perspective—to a political one, which was supposed to make sense to any American voter. "Making sense," now that reforms were being proposed and debated, required a much more widely accessible narrative that was not just about how corporations do business, but indeed about their position in civil society. The concept of scandal did much to facilitate this translation—and had already proved useful even prior to BCRA or Sarbanes-Oxley debates. As we saw, even some of the earliest narratives of Enron invoked scandal by decrying not only Enron's fraud, but also the complicity of regulators, public officials, and even the law.

But as the federal government itself took up Enron as a problem to solve, designating it a scandal, even implicitly, also suggested some more specific changes in how this story would be told. First, although vilification and blame of executives certainly continued, legislators could not always speak so personally about individuals. To accept that reform was needed was to admit that Enron's fraud, ultimately, was not necessarily particular to the people involved—otherwise, with these few "bad apples" out of their corner offices, no legislation would have been in order. But furthermore, viewing Enron as a scandal re-cast the significance of those individuals, and even the company, that remained at the center of the story.

In *On Scandal,* Ari Adut argues that a scandal has to involve prominent figures not only because they command attention, but also because they stand for "groups, institutions and values." This symbolism applies with even more weight to people in whom trust has been invested.[2] No matter how outrageous the behavior of a low-status unknown, then, it cannot readily be called scandalous. This is because he stands for nobody but himself, and has no public expectations staked on his integrity. Enron, however, did fulfill Adut's scandal criteria. Its executives certainly personified "groups, institutions and values," beginning with their own company but also, given Enron's size and status, they stood for the modern energy industry, trading in the "new economy," and even big business as we knew it in the early 2000s. Adut further shows that the less the public knows about the milieu in which a scandal has occurred, the more likely they are to assume the misbehavior is typical, and that a broader set of people are therefore guilty as well.[3] At the time and in the context of Enron, such a blanket conviction in the court of public opinion had happened fairly easily.

Furthermore, notwithstanding the widespread and perennial suspicion toward big businessmen, Enron's leaders had also enjoyed a crucial degree of "trust" by employees,

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[2] Ari Adut, *On Scandal: Moral Disturbances in Society, Politics and Art* (New York: Cambridge University Press, 2008), 24.

[3] *Ibid.,* 27-28.

investors, the media, and even regulators and the government. Even all of the cynicism and embarrassment that came after the bankruptcy could not obscure the unpleasant fact: Enron could only have climbed so high with the cooperation and endorsement of millions of believers. Therefore Enron executives, who stood for important but often ill-understood realms of business activity, and who had once been highly regarded, now had to become more than individual actors or even character types. In legislator's narratives of problem and solution, they had to become representative—not only of a broader category of people, but indeed of conceptual threats.

Two threats in particular; namely, government's "corruption" by big money, and fraudulent accounting; became the rationales for post-Enron legislation. A pair of scandals, thus conceived, facilitated a pair of reforms. Yet while BCRA and Sarbanes-Oxley each had its own justification, in the form of a problem exposed by Enron, each also had its own narrative. And the two stories, though both fundamentally "about" the same thing, were strikingly different. In the political narrative that logically led to BCRA as a resolution, lawmakers themselves were implicated in the conflict. Appearing beholden, for money, to large corporations like Enron, they had lost the faith of their constituents. The latter believed Congress, in exchange for campaign donations, had condoned Enron's wrongdoing. Meanwhile the story offering Sarbanes-Oxley as finale was a much more familiar tale of greedy and reckless businessmen—and far less nuanced on the question of blame. There was no doubt but that chastening was the answer. The government needed only to stand firm, both in its rules and in its punishment for breaking them.

If BCRA debates forced Congress into an uncomfortable exercise in self-scrutiny in early 2002, Sarbanes-Oxley offered relief by mid-year. The first legislative analysis of Enron required congresspeople to speak critically—if circuitously—about their own *modus operandi*. But in the end, they would return to a melodramatic conceptualization of Enron in which they themselves were pure; even heroic. The most important commonalities between these two narratives, and how each pushed for reform, were the factors of rushing and, related, of oversimplification. Given that the advocates of BCRA and Sarbanes-Oxley knew they had greater sway, but only for a limited time, their arguments invoking Enron were hasty and haphazard. And not surprisingly, in these two cases as in many past reforms suddenly enabled by scandal, the resulting legislation was rife with loopholes and fatal compromises.

PART I:
APPEARANCE OF CORRUPTION: THE BIPARTISAN CAMPAIGN REFORM ACT

"You need to change your opinion." So said Enron's Jeff Skilling in an individual meeting with the chairman of the House Energy and Power subcommittee in 1999. Skilling proceeded to lecture the congressman, in his own office, on the obvious wisdom of forcing states to deregulate their energy markets. As a celebrity top executive of a Fortune 10 company, Skilling felt entitled to give orders in Washington—perhaps especially when, as in this case, he was speaking with a Texas Republican. One high-ranking member of Enron's government staff later said "Jeff thought you could throw money and buy people and they did what you told them to do."[4] As a general matter Skilling regarded public officials as "idiots," and in conversations like this one he made little effort to hide it.

That year Enron was approaching the peak of its glory. It was entering more and more markets, its price per share was close to $100, and it was soon to be named *Fortune* magazine's "Most Innovative Company in America" for the fifth year in a row. Yet in retrospect all of this appears dramatic prelude to the infamous bankruptcy of 2001. The mainstream news media would then register disgust with Enron's leadership; particularly founder and CEO Ken Lay, former CEO Jeff Skilling, and CFO Andy Fastow, who had personally pocketed $60.6 million over years of accounting trickery.[5]

After the initial shock and condemnation of these executives, some observers began to fume that only a government bowing to corporate prerogative could have allowed such a disaster. Perhaps, the allegation ran, federal regulations had condoned this egregious fraud because of the documented campaign contributions that Enron had given to both parties. This complaint

[4] Bethany McLean and Peter Elkind, *The Smartest Guys in the Room: The Amazing Rise and Scandalous Fall of Enron* (New York: Portfolio, 2003), 173.

[5] McLean & Elkind, *Smartest Guys in the Room,* 376; Kurt Eichenwald, *Conspiracy of Fools: A True Story* (New York: Broadway, 2005), 554. These facts are uncontested; Fastow pled guilty on January 14, 2004 to conspiracy counts of wire and securities fraud, to reduce his forfeiture of assets and prison sentence in exchange for cooperation as a witness in the prosecution of other executives (Eichenwald, *Conspiracy of Fools,* 672).

soon broadened to refer to corporations more generally: that big business was buying favorable legislation, to the detriment of Americans' interests as investors and as citizens. The circumstances surrounding Enron's bankruptcy cast shame on company executives as well as Congress, the president, and energy regulators. But for those who felt that big business enjoyed too much influence on government—and that argument of course long pre-dated Enron—this scandal actually was not a particularly good case in point. Nonetheless, political narratives used Enron to symbolize corporations' political power during the 2002 debates on campaign finance reform. This analysis will explore how and why.

Between 1989 and 2001, Enron gave roughly $6 million in campaign donations, with about two thirds going to Republicans. Its foremost executives also gave generously on an individual basis. Enron was one of George W. Bush's primary backers, and the Bush family had long been personally connected to Ken Lay.[6] There is no doubt but that Enron won some influence in Washington: For example, Vice President Dick Cheney appears to have consulted Lay personally, in secret, as he crafted the Bush administration's energy policy. Another Enron protégé, Sen. Phil Gramm (R-TX), co-sponsored a law that relaxed commodity futures trading—vital to Enron's business model—while his wife Wendy sat on Enron's board of directors.

But Enron had a grand political objective whose defeat far outweighed such victories. During its most successful years, the mid to late nineties, the company focused all of its Washington wherewithal, including lobbying, advertising, and millions of dollars, on the legislative effort to force nationwide energy deregulation. This would not only have been a financial boon, but also an ideological triumph, for Enron. Yet congresspeople, including many who had gladly taken Enron moneys, flatly rejected the proposal, as did Rep. Joe Barton in our opening scene. Even as its "government affairs" budget staggered, Enron could not even move the bill out of committee.

When Barton ended the aforementioned meeting with a final rejection of Skilling's proposal, it might have appeared that the Enron executive had made a grave political misstep. In truth, Skilling was fighting a losing battle—if sloppily. And at any rate, the company had many

[6] McLean and Elkind, *Smartest Guys in the Room,* 87.

advocates in Washington who were more socially adept. (Indeed, given his attitude toward government and his typical manner of engagement, both well known, it is not clear why Skilling was allowed anywhere near the Capitol as a representative of Enron). Deregulation stalled mainly because local utilities—smaller businesses in the various states—had stronger connections to their congresspeople than Enron did. In other words, this flush multinational corporation faced opponents who had far less money to spend, and yet found with all its might it could not even mount a challenge.[7] This legislative loss to smaller, regional utility companies hardly represented any populist victory, for here one set of business interests simply trumped another. However, it pointed up that “Business” is not a monolithic interest group; and indeed that even an Enron can be overridden in this fragmented constituency’s internal struggles. More to the point in BCRA debates, it demonstrated that Enron made a poor model for campaign finance reformers, who spoke of large corporations that could buy any national policy they pleased.

Nonetheless, as the Enron scandal unfolded, politicians, including President George W. Bush, had to distance themselves from the company. Many legislators who had received moneys from Enron hastened to return them.[8] And when campaign finance reform came up for debate just a few months after the bankruptcy, congresspeople were forced to contend with the proposition that they themselves were to blame, in part, as well. The story that developed, awkward as told by legislators, suggested that Congress’ “conflict of interest” was the problem; that lawmakers were declining to effectively regulate big business because they relied on corporations like Enron for campaign funding. As opposed to simple demonization of greedy tycoons, which underpinned the Sarbanes-Oxley accounting reforms of that same year, this explanation implied a need for institutional change that would address the business-government symbiosis. Since 1907 corporations had been barred from making direct campaign contributions, but they were known to funnel money through individual executives; to sponsor so-called issue ads that clearly supported one candidate over another; and to make generous soft money

[7] *Ibid.,* 173.

[8] Victoria A. Farrar-Myers and Diana Dwyre, *Limits and Loopholes: The Quest for Money, Free Speech and Fair Elections.* (Washington, DC: CQ Press, 2008), 82.

donations to parties (soft money being that which is unregulated by federal campaign finance law). Addressing such loopholes was the main stated rationale for the Mc-Cain Feingold and Shays-Meehan Bipartisan Campaign Reform bills, known together as the Bipartisan Campaign Reform Act.

Enron was thus not only conceived as a business scandal, but also—if reluctantly—considered as a political scandal as well. Ari Adut has pointed out that political scandal is in some ways endemic to democratic systems, because it entails certain expectations for leaders' behavior, and empowers voters (if informally) to arbitrate what is acceptable and what is not. Political scandals can also represent "democracy in action," as when culprits are criticized, voted out of office, impeached, or even prosecuted as a result of their scandalous deeds.[9] Legislators, naturally, wanted to contain the narrative of Enron as political scandal, and thereby contain its possible impact on them. Therefore the BCRA debates conveyed, at every turn, careful and calculated negotiations between admission and denial; humility and grandiosity. But this was not the first time that American leaders undertook a tentative self-examination on the issue of money in politics.

A History of Big Business, Big Money, and Campaign Finance

Campaign expenses, and how they were covered, were not always so controversial in the United States. To begin with, "electioneering in the founding era did not involve large sums of money."[10] Candidates ran (then, tellingly, the term was usually "stood") for office, largely on their pre-existing reputations rather than by proactively engaging the public. What little money was required went largely to printing and distributing campaign literature. When George Washington campaigned for a seat in the Virginia House of Burgesses, his provision of free alcohol to the 391 voters in his district (generously averaging more than one and a half quarts per head)

[9] Adut, *On Scandal,* 75.

[10] John Samples, *The Fallacy of Campaign Finance Reform* (Chicago, University of Chicago Press, 2006), 31.

represented an exceptionally large campaign expenditure. Furthermore, whether large or small, campaign expenses were paid by the gentleman candidate himself.[11]

By the early nineteenth century, however, the scenario began to change. Increasingly, men of more modest means entered politics—and though this development in one sense a realized a democratic egalitarian ideal, it also signaled a new role for money in electioneering. The "professional politician" hereby emerged; a candidate who relied on others to fund his campaign. His entrance entailed not only requests for donations, but also gave rise to the spoils system, whereby a newly elected officeholder would grant government positions under his purview to those who had supported his run. Eventually beneficiaries of the spoils system were expected to pay *for* their jobs, as the national political parties took assessments on their salaries.[12] Thus the primacy of money came not only to saturate the process of campaigning, but also the mechanisms of governing.

As the nineteenth century wore on, big business gained its reputation—and rightly so—for buying influence with public officials. Railroad executives in particular had a relatively easy time manipulating and paying off government officials at both the state and federal levels, and often thwarted unfriendly reform efforts with campaign contributions and outright bribery.[13] By 1874, railroad leaders felt comfortable announcing that they would "disregard" regulations that *were* enacted against their wishes, such as the Wisconsin "Potter" Law controlling freight rates and passenger fares. In 1890 the president of the St. Paul Railroad seemed to declare that the railroad industry was self-governing. Its executives, Robert E. Riegel wrote, were "practically independent sovereigns, exercising functions and prerogatives in defiance of the laws, and practically denying their amenability to the laws of the country."[14] The word "practically," used twice here, probably does not mean "virtually" or "almost." Rather, Riegel was describing who

[11] Congressional Quarterly, *Congressional Campaign Finances: History, Facts, and Controversy* (Washington, D.C.: Congressional Quarterly, 1992), 29.

[12] *Ibid.*

[13] Jack Blicksilver, *Defenders and Defense of Big Business in the United States, 1880-1900,* American Economic History: A Garland Series, ed. Stuart Bruchey (New York: Garland, 1985), 212, 222.

[14] Chester McArthur Destler, "The Opposition of American Businessmen to Social Control in the Gilded Age," *The Mississippi Valley Historical Review* 39, no. 4 (March 1953): 641-72. 647.

made the railroads' rules *in practice,* regardless of ostensible jurisdiction—and this came not as a complaint from some railroad discontent; but from someone highly ranked within the industry. The railroads would either buy the government that they wanted, or make a government of their own.

The railroads were not the only business group perceived to be above, or in control over, the law. Joseph Keppler's famous editorial cartoon of 1889, "Bosses of the Senate" would become an icon of the Gilded Age. Keppler depicted the "bosses" as a line of grimacing men with dollar signs on their chests. Their bodies were roughly ten times larger than those of the senators, mostly due to gigantic stomachs, on each of which was written a given industry "trust:" sugar, coal, iron, and so on. They had entered through a wide doorway designated just for them, and in the background was a small window—closed and locked—marked "PEOPLE'S ENTRANCE." The trusts, then, were apparently gorged on profits and power. Not only did they give orders in the senate—the "people" who senators supposedly represented were not even allowed in.[15]

If Congress appeared compromised, so too did the White House. William McKinley's presidential victory over William Jennings Bryan in 1896 was partly due to the pioneering fundraising of campaign manager Mark Hanna, who developed a systematic means of soliciting donations from banks and corporations.[16] If Bryan represented populism, then his defeat by McKinley and the Republicans' big business allies was surely apt. It was the election of 1904, however, that decisively solidified the movement for national campaign finance reform. By this time the complaints of undue business influence in politics were strong enough to overwhelm opposition.[17] Although some states had enacted campaign finance reforms during the late nineteenth century, the first major federal law on the subject was the Tillman Act of 1907. Tillman forbade corporations from contributing directly to federal campaigns—outlawing the type of funding that had helped bring McKinley and also Theodore Roosevelt to office.

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[15] The image first appeared in *Puck* on January 23, 1889. "Bosses of the Senate" has many ideological descendants among modern editorial cartoons—up to and including many artistic renderings of the 2010 Supreme Court decision *Citizens United v. FEC*, which relaxed rules on corporate campaign spending.

[16] Congressional Quarterly, *Congressional Campaign Finances*, 30.

[17] Robert H. Sitkoff, "Corporate Political Speech, Political Extortion, and the Competition for Corporate Charters," *The University of Chicago Law Review* 69, no. 3 (summer 2002): 1103-116. 1128; Congressional Quarterly, *Congressional Campaign Finances,* 30-31.

The next major episode in campaign finance and the controversial relationship between business and government came with Teapot Dome. In 1925 Congress learned that the Teapot Dome reserve in Wyoming had been secured through bribery of public officials, and with contributions to help retire Republican campaign debts incurred in 1920. The scandal corroborated then-President Warren Harding's reputation for being on the take. Harding, who brought "cronies, poker, cigars, and bootlegged highballs" to the White House, indeed had had a hand in the operation. The head of the Department of the Interior, author of the secret leases, was an old friend of the President, and Harding granted him control of the reserves on dubious reasoning.[18] Again, public outcry enabled reform; this time as the Corrupt Practices Act. The new law mandated more thorough and more frequent disclosure of campaign funding sources, thereby closing one loophole that had made the Teapot Dome scheme possible. It also tightened restrictions on contributions, electioneering, and campaign spending, and broadened the purview of campaign finance regulations to apply not only to money but also to "a gift, subscription, loan, advance…or anything of value."[19]

Nearly fifty years later, the Watergate scandal set off yet another impromptu referendum on the role of money in politics. On its face, the sordid story was of a president who commissioned an office break-in. Watergate, however, was also an embarrassment in campaign finance. Richard Nixon's 1972 reelection campaign, it turned out, had been largely financed by unreported contributions that were illegal by virtue of source, size, or both. Furthermore, some of these very funds went the conspirators who carried out the break-in at the Watergate Hotel, both in advance of the operation and afterward.[20] Yet again, scandal cleared the way for a reform initiative that long pre-dated it. In 1974, public opinion polls showed that Americans ranked "government corruption" among the most important national issues, and that support for

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[18] Irving S. Michelman, *Business At Bay: Critics and Heretics of American Business* (New York: A. M. Kelley, 1969), 79-80.

[19] Congressional Quarterly. *Congressional Campaign Finances,* 31-32.

[20] *Ibid.,* 41-42.

disclosure laws and public campaign funding had risen from previous levels.[21] That year reformers accomplished a major set of campaign finance regulations as amendments to the Federal Election Campaigns Act of 1972. This legislation began the public funding system for presidential campaigns, further restricted donation amounts (and outlawed them entirely from some sources), mandated more disclosure of gifts and expenditures, and created the Federal Elections Commission to oversee federal campaign financing.

Congress has been accused of enacting these new regulations essentially for show: so that they could appear to be taking action in response to Watergate. Indeed, nearly all of the campaign finance abuses associated with the scandal had already been illegal;[22] thus any reform conceived strictly to close what loopholes remained, could have been minor. Instead, Congress propounded the most sweeping legislation on election funding to date. In *The Fallacy of Campaign Finance Reform*, John Samples argues that this was, in part, due to another form of opportunism—here pertaining not to a pre-existing reform crusade, but, more cynically, to legislators' practical self-interest.[23]

Thus the post-Watergate laws instantiated, perhaps most obviously, a perennial phenomenon in election reform. Here the uniqueness of campaign finance, as a topic of lawmaking, becomes particularly relevant. It is unlike most other realms of law that Congress considers and debates in that it pertains to the legislators themselves, carrying a much greater impact for them, overall, than it does for their constituents. People in Congress, when dealing with electioneering issues, are in the unusual position of making rules primarily for and about themselves. And because campaign finance so directly affects their own careers and lives, legislators can hardly ignore the prospect of either helping or harming in decisions about regulation.

Specifically, immediately after Watergate and up to the present time, legislators have attempted to shape campaign finance according to their own desires as incumbents and as

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[21] Julian Zelizer, "Seeds of Cynicism: The Struggle Over Campaign Finance, 1956-1974," *The Journal of Policy History* 14, no. 1 (2002): 73-111. 99-100.

[22] Samples, *Fallacy of Campaign Finance Reform,* 215.

[23] *Ibid.*

partisans. First, limitations on campaign contributions or spending typically help incumbents by undermining challengers. In most cases, a challenger must raise and spend far higher amounts, compared to someone already in office, to mount a viable candidacy and thereby a real competition. It is not difficult to see how such a handicap on challengers might appeal to a Congress that is, by definition, composed entirely of incumbents—most of whom want to keep their seats. Second, different types of campaign finance reform are distinctly partisan because they can either encourage or hinder the kinds of donations that go to Republicans or to Democrats. For example, unions being banned, in 1943, from contributing directly to campaigns, was a strategic answer to the analogous ban on corporate donations; for unions tended to back Democrats where corporations more often supported Republicans.[24] Likewise, caps on contribution amounts usually help Democrats, who receive smaller donations but in larger volume. As long as the limit is calculated to be lower than a critical mass of Republican gifts, but around the highest amount of Democratic ones, then it dampens Republican fundraising only.[25] The voting patterns of particular legislators—sorted by their electoral vulnerability and party affiliation—substantiate that many do support or oppose particular reform measures according to their interests in staying in office and bolstering their parties.

Thus members of Congress, in passing the post-Watergate reforms, might have been serving themselves, performing for the public, or both. But at any rate, their purported goals of curbing the influence of money in politics, and maintaining the confidence of American voters, both went largely unfulfilled. Since the 1970s campaign costs have only continued to rise—and ever more sharply in recent elections. Meanwhile, constituents' trust in their leaders, and particularly their faith that lawmakers serve public interests over special interests, have only declined since the era of the Vietnam War and Watergate.[26] By 1990, one opinion poll found that

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[24] The ban was part of the Smith-Connally Act, passed over President Roosevelt's veto.

[25] Samples, *Fallacy of Campaign Finance Reform,* 200-203.

[26] Zelizer, *Seeds of Cynicism,* 88.

71 percent of respondents agreed "most members of Congress are more interested in serving special interest groups than the people they represent."[27]

Before Enron and BCRA, the final major episode in this series of campaign finance scandals was the Keating Five affair. Charles H. Keating, Jr., was a lawyer, businessman and financier known to give very generous campaign contributions. During the late 1980s he made or solicited $1.5 million in gifts to five senators: Alan Cranston (D-CA), Dennis DeConcini (D-AZ), John Glenn (D-OH), Donald W. Riegle (D-MI), and John McCain (R-AZ). Some of these moneys came from corporations but were channeled through non-profit organizations to which Sen. Cranston was connected. Keating also employed the campaign finance strategy of "bundling:" combining smaller donations from family members, associates and employees of a company, into a lump sum, so as to make a stronger impression on the recipient. These five senators in particular were accused of doing Keating favors in return for such contributions. As hearings and news reports built a story around how Keating had won influence in Washington, the "Keating Five" moniker tarnished them, and even further tarnished the image of the federal government as related to big money.[28]

Keating Five was an apt precursor to Enron because both scandals connected a business structure that had failed disastrously, to shady political donations. Charles Keating's political clout, seemingly "bought," would have been scandal enough on its own. Yet the source of his wealth, and the potential motives for his generosity, made this story even more galling. Keating's financial empire, during the relevant time period, was largely composed of thrift institutions: the Savings and Loan firms at the center of this period's most infamous bankruptcies. The S&Ls' irresponsible investment and reporting practices, like those of Enron, were extremely lucrative so long as they went unquestioned (and in many cases unregulated). Part of what Keating appeared to have been doing, with his political contributions, was shoring up Senate opposition to unfavorable regulatory decisions. Insofar, then, as people believed Keating

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[27] Congressional Quarterly, *Congressional Campaign Finances,* 3.

[28] *Ibid.,* 2-3.

effectively paid to have legislators wink at S&Ls' reckless dealings, this was a business scandal and a political scandal combined into one headline. The same would later become of Enron.

Keating Five set the stage for BCRA not only in its concepts, but also in one of its main characters. John McCain emerged from the Keating Five scandal largely unscathed, as he was exonerated by the Senate Ethics Committee investigation (though the same cannot be said for all his four colleagues). Nonetheless, he has often stated that his commitment to campaign finance reform grew out of the disgrace of his association with Keating.[29] The role of money in politics became a major issue during the presidential election of 2000 in part due to that cycle's unprecedented volume in giving and spending by both parties. Campaign finance reform was also, however, a major plank in candidate McCain's platform, and that prompted each of his opponents to address the issue, at least to some extent, as well.[30] Still in the Senate two years later, McCain had the same enthusiasm, but different circumstances. He would play a lead part in pushing and passing BCRA when Enron came along as an expediting pretense.

2002: Something Old, Something New

The real intended purposes of BCRA were and remain subject to debate, but its basic provisions can be crudely summarized thus: It placed new rules on soft money fundraising and spending; it prohibited corporations, unions, or any unregistered group from funding "issue ads" within a certain timeframe before an election; it strengthened and standardized mandates for contribution disclosure; and it raised maximum legal amounts for individuals' campaign contributions.[31] The initiative had, in some form, been languishing in Congress for five years.[32] The Enron disaster won BCRA expedited congressional debate under special rules, the reluctant cooperation of President Bush, and most importantly, the public impulse toward reform that so

[29] Jill Abramson, "McCain's Battle Against Big Money in National Politics," Review of *Citizen McCain,* by Elizabeth Drew, *New York Times* 24 May 2002, Leisure/Weekend Desk section, 40.

[30] Farrar-Myers and Dwyre, *Limits and Loopholes,* 73-74.

[31] *Ibid.,* 86-90; Joseph E. Cantor and L. Paige Whitaker, "Bipartisan Campaign Reform Act of 2002: Summary and Comparison With Existing Law," Congressional Research Service Report for Congress, 3 May 2002.

[32] Farrar-Myers & Dwyre, *Limits and Loopholes,* 73-74.

often follows a national embarrassment.[33] Again, in the allegation that business always got its way in Washington, Enron had never been a good example. But the myth created political momentum just the same.

When legislators arguing in favor of BCRA referred explicitly to Enron, they co-opted questioning of their own integrity by framing the scandal as an opportunity for affirmation. Carefully acknowledging the conception—implicitly, the *mis*conception—that congresspeople were beholden to big business, they argued that campaign reform would restore Congress' credibility in the public view by placing controls on corporate contributions. Perhaps no legislator had a greater interest in this effort than did John McCain. Such image management, draped in false piety, recalled Theodore Roosevelt's championing the Tillman Act—for the scandal that most directly precipitated that reform implicated Roosevelt himself more than anyone else. His own 1904 presidential campaign, as Congress discovered, had been secretly financed in large part by several corporations. By the next year, Roosevelt was one of campaign reform's most energetic supporters. The bill that was ultimately passed as the Tillman law had been written and introduced five years prior.[34] Not only, then, did Roosevelt receive credit for legislation that was not his idea. He received credit for a set of reforms that passed in reaction to his own questionable activities. McCain's role in BCRA, in light of the Keating Five affair, was comparable—though McCain at least had helped write the bill years before.

Congresspeople advocated BCRA with rationale attempting a fine balance between citizens' (putative) desires, and their own interests. Appealing simultaneously to two distinct audiences—constituents and congressional colleagues—these legislators' remarks need to be parsed accordingly. For example, Sen. Barbara Boxer (D-CA) described BCRA as a relief for legislators caught between conniving donors and a skeptical public—yet this relief would also bring a burden. Boxer sought to convince her peers that funding restrictions would benefit them, politically, enough to compensate for the material loss entailed:

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[33] Farrar-Myers and Dwyre, *Limits and Loopholes,* 83-84, 11; Michael Schudson, *Watergate in American Memory: How We Remember, Forget, and Reconstruct the Past* (New York: Basic Books, 1992).

[34] Congressional Quarterly, *Congressional Campaign Finances,* 31.

> No longer will federal candidates have to go and ask for unlimited sums of money for our parties and be put in a position where even if, of course, we are not going to give special privilege to the people giving it, it has that appearance of a conflict of interest. And the American people have every right to question what we do if they look and see the large sums of money we receive. I think the Enron scandal brought this home. I think people [*Note: "people" here means legislators*] felt terrible that they had taken these sums. That was the system. They may have done absolutely nothing to help a company that had gone astray, but it looks bad.

Likewise, Sen. Chris Dodd's (D-CT) rhetorical contortion hinged on distinguishing appearance from reality:

> The exploding use of soft money is…in the minds of many, a corrupting influence, suggesting that large contributions…to office holders, candidates, and political parties provide those donors with preferred access and influence…Whether or not that is the case is immaterial. I have never suggested, I have never known of a particular Member whom I thought cast a ballot because of a contribution…[But] that is what [most people] think happens. So it then becomes a fact to them.[35]

Here the premise of an "appearance of corruption," which became the legal grounds for BCRA, was most instrumental but also most specious: unable or unwilling to demonstrate actual corruption, even BCRA's most fervent supporters had to keep the concept abstract.[36] Furthermore, the only form of corruption that would be undeniable, per descriptions like this one, would consist in a campaign contribution purchasing a legislator's vote. Dodd and his colleagues, by averring that such deals did not go on, avoided addressing the possibility of more subtle forms of influence.

John McCain, spearhead of BCRA political strategy, and his corps of fellow advocates, insisted that American citizens wanted to "take back" their government from moneyed "special interests," and reasoned that the more media attention given to the legislation, the more likely constituent pressure would facilitate its passage.[37] Yet despite the importance of this premise that the public no longer trusted its leaders, no one could specify at what prior time it had. And abundant evidence from before and during the Enron scandal suggested this bankruptcy was

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[35] US Senate, *Campaign Finance Reform: Hearing before the Senate,* 107th Cong., 2nd sess., 20 March 2002, *Congressional Record* 2002, 3559. Here Dodd was probably thinking of his father, Sen. Thomas Dodd. The latter was censured for allegedly using campaign money for personal purposes, and lost his seat shortly thereafter. His son always maintained that the censure and its consequences were undeserved and unjust.

[36] Samples, *The Fallacy of Campaign Finance Reform,* 112-13.

[37] Elizabeth Drew, *Citizen McCain* (New York: Simon & Schuster, 2002), 46.

hardly the tipping point. Moreover, polling that inquired specifically about campaign reform indicated that, perhaps due to precisely the kind of cynicism toward politics that the measure sought to combat, most citizens acknowledged a problem but did not expect it to be solved. People tended to agree that legislators were more responsive to large contributors than to other constituents, but they also ranked campaign finance near the bottom of their policy issue priority lists. At any rate, most citizens expressed doubt that campaign reform, in any of its components, would actually work to reduce the power of corporations or other special interests.[38]

Arguments for campaign finance reform assume that the will of the people exists in some pure form outside of the political process.[39] "Corruption" is only possible insofar as there is something to corrupt—here, lawmakers' reflection of their constituents' will; and something with which to corrupt it—here, money. Yet even if it were possible to distinguish what the American electorate wanted, distinct from all campaigning and moneyed influence, it might well turn out that on many legislative issues voters do not even have opinions. Many people will readily admit uncertainty, if not apathy, when asked about the same matters on which congresspeople are urgently supposed to do their bidding.[40] This reticence does not necessarily mean that Americans are simply ignorant and politically uninformed—though many commentators are willing to pronounce such a judgment.

A more generous and less fatalistic explanation is the "cognitive miser" theory. By this line of thinking, people simply have limited amounts of attention and energy with which to conduct their daily lives. Accordingly, they learn about political issues and developments only to the extent they deem worthwhile—whether for forming opinions, buttressing positions they already hold, or deciding how to vote.[41] As we have seen, campaign finance reform is a good example of an issue on which most people hold a fairly consistent position, and yet has never provoked much public

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[38] J. Tobin Grant and Thomas J. Rudolph, *Expression vs. Equality: The Politics of Campaign Finance Reform* (Columbus: Ohio State University Press, 2004) 6-7.

[39] Samples, *Fallacy of Campaign Finance Reform,* 102.

[40] *Ibid.,* 102.

[41] Michael S. Lewis-Beck et al., *The American Voter Revisited* (Ann Arbor: University of Michigan Press, 2008): 425.

clamoring. The more informed Americans are, the more likely they are to find fault with the current system of campaign finance.[42] But an electorate composed of cognitive misers has rarely risen to engage the issue—even by voting for or against candidates based on their relevant positions or their funding profiles, much less to analyze reams of campaign money disclosures. If nothing else, it appears they find other concerns more pressing.[43]

Thus we see a great disjuncture between the sentiments that BCRA supporters attributed to their constituents, and actual prevailing attitudes. This gap is hardly surprising, but it highlights the importance of narrative, in the most visionary sense, in this legislative debate. Some of the grandest language deployed in arguments for campaign reform altogether bypassed the issue of public sentiment per se and instead invoked loftier conceptions of democracy, civic culture, and the American way—all supposedly threatened in the aftermath not only of Enron's collapse but also, just months before, of September 11. Here individuals and their opinions—perhaps because so unreliable—were no longer central, even no longer relevant.

Rather, the nation's political and cultural integrity were at stake in the question of money and elections. The following statements exemplify this premise:

> Diane Feinstein (D-CA): Campaign reform goes to the heart of our democracy. The way we currently finance and conduct our campaigns is a cancer metastasizing throughout the body politic.[44]

Feinstein's metaphor recalled that of Sen. Hubert Humphrey (D-MN), who after Watergate called private money in elections "a cesspool,…a source of infection for the body politic."[45] House Minority Leader Dick Gephardt (D-MO) raised the stakes even higher:

> It doesn't have to be this way. It was never meant to be this way. Our Founding Fathers never conceived of such a system. We have inherited a wonderful legacy of democratic

[42] Grant & Rudolph, *Expression vs. Equality,* 74.

[43] On similar reasoning, John Samples has argued that the established legal equation of money with political "speech" (under the first amendment) is appropriate: campaign contributions constitute statements that Americans make to one another as to their political positions and their level of commitment thereto. Money, he says, can also guarantee that minority constituencies retain some political voice. (Samples, *Fallacy of Campaign Finance Reform,* 37-8, 39, 150). Taken to its furthest extent, this reasoning could be used to justify allowing unlimited election spending by anyone—but it ignores the glaring problem of disproportionate financial resources.

[44] US Senate, *Campaign Finance Reform*. *Congressional Record* 2002, 3616.

[45] Zelizer, "Seeds of Cynicism," 73.

> government which began as a bold and risky experiment. Despite more than 200 years of history, it continues to be an experiment and we cannot allow it to fail…[46]

Gephardt might not have acknowledged his invocation of the Gettysburg Address, but here the house was divided between corruption and civic virtue—and needed to reunite around the right principles.

Not surprisingly, a narrative of progress was also at work. An editorial in the *New York Times*, rather than gesturing to any noble tradition, reviewed the history of money in politics as a downward spiral leading ultimately to this moment of opportunity. But if Enron signified the darkest hour in campaign finance, then BCRA promised dawn:

> Today can be a historic moment in American politics. In the 19th century, Congress was basically up for sale. Lawmakers regarded it as a point of pride to pass special-interest legislation and harvest campaign money. The political establishment is back at that old game. The…endless special-interest legislation of recent years and the Enron abuses should jolt Congress to take stock. If lawmakers approach in that spirit, they will do the right thing.[47]

The most glaring flaw in this rendition of campaign finance history is that it ignored BCRA's extensive precedent. Generations of reform efforts, although not entirely pure in motive or means, indicated that 2002 was hardly the first time people questioned the influence of money in politics.

Whether the past was glorious or gloomy, Sen. Carl Levin (D-MI) focused instead on the future with a promise of redemption:

> …We will be taking the solicitation of big money by people in power…out of American politics and with it will go the appearances of favoritism and corruption. The political landscape will change when this bill takes effect. It will be filled with more people and less influence; more contributors and smaller contributions; more democracy and less elitism.

In contrast to descriptions of corruption, or references to what the American people wanted or needed, quotations like these offered an argument much more difficult, empirically, to refute. It was as if the antidote to the "appearance of corruption" was the appearance of righteousness. The actions and attitudes of real legislators and real voters were less important than the nebulously construed "American way," which warranted faith in systems, principles, and legacies, if not in people.

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[46] House Committee on House Administration, *Campaign Finance Reform: Hearing before the House Committee on House Administration,* 107th Cong., 2nd sess., 1 May 2002.

[47] Editorial, "Congress In Search of Its Soul," *New York Times,* 13 February 2002, Editorial Desk, 30.

Congressional opposition to BCRA was just as spirited and just as high-minded. Led most vociferously by Sen. Mitch McConnell (R-KY), opponents—predominantly Republicans—argued that the measure would abrogate constitutional guarantees of the most precious kind: the rights of citizens, in a democracy, to pursue their interests and voice their views. Campaign contributions from any entity, they insisted, were protected by the first amendment, and to forbid issue ads—particularly during the crucial pre-election period in question—would be to stifle political dissent.

They claimed to be championing hypothetical grassroots citizen's groups; ordinary Americans just seeking to have their political say. Indeed they studiously avoided reference to how corporations or business associations would be affected by BCRA, as in House Majority Whip Rep. Tom DeLay (R-TX)'s letter to the *New York Times,* warning that "groups of citizens would be forbidden from joining the debate" if the bill passed. DeLay, as an opponent of BCRA, said he wanted instead to "encourage political participation" whereby "citizens [can] join together" with "others who share their views" to "fight for their beliefs."[48] On the basis of evidence, however, claims that campaign finance reform threatened "citizens'" rights rang hollow and, particularly because they usually came from Republicans, also seemed disingenuous. Soft money donors and issue ad backers were statistically much more likely to be corporations, and GOP-favoring ones at that.

McConnell and other Republican critics of BCRA also decried double standards in the "electioneering communications" provision, making much of the fact that television networks would face stricter regulation than would major newspapers—which were notoriously liberal. Only here did they refer to "corporations," warning of the powers of newspaper firms such as The Washington Post and the New York Times Companies, whom they saw as political antagonists. Here "the media" became corporate bogeymen; Republicans' answer to the specter of big business in politics. "The McCain-Feingold bill would give the media an even greater role in determining which candidates win elections," Rep. DeLay wrote. Individual first amendment rights

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[48] Editorial, "Wobbling on Campaign Finance," *New York Times,* 13 June 2001, Editorial Desk, 32.

would be curtailed, but “the media would have no restrictions.”[49] Summing up the primary objections to BCRA, McConnell said the Senate’s passing it marked “a sad day for our constitution, a sad day for our democracy, and for our political parties. We are all now complicit in a dramatic transfer of power…to outside special interest groups, wealthy individuals, and *corporations that own newspapers*” (emphasis mine).[50]

Most fundamentally, BCRA opponents argued that nobody had been able to prove money’s influence on legislators in the first place. Pointing to the same flaw in the “appearance of corruption” standard mentioned previously, they asked rhetorically for proof that they or any of their colleagues had ever introduced, supported or opposed particular policies because a corporation or other special interest had paid them in soft money to do so. Yet here lay the logical sleight of hand on the other side of the BCRA debate: such *quid pro quo* would be all but impossible to prove beyond doubt,[51] and McConnell and his cohorts must have known that. The campaign funding and legislative systems were both far too complex—and most lawmakers far too savvy—to leave clear evidence even if such deals were being made. Business leaders, for their part, would have no interest either in exposing their own role. In sum, BCRA’s opponents complained that the measure was based on “anecdotal or circumstantial evidence” of corruption, but given the context this might be the best evidence, or indeed the only evidence, available.[52]

For all their differences, which ranged from tactical to philosophical, McCain and his cadre of BCRA supporters, and McConnell and his (smaller) team of BCRA dissenters, shared one point of agreement, rarely acknowledged but telling. All believed that “corporations”—and the word choice was significant—posed a particular threat on the political scene because they controlled vast financial resources and owned key media outlets. Everybody wanted to come out against corporate power. Nobody would admit to defending corporate rights. And indeed, even as

[49] *Ibid.*

[50] US Senate, *Campaign Finance Reform*. *Congressional Record* 2002, 3593.

[51] Kurt Hohenstein, *Coining Corruption: The Making of the American Campaign Finance System* (DeKalb, Ill.: Northern Illinois University Press, 2007), 244.

[52] *Ibid.,* 254.

some legislators did champion the political prerogatives of big business, they did so by obscuring it behind hypothetical groups of concerned citizens.

On March 27, 2002, President Bush signed the McCain-Feingold Act into law. There was no signing ceremony and a marked lack of fanfare. Even John McCain issued only a one-line statement, indicating he was “pleased” that his political pet project of many years had finally come to fruition.[53] Such subtlety and reserve stood in stark contrast to the accolades of Sarbanes-Oxley’s enactment a few months later, when legislators and the president would hail a new era of corporate responsibility. It also signaled a difference in narrative framing between the two pieces of legislation. Where Sarbanes-Oxley would time and again be touted as a decisive means of correction and punishment—the Enron scandal’s just resolution—neither side of the BCRA debate positioned campaign reform as a narrative end-point. For its supporters, McCain-Feingold was but a “first step” in what they felt should be an ongoing process of monitoring and adjusting the rules of election funding. For those who had opposed BCRA, its enactment was a violation of the first amendment, marking the beginning of a new crusade.

As he had promised, Mitch McConnell sued the Federal Election Commission on the very day BCRA passed, seeking an injunction from enforcement of the legislation based on the same objections he had mounted in Senate debates.[54] Congresspeople testifying in favor of BCRA related, under oath, occasions when they had faced pressure to grant campaign contributors special “access and favors.” And after a trial that deserves its own narrative analysis, the Supreme Court upheld the new law in *McConnell v. Federal Election Commission* (2003). This decision admittedly relied on circumstantial evidence and “common sense” [55]—but, again, due to the factors of the case this may have been the strongest basis for judgment possible. The *McConnell* ruling would be revisited seven years later, when a 501(c)(4) non-profit group called Citizens United stood in for the same first amendment cause. The group sued the FEC for the

[53] Drew, *Citizen McCain,* 171.

[54] Floyd Abrams, *Speaking Freely: Trials of the First Amendment* (New York: Penguin, 2005), 231-75.

[55] Hohenstein, *Coining Corruption,* 247-50.

right to air a political exposé on Hillary Clinton shortly before the Democratic primary for the 2008 presidential election, and its appeal reached the Supreme Court.

Doubts about the fundamental premises of BCRA have carried over into assessments of its impact. For one, the basic assumption as to how money came to permeate politics may have been misconceived. Some critics charged that legislators, not corporations, were to blame for any questionable alliances between the two; that companies were being subjected to soft money "shakedowns" whereby lawmakers subtly threatened consequences for *withholding* campaign contributions. Yet this time, it was business leaders, rather than lawmakers, who could claim the status of victim in the equation of money and politics. Again this allegation, like the general complaint of "corruption," would be difficult to prove because neither legislators nor corporations would benefit from publicizing such dynamics.

Nonetheless, in actions if not in explicit statements, business leaders substantiated the premise that lawmakers had obligated *them* to become accomplices to corruption. Through think tanks and industry groups that allowed them to remain anonymous, executives from the nation's largest and most successful firms intimated they supported BCRA's soft money ban. Their primary practical reason was that it would curb the pressure that companies faced to make campaign donations or else risk legislative retaliation.[56] Analogous reasoning was already loudly proclaimed during the late nineteenth century, as in the struggle over antitrust policy. Big business defender George Gunton, whose work was heavily subsidized by Standard Oil, conceded that large corporations had bought into the political fray, but he blamed the solicitors, rather than the donors, of campaign gifts. "Take from the boss the power to blackmail the corporation," Gunton wrote in 1890, "and the corporation will gladly disappear from politics."[57] (Significantly, the "boss" in this formulation was a politician, not an executive.) As Robert Sitkoff has shown, the Tillman Act of 1907 also came about with support from business, with similar

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[56] Farrar-Myers and Dwyre, *Limits and Loopholes,* 69.

[57] George Gunton, "Trusts and How to Deal with Them," *Chautauquan* X (March, 1890), 702, quoted in Blicksilver, *Defenders and Defense of Big Business,* 393.

rationale. Corporations had complained of “systematic shakedowns” from lawmakers, and wanted legal protection.[58]

It appears that the reality of the business-government relationship, regarding money, features neither entity as wholly innocent or wholly culpable. Rather, corporate leaders and legislators cast blame on each other while continuing to push for rules and norms that serve their own benefit. We have seen how legislators calculate limits and embed loopholes in campaign finance legislation to serve incumbent and even partisan interests. Likewise, business leaders have distinct preferences, and a certain amount of influence, in the particularities of campaign finance rules. Although most companies would prefer not to make soft money donations—and many even have official policies against it—to opt out of the system alone is politically equivalent to, as one manager put it, “unilateral disarmament.”[59]

Indeed, since at least the early twentieth century politicians allegedly pressed for corporate contributions by citing the donations of the companies’ competitors.[60] The implication, which hardly needs spelling out, is that rewards will be meted out commensurate with gifts. No company would want to find itself on the low end of that continuum. Thus large corporations, as diverse and conflicting as their objectives sometimes are, have long had incentive not only to act, but also to act *together*, in shaping campaign finance reform. To extend the weapons analogy, a regulation such as BCRA’s soft money ban is like mandatory, universal disarmament: offering safety to all as long as all participate.

As Sitkoff put it, business leaders want relief from lawmakers’ extortion, and to have legal grounds for delaying or withholding contributions. They do not want, however, to deal themselves out of “the market for legislation”[61]—much less to eradicate that market. Legislators, for their part, also have reason to maintain it in some form. Political Action Committees (PACs) and 527 organizations remained, after BCRA, legal and viable options for corporations who wished or

[58] Sitkoff, “Corporate Political Speech,” 26, 30, 35.

[59] *Ibid.,* 14, 18-19, 22, 52.

[60] *Ibid.,* 25.

[61] *Ibid.,* 37.

needed to spend large amounts in political campaigns.[62] Even in the presidential election of 2004—the first to take place after BCRA's passage—527s were immensely influential.[63] Meanwhile, issue advocacy groups and trade associations were not required to disclose their funding, so we cannot know how much came from corporations.[64] History suggests that loopholes in campaign finance regulation have always been more the rule than the exceptions to it. So it went with the Tillman Act, which, as everyone noted at the time, allowed companies to funnel money through their executives. Likewise, the post-Watergate reforms condoned and even effectively encouraged the rise of PACs.[65]

The so-called "hydraulic theory" of election funding holds that corporate money, like water, despite any obstacle in its path ultimately flows where it will. It does appear, however, that at least some money from business readily dried up after BCRA was enacted; that corporations chose not to exploit all of the loopholes available under the new rules. This evidence suggests there was at least some truth to their complaints of being "shaken down," for once soft money donations were illegal, so were legislators' requests for them. For example, if determined to use soft money contributions to advance their political agendas, corporations could have re-routed roughly the same amounts that previously went to the parties, into 527 organizations, which were still allowed to accept it. Instead, in 2004 business gave far smaller soft money contributions to 527s than in recent prior elections.[66] In fact, some of the largest corporate soft money donors from the elections of 2000 and 2002 did not give *at all* during that cycle. Likewise, the hydraulic

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[62] Samples, *Fallacy of Campaign Finance Reform,* 262; Stephen R. Weissman and Ruth Hassan, "BCRA and the 527 Groups," in Michael J. Malbin, ed. *The Election After Reform: Money, Politics, and the Bipartisan Campaign Reform Act* (Lanham, MD: Rowman and Littlefield, 2006), 97-98.

[63] Farrar-Myers and Dwyre, *Limits and Loopholes,* 133, 135, 137.

[64] Robert G. Boatright et al., "Interest Groups and Advocacy Organizations After BCRA," in Malbin, ed., *Election After Reform,* 114.

[65] Zelizer, *Seeds of Cynicism,* 75, 79, 102.

[66] Farrar-Myers & Dwyre, *Limits and Loopholes,* 152; Boatright et al., "Interest Groups and Advocacy Organizations After BCRA," in Malbin, ed. *The Election After Reform,* 119-20.

theory might have corporations channeling soft money through executives to pass contributions off as “individual,” or increasing hard money contributions. In 2004 they did neither.[67]

The 2004 campaign showed increased levels of citizens’ political engagement over the election of 2000.[68] BCRA supporters may have taken that change as a vindication of the new rules, signifying that the chastening of money in elections led voters to re-invest time and effort in politics. However, it might also be attributed to other factors, such as the political polarization associated with George W. Bush, then running for reelection, and with the recently begun, controversial war in Iraq. Moreover, due to PACs, trade associations, and the like, there is no definitive evidence that the 2004 election really was any cleaner, in terms of finance, than previous ones.

Aside from the central matter of soft money, BCRA’s effects also appeared ambiguous on other scores. The electioneering communications provisions, which regulated televised “issue ads,” seem to have affected the timing and sponsorship of advertisements, but not their volume or content.[69] Thus from the perspective of the typical viewer, political advertisements were largely the same before and after BCRA. BCRA’s endorsement of sunshine as a disinfectant in elections—the provision that streamlined disclosure of campaign donations—may also have been misguided. Disclosure is only meaningful if some intermediary between campaign and voter—the news media, most likely—is able and willing to sort through and synthesize vast amounts of complex data. Furthermore, and crucially, it must do so *proactively* if citizens are to judge candidates by the origins of their money in time to vote accordingly. Absent a breaking scandal there is little incentive for journalists to undertake such a task.[70]

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[67] Boatright et al., “Interest Groups and Advocacy Organizations After BCRA,” in Malbin, ed. *The Election After Reform,* 113; Weissman and Hassan, “BCRA And The 527 Groups,” in Malbin, ed., *The Election After Reform,* 93.

[68] Lewis-Beck et al., *American Voter Revisited,* 84-85.

[69] Michael J. Malbin, “Assessing the Bipartisan Campaign Reform Act,” in Malbin, ed., *The Election After Reform,* 12.

[70] Sitkoff, “Corporate Political Speech,” 12; Richard Briffault, “Reforming Campaign Finance Reform: A Review of Voting with Dollars,” *California Law Review* 91, no. 3 (May, 2003): 643-84. 653.

Behind all of the questions that dog BCRA lurks most persistently the potential embarrassment not of public outrage, but of public apathy. As mentioned before, most Americans never felt strongly about BCRA even as legislators strenuously debated it in their name. Likewise, there is little evidence that citizens cared or even noticed when McCain-Feingold changed the rules of their elections, nor that campaign finance has ever been a particularly salient issue when voters form opinions and make choices. This dubious development, too, is part of a legacy: the post-Watergate reforms, for example, only ever enjoyed "lukewarm" support from voters. Despite all complaints that money had corrupted politics, the electorate never really pressured legislators to enact new campaign regulations, nor did it punish the opponents of reform—even in the wake of such a scandal.[71]

Thus rhetorical posturing and grandiose narratives about the public good and the future of American democracy belied the reality that citizen-voters were probably the constituency with the least interest—in more than one sense of the word—in campaign finance rules. The "appearance of corruption" standard glossed over both the (inevitable) dearth of hard evidence that legislators were on the take, and also the possibility that "appearances" may not be so important after all if the public rarely pays attention anyway. And here we return to the ultimate narrative irony in the story of BCRA as an outcome of the Enron scandal. As stated previously, Enron was never an apt example of a corporation buying its way through the legislative process. Thus even if corporate money had flooded American politics, and even if the public were dedicated to damming the deluge, the fact that Enron provoked the most lively discussion and the most significant reform since Watergate would have made little sense—were it not for the power of stories. General anxieties about corporate influence found traction in narratives of the Enron scandal. And in a story of plutocracy, executives like Lay and Skilling made very convincing plutocrats.

Hypocrisy Incumbent: The Compromises and Confusions of BCRA

As if the bill's many loopholes were not enough, both political parties set about undermining BCRA almost immediately after it passed. President Bush, promptly after signing the

[71] Zelizer, "Seeds of Cynicism," 74, 77.

legislation, approved the efforts of McConnell *et al.* to challenge it in court. Meanwhile, a bipartisan coalition pushed for maximum flexibility in the law's actual implementation; that is, in the practical rules that the FEC would enforce. This effort included some of the same Democrats who had claimed credit, for their party if not personally, for enacting the campaign finance reforms. The FEC, notoriously political, was accused of plotting to "eviscerate" BCRA—but if this was true, many politicians and party operatives were in on the conspiracy. [72] Here manifested yet another uniqueness in campaign finance as a legislative issue. The rules of implementation, on any new law, are typically left to regulatory agencies due to the latter's special expertise. On the topic of election funding, however, everyone in politics and government has expertise, and most are loath to defer to as shaky an authority as the FEC.[73]

Both parties also made a point of soliciting as much soft money as possible after BCRA passed but before it took effect. Democratic National Committee chairman Terry McAuliffe, who had welcomed the legislation, said in an interview "We're trying to tell everybody, 'Get your checks in before Nov. 5,' because there's no more soft money after that."[74] Both the Democratic and Republican National Committees even set up organizations in the states, in advance, to keep the soft money coming. The state groups could continue collecting and spending the kinds of large contributions that BCRA would soon make illegal in federal campaigns—and these funds could still be used, within the states, for federal electioneering.[75]

Even if legislators themselves did not propose such means of sidestepping BCRA, there is no doubt that they stood to benefit. Moreover, had a majority in Congress really intended to exile special interest money from political campaigns, the bill could have been much stronger and more comprehensive. Loopholes such as those offered by PACs, 527s, and state party

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[72] Editorial, "Federal Election Wrecking Crew," *New York Times,* 15 June 2002, Editorial Desk, 16.

[73] Farrar-Myers and Dwyre, *Limits and Loopholes,* 124, 126.

[74] Richard A. Oppel, Jr., "The 2002 Campaign: The Contributors—Soft Money Rolls Into Coffers While It Can," *New York Times,* 17 October 2002, National Desk, 29. See also Editorial, "Federal Election Wrecking Crew;" Richard A. Oppel, Jr., "Records Falling In Waning Days Of Soft Money," *New York Times,* September 30 2002, National Desk, 1.

[75] Don Van Natta, Jr., and Richard A. Oppel, Jr., "The 2002 Campaign: The Money—Parties Set Up Groups to Elude Soft Money Ban," *New York Times,* 2 November 2002, National Desk, 1.

organizations were hardly unforeseeable; and indeed in many cases were already quite obvious. Here, then, was yet another reminder of how legislators had passed BCRA in part with an eye to their own interests as perennial political candidates.

The charge that BCRA was, in Sen. Rick Santorum (R-PA)'s words, an "incumbent protection plan,"[76] should give any "little-*D* democrat" pause. Generally, it is in the public interest that any election be open and competitive, but limits on campaign spending and regulation of media communications do disproportionately hinder challengers, who face special obstacles even to make themselves known.[77] (The same complaint surfaced about campaign rules at the time of the post-Watergate reforms.[78]) Indeed, most of the congressional Republicans who supported BCRA—the people whose votes allowed it to be called "bipartisan"—were the ones most vulnerable, in their own districts, to losing their seats to challengers.[79] It might have been this personal threat, as much as an earnest commitment to campaign reform, that prompted these legislators to break with the party line.

Related to the quandary of campaign finance rules that may return incumbents to Congress term after term, was the issue of free speech. For if BCRA made it more difficult to defeat someone currently in office, it also, via issue ad provisions, made it more difficult to publicly protest incumbents' policies. As American courts have recognized (and enshrined), money, in electioneering, is speech. For this reason, even after Mitch McConnell lost his suit against the FEC, many McCain-Feingold dissenters remained faithful that the measure would ultimately be reversed as unconstitutional. The "concerned citizens" of McConnell's and DeLay's warnings, whose political engagement BCRA would supposedly thwart, do after all exist—alongside the corporations and interest groups that these congressmen were really defending. However big or small, and however rich or poor, the "speaker" may be, a democratic system theoretically should thrive on the most communications possible, from the most corners,

[76] US Senate, *Campaign Finance Reform. Congressional Record,* 3594.

[77] Samples, *Fallacy of Campaign Finance Reform,* 231.

[78] Zelizer, "Seeds of Cynicism," 103.

[79] Samples, *Fallacy of Campaign Finance Reform,* 242.

regarding policy issues and elections. Any law that hinders people or groups, whatever their motivations, from publicly criticizing elected officials (also incumbent candidates), should face skepticism and scrutiny. No one denies that BCRA's provisions affect the exercise of first amendment rights. The controversy is over the appropriate balance between such rights and the guarantee of democratic elections and responsible policymaking—and the answer is not obvious.

In 2010 the Supreme Court did strike down part of BCRA in its ruling on *Citizens United v. Federal Elections Commission*. The decision overturned restrictions on electioneering communications (the funding of issue ads) by a narrow majority, effectively deregulating political ads such that any group may finance them, to any extent, at any time (though disclosure of sponsorship is still mandatory). While this ruling was bounded, reversing only part of existing campaign finance law, it was received as a major development both among those inclined to celebrate and those disposed to lament. The former group applauded the decision as a righteous vindication of free speech, while the latter warned of an "opening of floodgates," in political contests, to special interest—especially corporate—money. Both views probably hold some truth. Rules regarding the amount of campaign contributions, and who can make them, remain in effect at present, but the Court appears potentially open to revisiting those restrictions as well.

The libertarian strain in American political philosophy urges us to think of government as a self-interested organization or entity, just like any other. Accordingly, it acts on concern for its own security and prosperity, even at the expense of the public. By such reasoning, congresspeople's willingness to place hurdles in the way of political challengers, and to place conditions on political speech, is not surprising in the least. The theory is intriguing, however, as applied to a legislative struggle against "special interests." It contends, essentially, that the federal government itself is a special interest, with its own distinct stake in policy. Moreover, it suggests that the government is more similar to a large corporation than to any ideological group—even the largest and best-funded—because like a company, it has no single issue or discrete set of concerns that it was created to address. Instead, it is a vast assembly of individuals who have very little in common except a shared desire to protect and bolster their organization. If the line between the private sector and public service seems ever blurrier, perhaps in this one aspect the diminishing distinction is theoretically useful rather than just fiscally convenient.

Private money has never been more important, in American politics, than it is now. At this point fundraising is a never-ending task, and an inevitable, major component of virtually any politician's job. Amid all the niceties of regulating who can give, and how much, this general state of affairs should not go unacknowledged. We cannot scientifically measure the impact of money on politics, because we lack any other contemporary US electoral system with which to compare the one we have. (Comparing our system to those of other countries introduces too many variables—such as party formations, structures of governance, and the means and accessibility of communications—to examine campaign finance in isolation). But Kurt Hohenstein suggests that the continual imperative to court huge amounts of money symbolizes, "more than any other modern development," the great gulf in experience between a political candidate and her constituents.[80] Again, if in the end "common sense" is among the best evidence available on the relationship between money and politics, then this idea is convincing enough. If people do not find their leaders relatable, perhaps one logical explanation is that those leaders are constantly surrounded by amazingly rich people and organizations, and at all times thinking about and dealing in millions of dollars. Even if such activities are not innately wrong, they are certainly unfamiliar to most "ordinary" citizens.

Yet another issue that modern campaign finance debates tend to gloss over is a practical one: how *should* candidates pay for their electioneering? Given how expensive it has become to run a serious campaign, where will the huge amounts required come from—if not from private entities that have impressive resources and, indeed, that have special interests motivating such generous donations?[81] The only consistent answer that has been offered is public funding, along the lines of the presidential campaign fund created after Watergate. The premise here is that publicly funded campaigns will be fairer, and that publicly funded candidates will be less beholden to private backers. Yet this system of campaign finance has never been popular among

[80] Hohenstein, *Coining Corruption,* 243.

[81] Adut, *On Scandal,* 134.

Americans, and their support for it continues to decline.[82] Ari Adut found that the French electorate knew about and condoned illegal campaign financing for generations simply because they found the alternative—their own tax money used for electioneering—more objectionable.[83] Americans' sentiments are probably similar, especially given the widespread distaste for politicking and their disillusionment with governmental leadership. It seems they feel public funds would not be well spent on campaigning. Meanwhile legislation such as BCRA signals that the public campaign finance system may effectively end before it ever effectively began—as does the emergent trend in candidates who forego public funding.

At any rate, 2002 marked no particular turning point in how American voters assessed or related to their government. Indeed, just a few years later, more "circumstantial" or "anecdotal" evidence appeared to suggest BCRA fell far short of restoring lawmakers' image—not to mention of purging any *real* corruption that may have taken hold among them. The congressional elections of 2006, which brought Democrats into control of both chambers in a dramatic reversal of partisan power, were distinctly characterized by continuing scandals of money and influence in Washington. Among the notable names associated with the Republican-controlled sitting Congress' "culture of corruption" were lobbyist Jack Abramoff, Ohio congressmen Bob Ney, and Tom DeLay. The common factor in each of these scandals was the manipulation of democratic elections and governance through money, political influence, and lies. None was "another Enron," but neither did Enron seem to have brought about any fundamental change.

For roughly one hundred years, Americans demanding campaign finance reform have expressed essentially the same concerns. They worry that moneyed interest groups and individuals hold too much power in elections, and that challengers and candidates of modest means face an unfair disadvantage due to funding patterns.[84] Yet both voters and lawmakers seem uncertain as to the root problem. Sometimes, protests and reforms focus on the origins of campaign contributions; and sometimes instead they emphasize size. There is no reason why

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[82] Zelizer, "Seeds of Cynicism," 84; Samples, *Fallacy of Campaign Finance Reform,*182-83.

[83] Adut, *On Scandal,* 134.

[84] Congressional Quarterly, *Congressional Campaign Finances,* 1; Grant and Rudolph, *Expression vs. Equality,* 5.

one factor must be more important than the other, and indeed most regulation has addressed both. But among laypeople, in non-technical discussions of campaign finance, statements of concern tend to invoke the sheer volume of money tied up in electioneering more often than anything else.

It is as if the dollar amounts themselves pose the most serious threat to democracy.[85] Such is the attitude that predominates outside of Congress—and indeed, it would be quite discordant if voiced within the Capitol. Everyone there has accepted, and works within, the reality of modern campaigning. This pattern in lay perception, however, also echoes many narratives of Enron, in which incomprehensible hugeness—of the company, of executive salaries, of contracts' valuation, of corporate assets—so alienated some observers that the details became irrelevant. Condemnations of bigness may not always be articulate, but they are perennial. Campaign finance reform debates in 2002 seemed to bring together fears about big business, big money, and a government corruptible by both.

Lawmakers have found a way at least to try to co-opt this strain of popular sentiment. For just as "corruption" can be cited to discredit government, so to can it be cited to justify government. What to do about the threat of money's infiltration? Create and maintain mechanisms of authority to identify and root it out, and in which the people have utmost faith. If legislators had first to establish, in debates about campaign finance, that they were not the problem, their overarching task was really to present themselves as the solution. They were not enabling special interests to influence the nation's governance—they were guarding against that possibility. If not for their power, the implication went, then the story might play out differently.

Campaign finance reform has always involved narratives of "sin and redemption." [86] Lawmakers tend to cast themselves as heroes, striving to serve and protect the American people. From the private sector come villains, seeking to derail the course of democracy, with money both their primary tool and their constant objective. As we saw in legislators' dramatic speeches on BCRA, this tradition was still alive and well in the early 2000s. Yet, again, it was somewhat

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[85] Samples, *Fallacy of Campaign Finance Reform,* 218.

[86] *Ibid.,* xi, 42, 189.

uncomfortably applied to the issue of campaign finance, because here congresspeople had to acknowledge how they themselves featured in this narrative's conflict. Legislation on "corporate accountability," however, which was debated just a few months after BCRA, enabled a much neater hero-villain formulation.

If BCRA had brought congresspeople dangerously close to blaming Enron on the least convenient party—themselves—Sarbanes-Oxley allowed them to blame the most convenient party: big business executives. With Sarbanes-Oxley legislators could return to a melodramatic narrative of Enron, and to the vilification of their favorite whipping-boys. Yet even here, problems of knowledge and understanding proved frustrating. The story was not quite as simple as these storytellers would have liked.

PART II:
ENRON MELODRAMA'S CURTAIN CALL: THE SARBANES-OXLEY ACT

Where BCRA supporters had posited Enron as a symptom of sickness in government, the Sarbanes-Oxley Act located Enron's problems squarely in the realm of business. The latter bill sought (among other things) to ensure the integrity of accounting audits; to hold CEOs and CFOs more strictly responsible for their companies' financial statements; to prevent executives from trading company stocks during periods of "blackout" when their employees are unable to do so; and to strengthen the Securities and Exchange Commission (SEC). In theory, each of these measures could have helped to prevent "what went wrong at Enron," conceived as a set of ethical breaches in business and accounting.

In specifics, many of the law's provisions were quite narrowly tailored. This was the legislative consequence of construing Enron as "incredibly an aberration," in the words of one congressman. If the scandal was unique, then the reform it necessitated could be finely targeted to prevent another aberration of this kind. Sarbanes-Oxley emphasized, for example, separating accounting firms' auditing and consulting services, meaning that none could do both jobs for the same corporate client. This measure was intended to eliminate conflicts of interest such as the one Arthur Andersen appeared to have with Enron. Likewise Sarbanes-Oxley created a national review board for accounting services, the Public Company Accounting Oversight Board (PCAOB), which itself would also be regulated to prevent partiality among members. The rationale was that better federal supervision would guarantee investors' trust in the financial statements of companies in which they bought or held stock. Such a reform, in response to Enron, suggested the bankruptcy provoked a crisis in confidence as to securities' value. This was not to happen again.

A History of Fraud and the Regulation of Representation

Sarbanes-Oxley's legal premises can be traced back to the foundations of contract law and to prohibitions against fraud and forgery. Essentially, Sarbanes-Oxley was about representations of value in business dealings, and about who officially vouched for them—and could thereby be blamed if they were false. Business regulations have always struggled to keep abreast of new modes of swindling, though with its ever-quickening pace, innovation in commercial practices and in technology always seems slightly ahead. If Enron's fraud instantiated this pattern, thus easing the passage of Sarbanes-Oxley, the last major regulatory overhaul in this vein had come about under similar circumstances.

In assessing the worth of large, publicly traded corporations, and particularly their effect on stock markets, Sarbanes-Oxley's most relevant precursor was the securities reforms of the New Deal era. It was then that the SEC was created, that public companies first had to release formal financial statements, and that many of the rules of stock trading first took effect. Most of these measures were intended to prevent another bubble, and subsequent burst, based on the harsh lesson beginning in October 1929. There was also a distinct business scandal, however, that helped provoke New Deal reforms. It anticipated Enron not only in that regard, but also because the scandal was predicated on changing energy markets as well as stock speculation.

Samuel Insull made his name, and a great deal of money, buying electrical utilities. His large holding company garnered wide admiration and many investors, but from late 1931 through early 1932 it suddenly plummeted into bankruptcy. Over one million investors saw their savings devastated.[87] One FTC lawyer, who had watched some of them attempt to recover their money, described "just the average run of people—clerks and school teachers there in Chicago, small

[87] Hon. Richard D. Cudahy and William D. Henderson, "From Insull to Enron: Corporate (Re)Regulation After The Rise and Fall of Two Energy Icons," *Energy Law Journal of the Federal Energy Bar Association* (2005): 36-110. 36.

shopkeepers in Illinois, farmers from Wisconsin—and…they had lost every penny."[88] Insull had made one irresponsible investment decision after another, and in the absence of any consolidated, coherent disclosure of the assets of his holding company, nobody had known—and nobody chose to question—its real worth, or even whether it was solvent. For these reasons and many others more technical, Enron's success and subsequent collapse were quite similar to Insull's.

The most important long-term consequences of Insull's scheme were legislative. Here Franklin Delano Roosevelt was the opportunistic politician who seized upon scandal to accomplish his preordained objective. Campaigning for the presidency at the time, Roosevelt cited Insull as a baron of the "power trust" run amok. The candidate argued that concentrated private ownership of utilities was gouging consumers and threatening democracy. He also advocated securities law reform, which would protect investors from "the reckless promoter, the Ishmael or Insull" who inflated his own stock's value by lying.[89]

Roosevelt, of course, won, but Insull's operation as a precipitating scandal also figured into that era's political shift. First, Insull, like Enron, inspired a series of high-profile congressional hearings. Named later for the chief counsel of the relevant Senate subcommittee, Ferdinand Pecora, the hearings were part of an investigation into stock exchange practices. The timing—fall 1932—was no coincidence. The Pecora hearings, in context of a crashed stock market, staggering deflation, and rising unemployment, helped catalyze support for greater regulation in securities trading.[90] Insull's story and the Pecora hearings facilitated reforms such as the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Act of 1935, and the Federal Power Act of that same year. The premise overall was that big business, and the power industry, should not be left to state-level regulation. (Recall that Enron, in its time, was still lobbying the opposite position: that even the states should *not* regulate energy markets). Insull would come to symbolize the "corrupt old order;" the era before securities and utilities law,

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[88] *Ibid.,* 69.

[89] *Ibid.,* 68.

[90] *Ibid.,* 74.

at least in theory, made his kind of swindle impossible.[91] Needless to say, fraud would continue both in stocks and in energy. But in a detailed comparison of Insull's case with Enron's, Judge Richard Cudahy and legal scholar William Henderson argue that some of the reforms that Insull inspired may actually have prevented Enron's collapse from triggering a severe market downturn in 2001-2002.[92]

For all their similarities, one notable difference between the Insull scandal and the Enron scandal is that only the former prompted new legislation regulating energy. Insull's fraud was identified with his particular industry, whereas Enron—appropriately—was barely even considered an energy company in the postmortem. Enron's only major, publicized misdeed that was actually industry-specific was its trading exploitation in California's energy crisis. The company has always been much more closely associated with accounting fraud. Accordingly, 2002 saw accounting reform. On the rare occasions when energy-related abuses did enter the congressional discussion, they were usually merely used as examples, among others, of Enron's crookedness.

2002: A Calling to Account

The Sarbanes-Oxley Act has been attributed by some to "Sudden Acute Regulatory Syndrome." This recurring phenomenon in business regulation arises from a catalyzing event (in this case, Enron's collapse) which leads to the quick adoption of new rules even over the objections of industry leaders and lobbyists. The latter are usually able to exert at least some influence over the regulatory policies that govern their own business.[93] Larry Ribstein likens such political conditions to a "regulatory bubble;" an extreme but temporary inflation of lawmakers' willingness to "invest" or "buy into" the movement to create more rules.[94] Like the libertarian idea of government as a special interest group, the concept of a regulatory bubble is intriguing in its conflation of politics with markets. If speculative bubbles in the financial world often begin with

[91] *Ibid.,* 71.

[92] Cudahy and Henderson, "From Insull to Enron."

[93] Larry E. Ribstein, "Sarbanes-Oxley After Three Years," *New Zealand Law Review* 3 (2005): 365-81. 368-69.

[94] *Ibid.,* 366.

rash groupthink and end in disaster, it should not be surprising if regulatory bubbles arise out of somewhat similar contexts, and have consequences that may well be regrettable in hindsight.

Yet almost immediately after the Enron bankruptcy, the voice of the free-market ideal was already back, loud and clear. Though a regulatory bubble was expanding at this time, in other words, not everyone was willing to speculate. Sen. Robert Bennett (R-UT), for example, was reluctant to support new reform measures, and offered an interpretation of the Enron collapse that signified little need for a Sarbanes-Oxley when he said “the market is the fastest, quickest punisher of stupidity. And that's what happened.” Other legislators emphasized the overwhelming strength of corporate America, and insisted that an aberration like the Enron scandal should not tarnish its image. Even bill co-sponsor Rep. Michael Oxley (R-OH) warned,

> The fact that the vast majority of American businessmen and women are enterprising, honest and hard-working is what has made America in its brief 200-plus years the most prosperous civilization the world has ever known…There is no law Congress can pass which would match the entrepreneurial talents of the American people. Indeed…we can run the risk of restraining those talents when we rush to legislate in times of crisis. In this area Congress must proceed with extreme caution, because there is a direct correlation between the amount of freedom in a society and its ultimate success or failure.

From the “other side of the aisle,” Rep. Paul Kanjorski (D-PA) joined in:

> Nobody should assume that because there have been a very small number of people who had been irresponsible, that this represents the American free-enterprise system. Most accountants in this country are fundamentally honest and perform their work in the highest professional standards…Most corporate executives and board members of this country work very hard, very diligently and in the highest professional manner to perform their function.[95]

If Congress at this time did more to maintain the corporate capitalist status quo than it did to pre-empt “another Enron,” such remarks may help explain why. For here we are reminded how bounded the melodramatic narrative had been all along. These legislators, though more than willing to vilify Enron executives, still maintained nobody should get too carried away in the effort to restore calm and order. A just resolution would require only limited reform. Indeed, to undertake any major overhaul in regulation would itself be an act of injustice; an arbitrary victimization of the “diligent,” “hard-working,” “professional” and “talented” majority in American business. Such comments echoed the growing chorus of praise for small business owners and

[95] *Conference Report on Corporate Responsibility Legislation*, 107th Cong., 2nd sess., 24 June 2002.

employees, often touted as the backbone of the American economy and the embodiment of entrepreneurial spirit and dedication. But they also drew upon a common strategy in arguing against increased business regulation: that it would hurt honest, hard-working people in small operations. Big business often manages, in defending itself from stricter supervision, to "hide behind" small business—and it has help, in doing so, from legislators.

Initially, President Bush had been far from enthusiastic about the Sarbanes-Oxley Bill. In March 2002 he had announced a plan for reform that emphasized responsible self-governance in corporate America, as opposed to corrective legislation. Executives, he said, must answer to the "demands of conscience." Over the following months, however, doubt only mounted as numerous public companies issued "revised" financial statements. By mid-July, the New York Stock Exchange was weaker than it had been for five years. It became clear that Bush should not appear to be standing in the way of corporate accountability reform. He gave a speech in New York City plugging "Corporate Responsibility," but investors and financiers were clearly unconvinced; one could literally watch the stock market falling on the ticker tape as he spoke. On July 30, 2002, after it had been passed unanimously by the Senate, Bush signed the Sarbanes-Oxley Act into law.[96] "We hope all of this will begin to calm the economic situation," said primary sponsor Sen. Paul Sarbanes (D-MD) in a press conference in the White House driveway, "and provide a framework within which we can move forward and assure our investors…that they can count on the American capital markets to reflect fairness and integrity and transparency."[97]

In fact, Sarbanes and Oxley had written the bill before the Enron bankruptcy, but none of its proposals had yet even been studied by that time.[98] By most accounts, the legislation was passed in a hurried and haphazard fashion, before much research had been done as to the

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[96] Jayne W. Barnard, "Historical Quirks, Political Opportunism, and the Anti-Loan Provision of the Sarbanes-Oxley Act," Symposium article, *The Twenty-Eighth Annual Law Review Symposium in the Wake of the Sarbanes-Oxley Act*, 334, 336; Tosha Huffman, "Section 404 of the Sarbanes-Oxley Act: Where the Knee-Jerk Bruises Shareholders and Lifts the External Auditor," *Brandeis Law Journal* 43 (2004/2005): 239-58. 240, 247.

[97] By "all of this," Sarbanes was here referring to the bill but also to some additional resources being granted to the SEC that it might better carry out its oversight functions. (Federal News Service White House Briefing: *Stakeout Media Availability with Sen. Paul Sarbanes [D-MD], Chairman of the Senate Banking, Housing and Urban Affairs Committee, Following the Signing of the Corporate Accountability Bill*, 30 July 2002.)

[98] Huffman, "Section 404 of the Sarbanes-Oxley Act," 247.

wisdom of its provisions.[99] Jean Baudrillard wrote, “The denunciation of scandal is always an homage to the law.” A disturbance to a society’s moral structure, he argued, can be ritually alleviated by being labeled a deviation *from* the law in such a way as to affirm the power of the legal order, which supports “capital.” [100] President Bush and Congress, in the wake of Enron’s collapse, were clearly attempting something along these lines. For it is arguable that the Sarbanes-Oxley Act brought little in the way of “reform;” either because this new legislation still fell short of practical efficacy, or because it simply reassembled and reiterated policies that had already been on the books.[101] In any event, it has been subject to sustained criticism from a remarkable variety of angles.

In business circles, the new Sarbanes-Oxley regulations are collectively nicknamed “SOX” out of familiarity and, usually, contempt. Primarily in terms of work hours, the cost of compliance provokes much grumbling. To avoid the expenses of SOX compliance, some companies have “gone private” (removed themselves from the stock market); or “gone dark” (reduced public ownership to below 300 shareholders, which is the maximum allowed for a firm that does not comply).[102] Neither phenomenon is particularly promising for the American investment climate. More troubling, though, is the fact that smaller businesses as well as large are required to follow SOX policies. For them, the associated costs can be prohibitive,[103] such that they may shut down, or that people may be deterred from launching modest startup ventures in the first place. The one business constituency distinctly unopposed to Sarbanes-Oxley is accountants. The law is a boon for external auditors, as it effectively grants them a captive market for a new set of services that only they can provide.[104] “SOX Auditing” and also consulting on “SOX Compliance” are distinct services—almost a professional sub-field in their own right—and

[99] Ribstein, “Sarbanes-Oxley After Three Years,” 367; Huffman, “Section 404 of the Sarbanes-Oxley Act,” 258.

[100] Jean Baudrillard, *Simulacra and Simulation* (Ann Arbor: The University of Michigan Press, 1994), 14.

[101] Huffman, “Section 404 of the Sarbanes-Oxley Act,” 246, 249, 257.

[102] Ribstein, “Sarbanes-Oxley After Three Years,” 378.

[103] *Ibid.,* 374.

[104] Huffman, “Section 404 of the Sarbanes-Oxley Act,” 257, 259.

quite lucrative. Thus if accounting firms seemed to have erred in the Enron scandal, Sarbanes-Oxley in this respect ironically rewarded them.

The Sarbanes-Oxley Act also falls short in its purported goal to increase whistleblower protection. So far, very few claims for relief from retaliation have been filed under the 2002 law—and the courts have ruled, in most cases, in favor of employers.[105] Sarbanes-Oxley also imposed a statute of limitations that may serve ultimately to condone corporate offenses, because they are often so complex that they go undetected until years after the fact.[106] In other words, if a corporate employee discovers "too late" some arcane evidence of fraud, he can only take action at his own risk. He has no legal protection as a whistleblower.

Finally, some lesser-known components of Sarbanes-Oxley's whistleblower rules suggest that, far from being custom-designed for someone like Sherron Watkins, they actually would have excluded her. First, the terms of the law limit one's options, upon discovery of whistle-worthy activity, as to whom it can safely be reported. An employee is only protected if she brings her information to a federal agency, which Watkins never did. Furthermore, a would-be whistleblower's motives are subject to scrutiny. Only one who can prove she acted in "good faith" is guaranteed legal protection. For reasons outlined previously, Watkins may well have failed that test—especially with all the money and legal talent that Enron would have enlisted to discredit her. No one on either side of Sarbanes-Oxley debates, however, even acknowledged this fact.

Thus even if Sarbanes-Oxley was intended to pre-empt another Enron, narrowly conceived, here it failed even to do that. Particularly in its whistleblower provisions it departed significantly from the circumstances of Enron's case—delivering the real message, to anyone reading fine print, that Watkins as whistleblower-hero was to remain an exception, protected by incidental circumstance, rather than the norm. More substantively, in the broader goal of empowering corporate employees to report any transgressions they witness, these same loopholes in Sarbanes-Oxley are problematic even with Watkins entirely aside. For in her motives

[105] John B. Chiara and Michael D. Orenstein, "Whistler's Nocturne in Black and Gold—The Falling Rocket: Why the Sarbanes-Oxley Whistleblower Provision Falls Short of the Mark," *Hofstra Labor and Employment Law Journal* 23 (Fall 2005): 235-67. 235, 251.

[106] *Ibid.*, 251, 253.

and in her decisions, Watkins was probably typical: thinking and acting, for the most part, in her own interest. Indeed, what else could be expected? Whistleblowers who care only for the public good must certainly be admired, and protected, but there is no reason to believe they would be the majority. To legally discount someone who brings real crime to light, on the basis that she might have motives beyond simple "good faith," is to ensure that most people in a position to blow the whistle probably will not. Instead they will weigh the potential evidence that might be brought against them, and likely decide that the safest course of action is to keep quiet—whether they continue working with the offending company or leave.

As for big business executives who claimed to have been unaware of fallacies in their companies' financial statements, SOX created no new loophole, but neither did it really close the existing one. Under Sarbanes-Oxley, CEOs and CFOs would now be required to review their companies' quarterly SEC reports. Furthermore, they had to "design" and "review" the "effectiveness of internal controls to ensure that they receive material information…"[107] They would affirm they had done all of this with personal signatures, now mandatory, on every SEC filing. Such specifications clearly referred to claims, like those of Jeff Skilling, that a high-ranking executive did not know, or even could not know, whether his company's statements were honest or sound. A CEO now not only had to peruse these financial disclosures, but also was expected to make sure, himself, that he had all knowledge of precisely the kind Skilling had denied. To vouch for a corporation's financial statement is essentially to vouch for all of its significant dealings.

Nobody who was familiar with how business is done in a large firm, and who took any realistic approach to regulating it, should have approved such provisions. The size and complexity of companies like Enron might itself be problematic, but as long as it stands, there is no use in denial. Skilling's statements to Congress that he had no idea, nor even any reason to suspect, that Andy Fastow was stealing from the company, were probably false. But on the scores of more complex transactions on which senators quizzed him, Skilling likely *was* more or less ignorant. Enron was simply too big for any executive, even one as allegedly brilliant or as

[107] *Sarbanes-Oxley Act of 2002,* Public Law 107-204, 107th Cong., 2nd sess., 30 July 2002.

highly paid as Skilling, even to know, let alone vet, everything that it did. Sarbanes-Oxley's requirement that CEOs and CFOs achieve corporate omniscience—even on financial profile alone—amounted to wishful thinking and impractical legislating. In the language of the law, congresspeople even appeared, quietly, to acknowledge this. The word "knowingly" always affixes to descriptions of what constitutes an offense in approving financial statements. Therefore executives can—and do—still insist they did not *knowingly* commit any fraud, even when signing their names to figures that later turned out to be false.

Knowledge and Retribution in Sarbanes-Oxley

Information and knowledge, in presence and absence, was problematic in determining how to prevent another Enron. But it was also pivotal in selling policy proposals that offered answers to that question. Those who pushed for accounting and securities reform in 2002 faced some unique challenges, along these lines, in their task of political persuasion. Campaign finance reform had been a dry enough topic, with plenty of technicalities that most Americans would find difficult to master—and even more difficult to care about. Yet the regulation of SEC filings and internal policies on company stock trading was even more arcane, tedious, and seemingly irrelevant to most people's lives. In discussions of Sarbanes-Oxley, the people involved sometimes attempted to take advantage of their topic's complexity and boringness. At other times, they combated it by speaking in reductive terms about wrongdoing and retribution.

When Arthur Andersen CEO Joe Berardino testified in Congress about his company's work with Enron, he emphasized how complicated professional accounting is. "I ask that you keep in mind," he said in his opening statement, "that the relevant auditing and accounting issues are extraordinarily complex and part of a much bigger picture." Further, in one of many similarities between his testimony and Jeff Skilling's, Berardino also insinuated he would not be able to answer all of legislators' questions—and that this was no fault of his own. He continued, "None of us here yet knows all the facts. Today's hearing is an important step in enlightening all of us. I am certain that together we will get to the facts."[108] Like Skilling, Berardino in the same breath

[108] R. J. Craig and J. H. Amernic, "Enron Discourse: The Rhetoric of a Resilient Capitalism," *Critical Perspectives on Accounting* 15 (2004): 813-51. 829.

insisted that the “relevant facts” were within his exclusive expertise, and also that he did not and could not know everything that was going on within his company from where he sat as CEO.

Berardino could claim an even more specialized body of knowledge, as compared with his audience, than could Skilling. And by constantly reminding legislators how arcane the rules of accounting were, he suggested that public outcry targeting his company—for Andersen stood almost as thoroughly disgraced as Enron in the wake of the scandal—must be trumped up with misinformation, or just misunderstanding. One critique of Berardino’s maneuver bears quoting at length:

> This continues the hiving-off of the auditing and accounting issues into a separate, arcane domain, understandable only by the technically literate *cognoscenti*. It could be construed as a brave, yet audaciously patronising comment. But it serves notice that the vast majority of the audience (whether present at the hearings, or later readers) might as well fall asleep since it is a well-known truism of popular culture that accounting is profoundly boring…perhaps this is a cunning rhetorical ploy: cause the resolve of your inquisitors and accusers to wane through boredom and tedium.[109]

This pointed rebuke comes not from some anti-corporate activist journal, nor from a literary academic turned loose on congressional transcripts. Rather, these are the views of two business scholars writing for an audience composed almost entirely of accountants.

Not only do these commentators impugn Berardino’s “rhetorical ploy” to put off legislators’ interrogatives. They expect their readers—people in Berardino’s field, who have similar expertise—if not to agree with their analysis, then at least to know what they mean. Lest it be unclear, the authors announce: “Through the medium of accountants and managers, accounting has been remarkably successful in maintaining a luminescence of *objectivity* (emphasis in original).[110] This is to say: accounting is not objective, nor is it “luminescent”—even in its dazzling technicality. People like Berardino just try, and often succeed, to make it appear that way. The readers of *Critical Perspectives in Accounting* were to confront this proposition and at least consider that it might be true. Thus Enron’s fallout may have prompted a few among the *cognoscenti* to question how opacity and boredom might be used strategically.

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[109] *Ibid.,* 830, 832.

[110] *Ibid.,* 832.

One scholar of accounting further suggested that Sarbanes-Oxley itself gave too much credit to accountants for their expert knowledge. Here it was not one CEO's rhetoric, but instead the very foundations of new legislation, that seemed at best misleading or at worst to condone ongoing offenses. As mentioned before, Sarbanes-Oxley's accounting provisions focused on eliminating accountants' conflicts of interest by forbidding them to consult for the same client company that they audited. Yet scientific studies of instances when accountant-auditors failed to recognize problem transactions suggest that breakdowns are usually in "competence and diligence," not in objectivity.[111] In other words, auditors are more likely to lack the dedication, or even the competence, to do their jobs effectively, than they are to turn a blind eye to fraud due to partiality toward a client. It is a matter of incomplete knowledge rather than mal-intent. Yet by ignoring this evidence, the architects of Sarbanes-Oxley again addressed more what "looked bad" within Enron's particular case, than what actually seems to need remedy.

On issues of information and knowledge as well, the scandal of Samuel Insull had presaged Enron. For in understanding and responding to Insull's fraud, the primary obstacle facing Congress as well as prosecutors was the complexity of his business model and the indecipherability of his accounting. Then-chairman of General Electric Owen Young, who had brokered deals for Insull, said under oath "I confess to a feeling of helplessness as I began to examine the complicated structure of that organization…[it was] impossible for any man, however able, really to grasp the real situation."[112] Young, like any executive associated with Enron, had reason to force this "confession" of ignorance, even if it was false. Claiming to have been confused is preferable, after a scandal, than appearing to have been complicit. The lead lawyer who investigated Insull, however, was more likely to have been in earnest—especially when he suggested that even the mastermind himself may not have known what he was doing. In 1939 Ferdinand Pecora recalled: "It is said that only twelve men were qualified to understand the

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[111] Charlie Cullinan, "Enron as a Symptom of Audit Process Breakdown: Can the Sarbanes-Oxley Act Cure the Disease?" *Critical Perspectives in Accounting 15* (2004): 853-64. 856.

[112] Cudahy and Henderson, "From Insull to Enron," 95.

Einstein theory of relativity; but the Insull structure was so complex that no one could fully grasp it, not even, probably, Mr. Insull himself."[113]

Insull might have been stopped earlier had he been required to make disclosures to the SEC. But if the problem underpinning his protracted fraud was a lack of information, then the problem underpinning Enron's was overabundance. Enron, like any other publicly traded company since the early 1930s, had to file official financial statements every quarter. Plenty of information—including but not limited to these SEC filings—existed to suggest that Enron was insolvent, or at least engaging in risks not reflected by its market valuation. Yet for years, nobody inside or outside of the company was willing or able to discern the company's misrepresentations.[114] Thus Enron's fraud might be interpreted, in one sense, as a successful "data dump:" an overwhelming of potential questioners with too much information. Berardino's gestures to the "extraordinarily complex" accounting world and its "much bigger picture" seemed to attempt a similar cowing.

After the Insull scandal, one of Congress' motives in holding the Pecora hearings, and in taking up reform, was to demonstrate that something was being done. The process of legal prosecution is notoriously slow, especially in context of a sudden tide of public indignation. But if the courts had to take their time mulling over Insull's case and deciding how justice would be served, Congress did not. As in the case of Enron—whose major criminal trials did not occur until nearly five years after the fact—the congressional hearings got underway much more quickly.[115] And if legislators intended their hearings and deliberations to compensate, somehow, for Insull's lack of immediate punishment, then their concerns proved justified not only in the moment, but also in the long term. When Insull did eventually face trial, he was acquitted. Thus smearing his name was the closest the government would ever come to giving the public, and particularly Insull's former investors, what they wanted: to see this swindler "pay."

[113] *Ibid.,* 94.

[114] Malcom Gladwell, "Open Secrets: Enron, Intelligence, and the Perils of Too Much Information," *The New Yorker* 82: 44 (8 January 2007), 44-53.

[115] Cudahy and Henderson, "From Insull to Enron," 72.

Congresspeople undertook an analogous show when they plugged the Sarbanes-Oxley bill. For all the technicalities of accounting regulation and securities law, legislators emphasized more than any other SOX provisions those that pertained to punishment. Not only were these the most accessible features of the reform; they also resonated with conceptions of “bad guys” responsible for the Enron fraud and, accordingly, fantasies of revenge. The melodramatic Enron narrative, which featured legislators as the heroes who would restore the disturbed moral order, was being rehearsed yet again. “While we can't stop greed,” said Sen. Patrick Leahy (D-VT), “We can stop greed from succeeding. And nothing is going to focus someone's moral compass more than knowing that if they don't do what is right and moral, they're going to be a guest of the state behind iron bars for a long, long time.”[116] Such a vow conjures an image of Jeff Skilling, mustachioed and in handcuffs, screwing up his nose. “Rats! Foiled again!”

President Bush, for his part, emphasized that his administration would investigate, arrest, and prosecute corporate leaders who failed to “uphold their responsibility” to shareholders and employees. At his most energetic, he even directed these vows to “you”—the executive miscreants—and used the harsh tone of one who stands in judgment of sin. As if to pronounce a final condemnation over villains who were cowering in defeat, Rep. Edward Royce (R-CA) exalted in the thwarting of these “pinstriped crooks.” Sen. Mike Enzi (R-WY) declared, “There is no punishment too great for a criminal who destroys dreams.”

Sarbanes-Oxley did, in fact, spell out the punishment for “false certification of financial information.” A “knowing violation” can result in a $1,000,000 fine and/or up to ten years imprisonment, and a “willful violation,” $5,000,000 and/or up to 20 years. It also increased the maximum fines and sentences for existing securities-related crimes, directing the US Sentencing Commission to make federal sentencing guidelines to reflect the “serious nature of the offenses…, the growing incidence of serious fraud offenses…and the need to deter, prevent and punish such offenses.” Such instructions make clear the context of an urgent need for punishment—for each of these stated reasons, and probably a few others unmentioned. The

[116] *Conference Report on Corporate Responsibility Legislation*.

other major piece of legislation passed in response to Enron, BCRA, also included sentencing guidelines for people who broke the rules. It was the first campaign finance law ever to do so.[117]

Retribution was also to come in tangible form. Money had been stolen; thus money had to be given back. Sarbanes-Oxley mandated that any CEO or CFO who received a bonus or other inventive-based compensation twelve months after a fraudulent financial statement, would have to return it in full. Here the premium on pat justice met overemphasis on Enron's particularities. For in Enron's case, the CEO(s) and CFO—Lay, Skilling, and Fastow, respectively—do seem appropriate candidates for returning bonus compensation. They had been rewarded for fraud, whether they designed or merely condoned it, and that was surely unfair. However, numerous other people at Enron, by this reasoning, should also have had to return their incentive-based pay. Under Sarbanes-Oxley, they never would. Moreover, in other instances of corporate fraud—ones that have already occurred as well as others likely in the future—the CEO and CFO would probably *not* be the best people to pay their bonuses back. Under Sarbanes-Oxley, they would have to do so just the same, based purely on their job titles. Thus yet again, Enron's specifics, and a superficial conception of what would appear just desserts, prevented what could have been a much more effective reform.

At this juncture the import of Enron narratives becomes most clear. Sarbanes-Oxley, the primary official response to the scandal, was influenced by Congress' melodramatic conception. This was the second, and the last, piece of legislation to be passed in response to Enron; Congress and the President were all too eager to consider the problem solved with the closure of a "lesson learned." But any decisive closure that the Sarbanes-Oxley Act provided was more symbolic than real. For this reason the enactment of its "reforms," done hastily and without sufficient analysis of the complex problems they sought to address, makes an appropriate finale for the Enron melodrama, and for Enron legislation. If the conflict of the plot was conceived superficially, it is not surprising that its resolution should be superficial as well. The main objective of most of the actors, all along, was applause.

[117] Bruce Ackerman and Ian Ayres, "Campaign Reform's Worst Enemy," *New York Times,* 6 July 2002, Editorial Desk, 13.

Conclusion: Narratives Toward Reform

These two narratives of what kind of problem Enron was—the one pointing to BCRA, and the one pointing to Sarbanes-Oxley—were not mutually exclusive. Many legislators and commentators subscribed to both, arguing that the Enron scandal proved a need for campaign finance reform and also a need for new rules in accounting and stock trading. But not only could these two narratives coexist, rhetorically—they also in some ways needed each other, politically. The self-scrutiny that Congress had to negotiate, when it took up BCRA, might have been too dangerous were it not for the comforting blame of executives that Sarbanes-Oxley allowed. Likewise the railing against corporate crime in which legislators indulged, with Sarbanes-Oxley, might have seemed altogether too hollow and hypocritical were it not for the admission, which came with BCRA, that government played some role in the Enron disaster.

The most important practical commonality, in the processes of passing BCRA and passing Sarbanes-Oxley, was the factor of rushing. Opponents complained, and supporters took faith—but all agreed on the significance of timing. Movements for reform in campaign finance and in accounting, thanks to Enron, came suddenly into season; hence the urgent dusting off of two bills written years before. But time was "of the essence," as well, in the sense that it would run out. The shock and rage provoked by scandal both inevitably fade over time;[118] thus so too does the support that they lend to reform movements. Legislators knew that if they wanted these bills to pass, they would have to work quickly—and not meticulously. Many of the weaknesses and compromises in BCRA and Sarbanes-Oxley can probably be attributed to haste. Yet if time in part undermined these reform efforts, *timing* had made them possible in the first place. For if there had been no Enron, there would have been no "post-Enron" reforms. Legislation similar to BCRA or Sarbanes-Oxley could eventually have passed, but not in 2002—and perhaps not at all.

When Enron executives had realized in 2001 that their company was failing fast, they requested but were denied a federal bailout. Instead they soon found themselves scapegoats in the government's new regime of "corporate responsibility." Of course, politicians had to distance themselves from Enron post-bankruptcy, and some snubs certainly were calculated to that end.

[118] Adut, *On Scandal,* 169.

But they also illustrate, again, how narrative trumps logic when people describe the American political system before them, and envision the one they would like in its place. Enron narrated as a Washington titan facilitated the McCain-Feingold laws; and Enron narrated as a band of "pinstriped crooks" facilitated the Sarbanes-Oxley Act. But such superficiality does more harm than good in understanding and addressing the enduring problems of which Enron reminded us.

Chapter 3: Enron Remembered

On the website tlknet.com, you may order an Enron duffel bag, watch, mug, or pen, among many other accessories bearing the "Crooked E" logo. Also for sale are numerous shirts and hats celebrating Enron Field—the name of the Houston Astros' home stadium while under previous sponsorship. Presenting these "Enron Collectibles," tlknet promises:

> Directly from the folks that brought you the LARGEST corporate collapse in history! Once this stock is gone......there will never be anymore made!
>
> These items were purchased directly from the Enron Signature shop and are not knock-offs they are all BRAND NEW selling direct to you!! Most of the items we will have for sale are truly impossible to find anywhere!

The claim of authenticity is essential here, and fundamentally connected to a sense of temporality. In this general pitch, as in many descriptions of individual products, tlknet emphasizes that these Enron artifacts, because real, are in finite supply. The company is gone, and all traces of it eventually will be too.

Even as it advertises its own merchandise, tlknet appears ambivalent as to the consumer appeal of Enron collectibles. The website offers an odd mix of items that refer directly to the bankruptcy and scandal—for example, a framed stock certificate or the cover of Enron's ethics handbook—alongside miscellaneous corporate paraphernalia that would be entirely unremarkable bearing any other logo. Most likely the latter items are simply left over handouts from promotions or staff retreats. Reflecting such a motley collection, tlknet cannot seem to infer how its customers would commemorate Enron. Is it simply a company that no longer exists, leaving behind rare relics like anything else that has vanished? Or is every Crooked E a badge of infamy? The website's product captions cannot help but convey this unresolved question. A coffee mug with a cap for travel, for example, "would make a great conversational piece around the office or workplace!"—but an online shopper is left to imagine what kind of conversation the mug would provoke. Especially in the professional setting that the vendor suggests, not all of the possibilities are appealing.

As if to acknowledge that risk, along with the dubious sentimental value of Enron souvenirs, the website makes clear that if nothing else, to "get it while you can!" might make an Enron collector some money. "Enron memorabilia," tlknet claims, with the imprimatur of the Smithsonian, are "appreciating in value!" But with this pitch, like all its others, subject to doubt, it seems even the primary purveyor of Enron's remaining merchandise is ultimately uncertain as to why anybody would want it.[1] If the Enron mementoes on tlknet.com signify attempts to remember Enron, the website's awkward sales appeals begin to articulate the complexity of such a project. In the years following the company's collapse, its name remained meaningful, but it was not always clear how or even why. One challenge was the absence of almost anything material that was related to Enron—but as we see from the products on tlknet, even "Signature" objects could not necessarily make it tangible.

Enron proved difficult to remember for many of the same reasons it had been difficult to narrativize—and yet over time, these two tasks conflated. Narratives can make the past more coherent, and in Michael Schudson's nonacademic but unassailable term, also more "interesting."[2] (Enron was never, for most people, innately interesting enough, and this would only be truer as it faded from the news.) Thus if one component of memory is story in retrospect, then to construct an Enron memory was to continue a process that was already underway when the company went bankrupt. Narratives of Enron remembered, however, were distinct from contemporaneous narratives in that they signified—both deliberately and accidentally—the passage of time. From the company's bankruptcy in late 2001 to the eve of Ken Lay's and Jeff Skilling's trial in late 2005, numerous stories emerged about Enron—and they showed both the benefits and the weaknesses of hindsight. At the same time, understandings of the bankruptcy

[1] "Enron Collectibles," http://www.tlknet.com/enron.htm. Accessed 1 February 2010.

[2] Michael Schudson, "Dynamics of Distortion in Collective Memory," in Daniel Schacter, ed., *Memory Distortion: How Minds, Brains and Societies Reconstruct the Past* (Cambridge, MA: Harvard University Press, 1995): 346-64. 355.

that were already vague, fragmented further into references that could not be called narratives in their own right, but which still gestured toward certain patterns in perception and political meaning. Here I identify what I contend to be expressions of collective memory of Enron, and use them to critique existing memory theories.

Historiography has of late witnessed what Jay Winter calls a "memory boom;" a burgeoning field of scholarship dedicated to the study of memory in all its forms and manifestations.[3] Various definitions of memory are on offer, but the one seemingly most capacious and versatile is the relationship between past and present.[4] This conception of memory includes but does not end with the individual cognitive process of remembering. It can also encompass narratives and representations of past events, regardless of how or even if they are received and adapted as part of a particular memory. As numerous scholars have argued, that which can be called "collective memory" is not simply the aggregate of individual memories within a specified population. It "involves the integration of various different personal pasts into a single common past that all members of a particular community come to remember collectively." The concept "implies a past that is not only commonly shared but is also *jointly* remembered."[5]

As aspect in which working theories of memory are lacking, however, is in their apparent bias toward the traumatic, the violent, the emotional, and the visual. These qualifications dominate discussions of memory per se, to the exclusion of certain events that, I will argue, do not fit this model but that nonetheless find expression in collective memory. My premise is that the Enron collapse was a noteworthy socio-historic event; and accordingly that in the years immediately following it was already being "remembered" in popular cultural forms even if by gross misrepresentation. Iwona Irwin-Zarecka has advanced the idea of multiple "frames of remembrance;" arguing that memory texts are "framed" according to the form in which they seek

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[3] Jay Winter, "The Memory Boom in Contemporary Historical Studies," *Raritan* 21: 52-66. 52.

[4] John Nerone, "Professional History and Social Memory," *Communication* 11 (1989): 89-104. 89. See also Allan Megill, "History, Memory, Identity," *History of the Human Sciences* 11, No. 3 (1998): 37-62, on the influence of the present on conceptions of the past (51-52).

[5] (Emphasis in original). Eviatar Zerubavel, "Social Memories: Steps to a Sociology of the Past," *Qualitative Sociology* 19, No. 3 (1996): 283-99. 294. A similar explanation of collective memory is in Barbie Zelizer, "Reading the Past Against the Grain: The Shape of Memory Studies," *Critical Studies in Mass Communication* 12, No. 2 (June 1995): 214-39. 214.

to be received—as commemoration, entertainment, or “the truth,” to name a few examples.[6] Drawing on sources with a variety of different “frames,” I identify two related problems to which all attest. First, there appeared singular difficulty, for those who tried, in constructing and preserving a collective memory of Enron. Second, scholarly theories of memory seem generally inapplicable to an event of this kind.

Both for people trying to publicly “remember” Enron, and for an analyst trying to understand this process using current frameworks of memory, the round hole is the convention that collective memories necessarily involve trauma, emotion, personal investment, visual representation, a sense of time and location, drama, and at least some degree of narrative coherence. The square peg is a scandal that was only viscerally upsetting to a very few individuals, that was arcane or even irrelevant to much of the American public, that is nearly impossible to depict visually, that is not defined by any particular date or time, that few people actually understood, and that had little entertainment value even as it was happening; making it likely to become even less compelling with the passage of time.[7] Enron lacks the fundamental features of the remembered event as we know it—and yet it has not been forgotten. Through a variety of means, memory-makers sought to reconcile the square shape of this scandal with the round hole of conventions in collective memory. This analysis will conclude, from these strained reconciliations, that additional ways of understanding memory are needed to accommodate Enron and comparable events.

Michael Schudson has argued that legislation is a form of memory text, stating in the case of the Watergate scandal that the reforms enacted in its wake were intended to “institutionalize collective memory.”[8] The same might well be said for the McCain-Feingold campaign finance law and the Sarbanes-Oxley accounting regulations passed after the Enron

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[6] Iwona Irwin-Zarecka, *Frames of Remembrance: The Dynamics of Collective Memory* (New Brunswick, U.S.A.: Transaction Publishers, 1994), 5-6.

[7] Michael Schudson described a process of “distanciation,” by which a memory loses its detail and emotional intensity (“Dynamics of Distortion in Collective Memory,” 348). The question in terms of Enron becomes, what if the memory never had much of either one of these factors to begin with?

[8] Michael Schudson, *Watergate in American Memory: How We Remember, Forget, and Reconstruct the Past* (New York: Basic Books, 1992), 90.

bankruptcy. Their proponents explicitly stated that these new laws were intended to pre-empt "another Enron," thereby positing the scandal as something to be learned from. Not even a person, much less a nation, can learn from any experience without remembering it. Yet these post-Enron regulatory initiatives also functioned as memory in additional, more subtle ways. Given all the hearings and debate that their passage entailed, they created a record that, if not always coherent or complete, was permanent. Moreover, most congressional proceedings related to Enron—beginning with those theatrical interrogations and testimonies examined in Chapter One—witnessed explanations of root problems, and attributions of credit and blame. This also represented an early attempt to commit Enron to official memory; supposedly one that could be put to good use.

Such institutionalized commemoration, however, was only a small and fairly insignificant proportion of collective Enron memories emerging prior to the Lay-Skilling trial. In the realm of popular culture and mass media, numerous books, films and references were also remembering Enron. Because they targeted a much wider audience, these expressions of memory were both more accessible and—in cultural terms at least—more influential. Moreover, in nearly all of these popular commemorations of Enron, formal authority was conspicuously absent. That is to say, these narratives tended to exclude government, regulation, the judiciary, and even law enforcement. Such a pattern of omission was a statement in itself as to how people remembered Enron. For purposes of this study, it also suggests that the lay public was more likely to "keep" informal rather than formal memorializations of this bankruptcy. Evidently, they found such retrospective narratives more compelling, or even more accurate.

Expository Memory: Insiders and Infiltrators Tell (Almost) All

Many expressions of Enron memory were primarily expository; framed as "information," "fact," or "the truth." The main principles on which such narratives traded were honesty, authenticity, and completeness. Several investigative journalists and business writers who had no direct connection to the Enron bankruptcy published books about it from 2002 through 2005, and some among them represented original and quite thorough work; in other words, a unique and valuable account.[9] The highest sellers, however, in print media as well as in documentary film, came promising the inside scoop. Here former Enron employees, Houstonians associated indirectly with the company, and the reporters who effectively helped bring on the bankruptcy, claimed audiences' trust as authoritative sources above all others.

Some insiders seemed to claim the mantle of the survivor, thereby becoming "primary figures of authenticity."[10] The concept of survivorship seems always at a premium in the wake of disaster stories, and although Enron was in the end no real implosion or mortal tragedy, those who lived to tell the story enjoyed some of the same cachet. Former employees like Charles Prestwood, and former shareholders like "little bitty" Mary Bain Pearson, had appeared as survivors to testify in Congress. They also surfaced from time to time thereafter as quoted authorities in news articles about later Enron developments. Two more concerted manifestations of Enron memory came from higher-ranked Enronians—accountant and whistleblower Sherron Watkins and Enron trader Brian Cruver—in the form of published memoirs.

The memoirs of Watkins and Cruver carried both the authenticity of the survivor account and the assertion of professionally specialized knowledge. Their narratives were also confessional, if ambivalently so. The authors had to present themselves as credible people of integrity even as they capitalized on publicity surrounding a disgraced corporation and its scandalous downfall. Yet these memoirists were not the last veterans of errant enterprises to make names for themselves by reversing loyalties—nor, by far, were they the first. The reformed businessman who starts life anew, guided by purified values after rejecting greed and exploitation, should by now be familiar. He offers an exclusive inside perspective on his forsaken former world, and usually a vindication of outsiders' suspicions about it. Having "seen the light," the confessor can now be taken at his word. Such testimonials represent an important part of the "lost values" school of big business criticism, which holds that large systems and organizations in

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[9] See Loren Fox, *Enron: The Rise and Fall* (Hoboken: John Wiley & Sons, 2003); Peter C. Fusaro and Ross M. Miller, *What Went Wrong at Enron: Everyone's Guide to the Largest Bankruptcy in U.S. History* (Hoboken: John Wiley & Sons, 2002); Arthur L. Berkowitz, *Enron: A Professional's Guide to the Events, Ethical Issues, and Proposed Reforms* (Chicago: CCH, 2002); Robert Bryce, *Pipe Dreams: Greed, Ego and the Death of Enron* (New York: Public Affairs, 2002).

[10] Marita Sturken, *Tourists of History: Memory, Kitsch, and Consumerism from Oklahoma City to Ground Zero* (Durham, N.C.: Duke University Press, 2007), 28.

commerce have forced a departure from the traditional American mores of rugged independence.[11] This line of thinking has been traced back to populism, but echoes even earlier the Jeffersonian advocacy of yeoman self-reliance over Hamiltonian ideas of centralized government and banking.

One of the most prolific of twentieth century reformed businessmen, who applied "lost values" to the modern corporate order that he left behind, was Theodore "T. K." Quinn, onetime top-ranking Vice President in General Electric's New York office. In 1948, he wrote of his epiphany:

> …In the summer of 1935, I determined to resign. Being a symbol of so-called "success" was never going to satisfy me. My father had been a liberty-loving Irishman and a life-long fighter for the underdog. There I was on the wrong side of the fence…I do not suppose that General Electric was much worse or much better than any other giant, impersonal corporation, but there was no satisfaction in that…I only knew that I wanted…to get into something—anything—else.[12]

The controversy at hand, in Quinn's memory of this moment, was the antitrust litigation constantly dogging his company. But these proceedings were, he averred in retrospect, merely a cue that life would be better once free of his "giant, impersonal" employer. He would join his father on the right side of the "fence" between rote, systematized profit-making and righteous independence. Though Quinn's departure from the corporate world was actually gradual, and never really complete, he pretended later to have had an abrupt realization. He published a book called *I Quit Monster Business* (1948), and testified frequently against big business in general and against GE in particular.[13]

With every move, Quinn built his career like the savvy businessman that he was. He went on to make plenty more money as a Madison Avenue advertiser, but also as the author of books like this one. Watkins and Cruver, as Enron memoirists, made similar decisions, and probably for similar reasons. Cruver is still using his MBA—though apparently no longer in the fast-paced life

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[11] Irving S. Michelman, *Business At Bay: Critics and Heretics of American Business* (New York: A. M. Kelley, 1969), 165.

[12] T. K. Quinn, *Giant Business: Threat to Democracy* (New York, 1953), 159, quoted in Michelman, *Business at Bay,* 158.

[13] Michelman, *Business at Bay,* 159.

of a commodities trader—and Watkins works nationally as a consultant, speaker and writer on corporate ethics. Thus their recollections of Enron should not be accepted simply as they are presented: "the unshredded truth" or "the inside story," respectively. They were written in part to serve personal goals, and each deliberately and strategically sidesteps certain issues. Nonetheless, with the question of complete truth aside, it makes more sense to view these accounts as vehicles of collective memory than as personal reflections. Their decisions to publish—and so soon after the bankruptcy—suggested Watkins and Cruver consciously proffered their memoirs as authoritative, authentic Enron memory, to be received as widely as possible.

In 2003—the year after her star testimony in Congress and her appointment as Time Magazine's Person of the Year—former internal accountant and Vice President Sherron Watkins published *Power Failure: The Inside Story of the Collapse of Enron*. Watkins became famous for writing an anonymous memo to Ken Lay, urging him to take a critical look at some of Enron's partnerships and accounts. This was in August 2001, which was probably the last point in time when something could have been done to avert disaster. Fatefully, Lay failed to act. But like Bethany McLean, whom Skilling had rebuked for impugning Enron's business model, Watkins would ultimately be heard far and wide. She won recognition as a "folk hero" in the Enron drama, and the words she chose to describe her fears for the company; "I am very concerned that we will implode in a wave of accounting scandals;" were repeated often and by many, in retrospect, as something of a prophecy.

As in her statements to senators, Watkins presented herself in this memoir as entirely innocent—even cowed—amid all the shady dealing that she witnessed at Enron. She played down any personal motivations she may have had in writing her famous memo of warning, such as getting Andy Fastow fired or gaining job security or national recognition for herself. At the same time, Watkins played up the risks that came with blowing the whistle. As Ari Adut has stated, "Acquiring prestige from a scandal requires the denouncer to communicate effectively the costs of his or her normative enterprise."[14] Here the "normative enterprise" was, ostensibly,

[14] Ari Adut, *On Scandal: Moral Disturbances in Society, Politics and Art* (New York: Cambridge University Press, 2008), 162.

integrity in accounting standards, and more broadly in corporate governance—although Watkins' real enterprise may have been her own career. At any rate, per Adut's rule, Watkins emphasized in *Power Failure* the fear and danger that she felt, first when directly challenging Ken Lay, and then when testifying against him, Jeff Skilling, and numerous other company superiors. She recalled, for example, gripping a Bible and crying as she first went public with her revelations.[15]

In fact, Watkins actually *eliminated* a number of risks to her own well-being when she blew the whistle at Enron. By documenting her suspicions, and by bringing scrutiny to Andy Fastow, Watkins legally and interpersonally shored up her job. (At any rate, when she wrote her memo she had already started looking for another one, all her claims of "loyalty" notwithstanding.) Furthermore, by the time she testified in Congress, Watkins could only *gain* from such supposed feats of bravery. It should be noted that she requested her own subpoena—yet her memoir makes no mention of that fact and indeed seems to imply otherwise: "Finally, on Valentine's Day, the cameras turned to Sherron Watkins…she looked wide-eyed and anxious. But soon enough, she gathered herself."[16] As to the head-to-head confrontation between her and Skilling, staged by the Senate, Watkins claimed Skilling "requested the showdown," but provided no evidence for that, nor any hint as to how she would know.[17] At any rate, from blowing the whistle, through her testimony, to the very writing of her memoir, Watkins had every reason to expect precisely the outcome that she got: accolade, security, and entrepreneurial success.

Recalling her work at Enron, Watkins' "confessions" were actually nothing of the kind. Neglecting to mention her impressive salary or the professional perks that she enjoyed as a high-ranking executive, she placed herself at a cultural distance from the indulgence and waste for which Enron was known. Retrospectively, she assumed the persona of an innocent country girl naïve enough to have trusted her high-rolling bosses, but ultimately keen enough to see through their tricks. There is no guilt inherent in receiving generous pay, working and traveling in comfort, or living well—but as if in deference to an Enron-triggered backlash against such Fortune 10

[15] Mimi Swartz with Sherron Watkins, *Power Failure: The Inside Story of the Collapse of Enron* (New York: Doubleday, 2003), 345-46.

[16] *Ibid.*, 352-53.

[17] *Ibid.,* 353.

norms, Watkins evidently felt she had something to hide. As to real, active wrongdoing—rather than simply looking out for herself—it does appear Watkins was innocent, at least through the time she wrote her memo. The only admission of any possible fault that Watkins has ever made on record would not come until 2006, when Lay and Skilling went on trial. She was asked both in media interviews and in court why she was never indicted for insider trading, given her profuse dumping of Enron stocks at a strategically ideal time. She replied that she did not know—and even acknowledged that her stock sales had been "wrong."[18]

On a more personal note, Watkins' recollections of wanting to look good for Jeff Skilling came too frequently to ignore. She described, without any explanation, her deliberately provocative choice of clothing on occasions when she knew she would see him, and cringingly regretted the times Skilling caught her sans makeup. Given that Watkins wanted to be taken seriously in this writing, and that she had publicly and permanently damaged this man's career and life, such admissions are bizarre and defy obvious explanation. One can only imagine what Skilling himself made of them, for undoubtedly he read Watkins' book. Indeed, she likely knew that he would, for everyone close to Skilling acknowledged that he perused all coverage of Enron's collapse with an almost obsessive, yet perhaps masochistic thoroughness.

Yet Skilling, regardless of Watkins' actual regard for him, was not her target audience. Suggesting that she had long wanted to impress him, in ways that were not strictly professional, may have been part of Watkins' calculated self-presentation within this memoir. First, it could be taken a sign of extreme deference toward a man in a supervising role, which would enhance Watkins' image as well-meaning and loyal, far beyond the (official) call of duty. Second, this admission fit in well with what Watkins described as a cult of "Enron blondes"—the anonymous but gorgeous women who seemed constantly to adorn the company's offices and staff events.[19] The running joke, when nobody could say what division employed them, was that nobody cared.

[18] Melissa Block, "Whistleblower, Enron Employees Hear Verdict," Interview with Sherron Watkins, *National Public Radio* "All Things Considered," http://www.npr.org/templates/story/story.php?storyId=5431226, accessed 6 March 2010; Alexei Barrionuevo, "Warning on Enron is Recalled," *The New York Times* 16 March 2006, Business/Financial Desk, 1; Carrie Johnson, "Whistle-Blower Shifts Focus of Enron Trial," *The Washington Post* 16 March 2006, Financial, D1.

[19] Swartz and Watkins, *Power Failure,* 9.

Alternatively, since Enron had the best of everything, perhaps these women represented their own division. Describing this sexual climate, Watkins depicted Enron's corporate culture as tainted by more than one kind of sleaze. And by suggesting that she herself felt pressure to *be* an "Enron blonde"—specifically in Skilling's assessment, for whatever reason—she again appeared vulnerable and submissive. Thus in recollections ranging from accounting methods to her beauty routine, Watkins evoked a company rotting from the inside out, and presented herself as its trembling but noble voice of reason.

Former Enron trader Brian Cruver offered a much different narrative in his own memoir, *Anatomy of Greed: The Unshredded Truth from an Enron Insider* (2002). Notwithstanding his title, Cruver was far less dramatic than Watkins, and explicitly rejected the notions of good and evil that had seemed to prevail at the height of the scandal. Though he acknowledged and applauded Watkins' efforts, almost none of her most basic premises, beginning with her congressional testimony, had corollaries in Cruver's memory. He dismissed the hearings as "great theater," and said the Enron story had "No heroes. No whistle-blowers. No happy ending." "Hollywood will need its best screenwriters," Cruver speculated, "to spin heroes out of a game that had no winners. There are dozens of 'I told you so' analysts, journalists, and whateverists, each of whom knew something but none of whom knew everything." He stated that Watkins, and he himself, had voiced feeble objections to the misbehavior around them, but ultimately "decided to sit back and go along for the ride." [20]

Such a blunt tone was perhaps not surprising coming from a veteran of Enron's infamous trading operations. Cruver experienced Enron, day-to-day, with a distinct set of colleagues, and in an environment starkly different from Watkins' staid accounting offices. Here traders—mostly young and mostly male—made contracts and instantaneous deals all day, always on the phone and facing several computer screens apiece that reflected constantly changing valuations, worldwide, in various energy forms. The mood was tense but also excited, even giddy. Money could be made by the keystroke, and most traders thrived on their job's split-second demands in

[20] Bryan Cruver, *Anatomy of Greed: The Unshredded Truth from an Enron Insider* (New York: Carroll and Graf, 2002), 318, 295.

dealing and negotiation strategy. Cruver's particular trading division dealt in credit risk as a commodity[21]—at the time an edgy startup idea, but all too familiar a concept today. Like so many other Enronians, he worked for an energy company but did not work with energy.

Enron's trading business was highly lucrative but frequently problematic, with the California energy crisis of 2000 a prime example in both respects. In that instance as in many others, the bold and ambitious trading division brought Enron enormous profits and also intense scrutiny. (Cruver defended Enron's dealings in California, both at the time and in his memoir).[22] Within the company, the traders were often disparaged as crass and out of control—and yet they brought in so much revenue that no one would take action to quash their rule-bending, much less to sanitize their dirty language and boorish habits.

Cruver did little to position himself, in his memoir, as a "good guy"—but neither did he admit to having done anything that he shouldn't have. To begin, like Watkins, Cruver found ways to place himself at a distance from those around him. He related raunchy conversations in which he nibbled a cookie rather than participate, and uncomfortable meetings in which he cut the tension with a well-timed joke. Cruver made clear that he considered getting a job at Enron to be a tremendous professional boost, and that he had always genuflected in its imposing corporate presence. Yet in a careful move, seemingly self-deprecating but actually self-absolving, he established in his memoir's first ten pages that he was only hired due to "a slight mix-up." Cruver recalls supervisor Greg McLainey saying "I just wanted you to know because some people aren't real happy you're here…I wanted to hire you. It's just that the *group* really hadn't *agreed* to hire you…Just think of it like you're adopted" (emphasis in original).[23] Cruver said McLainey's words were "the sound of my bubble bursting," but in retrospect this revelation could reassure readers of his memoir. He had been "adopted" by, rather than ever truly belonging to, Enron's disgraced family—particularly that branch of black sheep who worked in the trading division. Indeed, the

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[21] *Ibid.,* 6.

[22] *Ibid.,* 108.

[23] *Ibid.,* 7.

"real" Enronians were loath to accept him. At the time, not being Enron material might have come as a blow to his ego, but when he wrote his story, it was Cruver's salvation as a credible narrator.

Cruver offered memories similar to Watkins' on the basic point that Enron was a wily work environment. He described intrigue and mistrust even among close co-workers, and a widespread, tacit acknowledgment that "the Crooked E," as employees affectionately called it, was "crooked" in its practices as well as its logo. He recalled his earliest impressions of his new co-workers at Enron: "They didn't really mind being the bad guy, as long as it meant they were all-powerful and dominant." Invoking the common Star Wars analogy—which equated Enron with the Death Star—he added, "I didn't mind joining the Dark Side either—after all, the Empire offered great pay and excellent benefits."[24] In these nonchalant terms the former trader established that Enronians, as a group, took a cavalier attitude toward right and wrong. By including himself in such statements, Cruver hardly flattered his own morality, but he appears to have been striving for something else instead. For every compromise that he related from his time at Enron, he highlighted its cynical rationale. He was well paid; he couldn't piss off the wrong people; if he had protested nobody would have heeded him anyway. Spoken like a true trader, Cruver did not mind if he came off looking opportunistic, but he maintained he knew what he was doing all along.

Cruver had even more to say than Watkins about Enron's sexual politics. He emphasized (and perpetuated) the objectification of the "Women of Enron" pinup calendar, referring to one colleague simply as "Miss August."[25] He recalled a female work friend of his confirming "'some of the execs had their own harems.'"[26] As to the credentials of "Enron blondes," Cruver suggested that certain employees were recruited from the staffing ranks of Houston's many topless bars.[27] Cruver, like Watkins, also focused specifically on Jeff Skilling's office flirtations, which culminated when he "upgraded his marriage after a messy divorce" and "shacked up" with corporate

[24] *Ibid.,* 10.

[25] *Ibid.,* 39.

[26] *Ibid.,* 100.

[27] *Ibid.,* 39-40.

secretary Rebecca Carter. To specify in what manner this represented an "upgrade," Cruver disclosed that Carter was referred to (behind her back) as "Va-voom."[28]

Cruver never primped for Skilling, as Watkins admitted that she had, but in remarks like this one—on a subject that was after all none of his business—Cruver demonstrated that he shared her particular fascination with Skilling and everything about him. Neither Ken Lay, nor the egregious Andy Fastow, nor any other Enron executive received nearly so much attention or analysis—in these two insider memoirs, as in other expository narratives after the company bankrupted. Watkins highlighted as a turning point the incident in which Skilling called a stock analyst an asshole during a conference call; Cruver emphasized instead the time he angrily flashed his middle finger to a row of employees in Enron's parking garage.[29] But both were preoccupied with this man's personal downfall as a kind of mirror to the company he had made. Skilling's notorious drinking, skirt-chasing, and bursts of rage provoked endless psychoanalysis, even from someone like Cruver who never dealt with him personally. Such speculation may be entirely misguided. For that matter, Skilling may not even be an especially interesting person. But fixating on his bad habits—the tragic antidote to his celebrated brilliance and ambition—helped personify Enron as crumbling under poverty of character.

All told, neither Watkins nor Cruver wrote much at all, in their memoirs, about what they actually did in a day's work at Enron. Perhaps they judged that such details would have been too tedious or too arcane for a general audience; and indeed this was probably true. Both of these books, instead, were primarily about Enron's corporate culture. The authors seemed to assume their readers were more interested in what Enron was like, than in how it worked—and again, they were most likely right. We can infer, however—comparing Watkins' job description with Cruver's—that their professional Enron experiences overlapped very little. There would have been no reason for them to have any contact while employed there, and indeed they probably never even heard of each other until their books stood side by side as the two major, published Enron testimonials. In other words, Watkins and Cruver have almost nothing in common except

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[28] *Ibid.,* 69.

[29] Swartz and Watkins, *Power Failure,* 265; Cruver, *Anatomy of Greed,* 88.

for their shared, elective status as “insider” memoirists. This suggests that on the one point on which they appeared to concur—Enron’s seediness, with Skilling the exemplar thereof—they were pandering, as confessors, to the same audience, and by the same calculations. The other possibility is that Watkins and Cruver agreed because this was, genuinely, how they as former employees remembered Enron.

Though she had never worked for Enron herself, a certain business journalist could also publish a book with a claim to special, exclusive authority. Bethany McLean was the *Fortune* magazine reporter whose bold March 2001 article, “Is Enron Overvalued?” had raised questions about the company’s practices for the first time on the national stage. In her research she had attempted a phone interview with Jeff Skilling, who was then CEO, but he directed her questions elsewhere and ultimately, she claims, called her journalistically “unethical” before hanging up on her. Obviously, in the grand scheme McLean was to have the last word when her skepticism received vindication, and then some. Along with Fortune colleague Peter Elkind, McLean went on to publish the only Enron book to date that makes a compelling read without being sensationalistic or reductive. Though not short, the book was a narrative achievement in both accessibility and scope, for it examined the personal and moral dimensions of Enron’s dysfunction alongside thorough analysis of its business models, management practices, and, of course, unscrupulous trading and fraudulent accounting. It refused to anoint heroes, though it did focus on a few of Enron’s dark personalities. The book’s title referred forebodingly to the reverence that Lay and Skilling had enjoyed as business celebrities: *The Smartest Guys in the Room: The Amazing Rise and Scandalous Fall of Enron* (2003).

Two years later the book became a movie titled *Enron: The Smartest Guys in the Room* (2005).[30] In classic documentary style it features “talking heads;” people who witnessed the Enron disaster from a variety of angles, from the executive suites, to the community church, to the power lines, to the trading floor, to the courtroom. It discusses the political parameters of the Enron scandal, giving due attention to the longstanding Lay-Bush relationship and the broader

[30] *Enron: The Smartest Guys in the Room,* prod. Mark Cuban, Todd Wagner, and Joana Vicente, dir. Alex Gibney, 110 min., Magnolia Home Entertainment, 2005, DVD.

context of energy deregulation in the 1990s. The film identifies many outside parties that were complicit in the company's ongoing fraud, including investment banks, stock analysts, and regulatory agencies. It does justice to Enron's glory days, conveying the critical but embarrassing fact that this company, whose name now serves as shorthand for immoral business dealings, was for no brief time a Wall Street darling.

In contrast to the presumptive happy endings that were promised in Congress, the documentary concludes with Sherron Watkins stating to the camera that this scandal "was not an aberration." In case her meaning is not clear, she adds with an uneasy laugh, "It can happen again." Thus the Enron bankruptcy not only represented broader problems; *The Smartest Guys in the Room* further makes clear that these problems have not gone away. Barbie Zelizer has argued for the unique ability of popular cultural forms to influence collective memory: particularly since the assassination of John F. Kennedy, she claims, Americans in their love of mass media entertainment have consistently shown willingness to draw upon sources such as popular films to inform their conceptions of history, even on highly contentious topics. If Zelizer is right, then *The Smartest Guys in the Room* as film may represent one of the most important contributions, to date, to the project of committing the Enron scandal to history in a way that will prove instructive.[31]

Still, the documentary as expository Enron memory has significant flaws. First, it shares a certain pitfall with Watkins' and Cruver's memoirs: like any "true story" told by people who lived it, *The Smartest Guys in the Room* shows personal partiality. Modestly, Bethany McLean all but wrote herself out of the film's story. It mentions her groundbreaking article and Skilling's hostility to "the *Fortune* reporter," but although she is one of the talking heads it is never specified that McLean was the writer who first called attention to the unanswered questions surrounding Enron's success.

[31] Barbie Zelizer, *Covering the Body: The Kennedy Assassination, The Media, and the Shaping of Collective Memory* (Chicago, University of Chicago Press, 1992), 209-12. I already surmise, anecdotally, that educated and well-informed Americans who have seen *The Smartest Guys in the Room* do accept it as authoritative, or at least lack any other source on Enron that they judge to be equally or more reliable. This film as a *de facto* historical account will probably be more influential, at least for the foreseeable future, than will actual scholarship on the subject; therefore at least in this instance I think Zelizer's point correct and important.

McLean's prudence, however, in declining to gloat, did not resolve other conflicts of interest among the film's interviewees. Amanda Martin, former in-house Enron attorney, tells of how she once tried to warn Skilling about the Enron Energy traders. They were becoming an almost tribal brotherhood, she felt, and exercised a growing, corruptive influence over the company. Sure enough, the traders in their unscrupulous quest for ever higher profits appear to have machinated unethical dealings in California energy markets. Martin describes Skilling gazing out of his office window as he contemplated her wise words. "'Yeah, Amanda,'" she recalls him replying, "'you're probably right.'" According to Martin, Skilling heeded her but declined to address the problem; thus indirectly she suggests he might have averted the California energy crisis if he had acted on her counsel. Whether or not this account is accurate, Martin's primary role during her time at Enron was certainly not that of sage advisor to an attentive Skilling—he was her far superior. Likewise the film never mentions Martin's extramarital affair with Skilling's cohort Ken Rice (CEO of Enron Broadband). That may not be centrally relevant in explaining the bankruptcy, but then, neither are the film's staged close-ups of gyrating strippers.

The most important journalistic compromise made by *The Smartest Guys in the Room,* involving personal sensitivities, related to Sherron Watkins. Watkins, again, probably had more than one reason for writing her now-famous memo to Ken Lay. The important point here is that *The Smartest Guys in the Room* does not acknowledge any nuance in this critical chapter of the Enron story. Thus here, as on other matters, the documentary forces its subject matter into "black and white." The most straightforward explanation is that Watkins' contributions were so valuable to the film that its makers would not risk alienating her. She may even have stipulated, when she agreed to appear in the documentary, what she would and would not allow to be included as to the details surrounding her actions. McLean's book had taken a much less generous view of Watkins, so upon hearing of its translation into a film for popular consumption, the latter might have calculated that cooperating with the project would be the wisest way to control her image. Indeed, as publicity for her new career as an expert corporate ethicist, Watkins likely knew that appearing in this film could do even more than her own memoir had.

If the documentary showed signs of personal bias, it also demonstrated a bias toward the personal. Here *The Smartest Guys in the Room*, as a whole, succumbed to one dangerous oversimplification. McLean pronounces close to the beginning that the company's story was a "human tragedy;" fundamentally "about people;" and the film corroborates that premise through intensive psychoanalysis of executives such as Lay, Fastow and Skilling. Lay is the messianic "son of a preacher man" and Fastow the cackling crook; rotten to the core. Several shots of the Enron headquarters are shown as an anonymous voiceover asks, in an exaggeratedly mysterious tone, "What's he building in there? What the hell is he building in there?"

Such mockery of the corporation's opacity is amusing, but it also reinforces the equation of Enron's many frauds with the deeply psychological, and even subconscious, motivations of just a few "guys." Particularly, in the documentary as in the book, the primary human fixation of *The Smartest Guys in the Room* is Jeff Skilling. The documentary relates at length how Skilling was awkward and unpopular as a teenager and, even after his rise to staggering wealth and business stardom, still harbored a complex about his masculinity that inclined him toward daredevil sports. His unscrupulous professional style, his adrenaline habit, and, ultimately, his fraud, were all connected to the same core issue: that Jeff Skilling always felt he had something to prove. Again, this executive appears to have been specially targeted. Either he was a character of extraordinary intrigue, or he was somehow supposed to embody Enron.

Expounding on the theme of individual psychology, the documentary also makes much of the personal indiscretions of lesser-known Enronians—including foibles that had nothing to do with their work, especially Enron Energy traders' penchant for gentleman's clubs and their (married) boss Lou Pai's impregnation of his "stripper girlfriend." Because the filmmakers did not seek Pai's cooperation, they were free to dish dirt at his expense—though not Amanda Martin's or Sherron Watkins'. (The one trader interviewed in the film confessed, as to Enron's crookedness, that he "should have asked why;" but like Brian Cruver never mentioned whether he joined in the strip club outings. Presumably both had a standing invitation.) Even Lou Pai's custom of deliberately spilling gas on himself before going home, so as to prevent his wife from smelling unfamiliar perfume on him, was deemed a relevant detail. Enron, as presented by the film, had a fundamentally immoral culture. The company was founded, led, and served by compromised characters—the ones who did not appear on camera to speak for themselves.

Thus perversely, *The Smartest Guys in the Room* in one sense actually echoed one of the first arguments that political conservatives offered in attempts to play down the scandal: that Enron was a case of “a few bad apples”—a handful of latter-day robber barons—rather than an indicator of any underlying systemic problems in politics or business. In the overarching assertion that the Enron story was “about people,” the essential message of *The Smartest Guys in the Room* was that it was *not* primarily about energy policy, corporate governance, or the alliance between big business and public officials. The documentary said very little about laws and regulations that enabled Enron’s fraud, and nothing about the ones enacted afterward in response. In *Why?*, his analysis of various forms of explanation, Charles Tilly wrote that people prefer to focus on “psyche” rather than political processes.[32] Whether this is due to audiences’ voyeurism toward “human interest” stories, intellectual laziness, or simple incomprehension (or boredom) toward more systemic explanations, it appears that these documentary filmmakers understood and delivered on this prizing of the personal.

It would be unfair, however, to dismiss the documentary for its overemphasis on psychology and personality. This bent is probably due in part to Bethany McLean’s obvious fascination with Enron executives, particularly Skilling; but it also represents an effort to construct an Enron story—a story needs characters—as well as to make it accessible. A documentary that only mentioned the executives in passing, focusing in stead on the particulars of special purpose entities, mark-to-market accounting, and energy deregulation, would be hard pressed to appeal to a general audience. Here we are reminded once again that the Enron bankruptcy really did not lend itself readily to *any* kind of narrative representation, much less to a visual form such as film. Indeed, if one had to state fundamentally what this “story” was “about,” the answer would have to be numbers, perhaps alongside the laws of corporate financial statements. Needless to say, neither of these is apt to make a good show. Thus the disproportionate attention to certain Enron

[32] Charles Tilly, *Why?* (Princeton: Princeton University Press, 2006), 171.

figures and their innermost thoughts is one strategy by which *The Smartest Guys in the Room* strove, against the odds, to create an Enron narrative with entertainment value.

As Wulf Kansteiner noted, representations of collective memory often hinge on "'the primacy of the visual.'"[33] Enron, as an event that would be memorialized, faces a distinct disadvantage in this regard. In an effort to make account fraud, for example, into something that can literally be "seen," *The Smartest Guys in the Room* features incoherent montages of computer-generated digits that scroll across the screen in red and black, changing several times every second as if in response to the keystrokes of an unseen hand. Eerie music often completes the effect, apparently in hopes of conveying the intrigue in Enron's accounting. The extreme (and extremely dangerous) sporting adventures of Skilling and his circle of invitees, are depicted from the perspective of a participant. The camera hurtles through desert dunes to show the viewer what she might see if leaping across canyons on a motorized mountain bike.

More blatantly still, the filmmakers found another visual perk in the lascivious behavior of some Enron employees. The strip clubs frequented by Lou Pai and some traders apparently needed to be depicted in live action. The documentary leaves little to the imagination as to that anecdote even though it is largely irrelevant. *The Smartest Guys in the Room,* after all, to achieve broad success could not be a straightforward analysis or commentary. It needed ferment, exhilaration, and female flesh; it needed to be a *movie*.

Apparently it achieved the right admixture of explanation and titillation. The film made an impressive showing at the box office, won numerous awards, and even received an Oscar nomination for Best Documentary of 2005. In its personal partiality, its psychologizing, and its attempts to make Enron visual, *The Smartest Guys in the Room* had to some extent compromised its journalistic and historiographical integrity when it translated from book to movie. Perhaps more than any other form of collective Enron memory, however, the film illustrates that such compromises are inevitable. Indeed they may even be necessary if a retrospective narrative is to gain traction in the moment, and to survive over the years.

[33] Wulf Kansteiner, "Finding Meaning in Memory: A Methodological Critique of Collective Memory Studies," *History and Theory* 41 (May 2002): 179-97. 191.

Objects and Placelessness: Where was Enron?

The efforts toward visual appeal in *The Smartest Guys in the Room* merely hinted at a much broader challenge in making collective Enron memory: that of substantiation. While most historic events leave behind some kind of artifacts or documentation, this bankruptcy and scandal consisted in very little that could be seen or touched. One might blame the massive shredding and deletion that went on at Arthur Andersen, but even had that data been preserved it would have held little aesthetic accessibility. Thus making Enron “real” to laypeople had posed unique challenges in representation from the beginning. As time passed, even less would be left of the company. What did remain possessed questionable meaning—if “crooked E” golf counters or sun visors were meaningful at all.

In a phenomenon that Marita Sturken calls the “tourism of history,” Americans tend to visit places, and to purchase kitsch, as a means of remembering. The remembered events of her case study were the Oklahoma City bombing of 1995 and the attacks on the World Trade Center in 2001, both of which inspired formal and impromptu memorials, monuments, and souvenirs.[34] While the meanings of all could be contested or ambiguous, they carried emotional resonance because of the solemnity in that which they commemorated. But if these two episodes of violence and death gave a certain dignity to their grounds and artifacts, the same cannot be said for Enron.

To remember this disaster it was not clear where one would go, nor what one would buy. Sturken is critical of, for example, the “FDNY” t-shirts ubiquitous after September 11, but there was at least some consensus as to what they signified: support, gratitude, mourning. The Enron shirts available on tlknet, by contrast, could be baffling as to the intended message in buying or in wearing one. This is one difference between commemorating a tragedy and commemorating a scandal (or trying to). Some narratives of Enron, in 2001-02, had indeed “borrowed” the somber imagery of death—even specifically from the events of 9/11—though often to unconvincing effect. It may be that amid all the political tug of war in narrativizing historical events, only bereavement

[34] Marita Sturken, *Tourists of History.*

unites people long and closely enough for collective memorialization to take place.[35] By this reasoning, in the absence of deaths to grieve, it is no wonder people never agreed on the significance or even the relevance of Enron; much less embraced any associated monument or memento.

It also proved difficult to create a historical site where there was none; to posit Enron as something that happened somewhere, just like a famous battle, a fateful meeting, or a great performance. As we have seen, in 2001 and 2002 the struggle to locate Enron occurred amidst another narrative with a highly stable sense of place. Yet while "Ground Zero" was immediately and permanently defined by that which used to stand there, no such conception, in narrative or in memory, would occur for Enron. Ground Zero became an instant tourist destination, and an elaborate memorial has been long in the works. The former Enron headquarters, on the other hand, evidently retained no innate significance.

The main Enron building, though stripped of what was officially called the "tilted E" sign, remains essentially unchanged. Initially it was renamed Four Allen Center, but today it is known simply by its address, 1400 Smith Street. Houston realtor Brookfield Properties leases it out like any other office space, with Chevron currently occupying the entire building. Brookfield's promotional web page for the Smith Street property makes no reference to its infamous former tenant, but dubs the building "an icon of the Houston skyline" that has "a high level of visibility from all points of the central business district."[36] This description accompanies a photo that most documentary viewers would immediately associate with foreboding music and "What the hell is he building in there?" For Houston-area business professionals, most likely to be browsing this realty website, the rate of recognition is probably one hundred percent. Brookfield's obliqueness, as in calling the building an "icon" without stating outright why, is therefore almost funny. Here Enron is so deliberately forgotten that it becomes all too obvious how acutely it is, in fact, remembered. The reference goes without saying.

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[35] Edward T. Linenthal, "The Predicament of Aftermath: Oklahoma City and September 11," in Lawrence J. Vale and Thomas J. Campanella, ed., *The Resilient City: How Modern Cities Recover from Disaster* (New York: Oxford University Press, 2005): 55-74. 65.

[36] "1400 Smith Street," http://www.brookfieldproperties.com/building/detail.cfm?BID=264. Accessed 3 February 2010.

This looming building, even more than other famous corporate headquarters, symbolizes the staggering heights possible in business success, and at the same time the sheer, vertical plummet possible in business failure. Also apt in remembering the Enron building, from the time when it was so-called, is the astute observation of financial historians Charles Kindleberger and Robert Aliber. They argued that skyscrapers and urban cultural centers may seem to signify booming business because of their glamorous and imposing edifices, but that their real association is with asset-price bubbles, which often provide the financing for ambitious construction projects.[37] Overall, Brookfield is probably correct if it assumes that potential corporate tenants neither need nor want to be reminded of the ghosts that may haunt this house. For its part, the "E" sign sold for $44,000 at an Enron auction. Brian Cruver also showed up there to bid on his ex-office chair because, as he told the *Cincinnati News*, it was the most comfortable seat he had ever known.[38]

Thus for someone trying to "tour" Enron as history, there is very little to see. Some narratives' treatment of Enron as distinctly Texan suggested that reckless businessmen were heirs to the mythic Wild West. And especially considering the company's inception in the oil and gas industries, its Houston location was no coincidence. For the sake of lasting coherence, however, the Enron collapse would better have occurred in New York City. Here the association with September 11, and the business failures and financial busts that both preceded and followed Enron, might have provided the bankruptcy, in narrative and memory, a more logical home. Wall Street in particular is an iconic location, with its name more often evoking a realm of activity and opinion rather than actual sidewalks and storefronts. Given its typical connotation of despicable money-grubbing, Enron would have fit in nicely. As for physical representation, New York's financial district at least offers statues of a bull and a bear, who appear evenly matched in their eternal face-off. This might be as close as the US has ever come to physically memorializing—both bemoaning and celebrating, it seems—market volatility and all that it entails. Specific

[37] Charles P. Kindleberger, *Manias, Panics and Crashes: A History of Financial Crises* (Hoboken: John Wiley & Sons, 2005), 97.

[38] "Enron 'E' Sign Goes for $44,000 at Auction," *Cincinnati News Online* 25 September 2002. http://www.wlwt.com/news/1686697/detail.html. Accessed 3 February 2010.

corporate failures, even when spectacular and historic like that of Enron, can never be revisited in person.

Humorous Memory and Slapstick Revisionism

What could not be commemorated could still be laughed at. Indeed, as if to acknowledge that Enron could not be memorialized in traditional terms, retrospective satirists embraced the very attributes of this historical event—embarrassment and incomprehensibility—that seemed to disqualify it from more dignified forms of memory. Like expository recollections of Enron, humorous ones emerged both in books and in films. These less serious renderings of Enron memory were never framed as “the truth” or “the facts,” but instead tended to recall the bankruptcy with irreverence and sarcasm. Such narratives looked back on the Enron story as how it “might as well” have happened, or indeed sometimes how it “should” have turned out.

In 2005 director Dean Parisot undertook a remake of the 1977 comedy *Fun with Dick and Jane*.[39] The original film had featured a professional couple who resorted to a life of crime after the husband, Dick, lost his job. The twenty-first century rendition, which takes place “a long time ago” in 2000, modified this premise somewhat by making the layoff itself, and the action leading up to it, more integral to the story. Here Dick (Jim Carrey) is an executive at “Globodyne,” a new economy corporation whose business is never specified. Globodyne folds, Dick is out of a job, and he and his wife Jane (Tea Leoni) stoop to indignity and then to robbery in attempt to make ends meet. The movie reviews ranged from ambivalent to abysmal, but all seemed to agree on one point: what originality and satirical merit the film *did* have was due to its depiction of the arrogant, flashy and doomed Globodyne. *Fun with Dick and Jane* was recognized (most generously) as a commentary on corporate scandal in the twenty-first century, and particularly on Enron.

The opening action establishes that Dick and Jane enjoy a luxurious lifestyle, and also how they are the worse for it. Their home, cars and clothing are beyond enviable, but they cannot communicate with their young child because he has learned to speak only Spanish—cared for

[39] *Fun with Dick and Jane,* prod. Jim Carrey and Brian Grazer, dir. Dean Parisot, 90 min., Sony Pictures Home Entertainment, 2006, DVD.

exclusively by the Mexican nanny. Then in one of the first scenes, corporate go-getter Dick receives a promotion too good to be true: to "Vice President of Communication." Globodyne's senior executives inform him that his first task in this new, lofty position is to represent the company on the TV program "MoneyLife." It turns out that the company is on the verge of collapse, and Dick has been duped into the position of "fall guy"—mistaking it for an honor. On the air, Dick falters when bombarded with questions about all the Globodyne intrigues now coming to light: accounting shenanigans that his superiors had used to siphon money from the company but about which Dick himself knew nothing. MoneyLife's real time ticker tape shows Globodyne's stock value plummeting and then leveling at zero by the end of Dick's interview. The bankruptcy happens over the course of just a few minutes.

Globodyne recalled, though with some exaggeration, several corporate collapses that had occurred three or four years prior to the movie's release, including those of WorldCom, Qwest and Tyco. The screenwriters, however, clearly used Enron as their primary model, and included many details and subtleties that identified Globodyne with "the Crooked E" to anyone who had paid close attention to the latter's meltdown. Early scenes make this point intimately, with reference to the people most affected. After Globodyne folds, Dick begins lolling about the house, sending out résumés (in vain) and voraciously reading and watching all coverage of his own company's scandal. Jeff Skilling could never resist any press on Enron, and Brian Cruver wrote that he too followed it, for better or worse—between restlessly applying for jobs and playing Black Jack online.

Globodyne's fallen Chief Executive is a bootstraps case with an affected folksy demeanor. Several times he begins a remark, "Like my granddaddy used to say…", but never finishes. This character (played by Alec Baldwin, always a natural CEO) easily references Ken Lay, who was born into poverty in Missouri, paid for his own education, and even at his richest claimed a personal connection with less fortunate people around him. It is said that Lay sometimes emulated his Baptist preacher father when debating energy policy or, most notoriously, when exhorting his employees to keep the faith in Enron—even when all evidence advised otherwise.[40] Eerily, Lay's death was also anticipated, symbolically, in *Fun with Dick and Jane*. Globodyne's greedy and guiltless CEO has a way of lifting off in his personal helicopter whenever he hears questions that he doesn't want to answer. Hair blowing in the wind, Baldwin's character takes to the sky with a beneficent farewell even when surrounded by a plaintive crowd to whom he owes an explanation, and more. Many people felt Lay had effectively done the same thing when he ascended into the heavens, permanently, shortly after his criminal conviction in 2006.

When Globodyne's Chief Financial Officer receives subpoenas for accounting documents, massive shredding ensues. Enron is the only corporation in the 2001-2003 Hall of Shame whose bankruptcy scandal involved such blatant document destruction, so again the reference is apparent. After the bankruptcy, the Globodyne CFO habitually appears drunk in public, indulging in pathetic monologues about his company's fall from grace. Enron CFO Andy Fastow, for all his misdeeds, was not known for embarrassing himself in the bars of Houston, but his colleague Jeff Skilling was. (Unfortunately, Skilling's incidents were the occasional subject of news reports through the time of his trial, and even after his conviction, in 2006)[41]. In one scene Globodyne's stumbling CFO slurs through a highly technical explanation of one particular factor in his company's downfall. He describes, exactly, the role of the Raptor hedge funds in Enron's collapse: intended as risk management, they were actually a liability in themselves, and Globodyne (Enron) had been losing money through them for years—without reporting it—by the time someone recognized the problem. To make this scene comprehensive as a recollection of Enron, the drunken CFO would have had to enumerate several more main factors in his company's bankruptcy. But to invoke the Raptors, and with such precision, was remarkable in itself.

Fun with Dick and Jane also features one "Grand Cayman Bank," whose slogan is "Where rich people go to evade taxes." Partnerships chartered in the Cayman Islands are

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[40] Bethany McLean and Peter Elkind, *The Smartest Guys in the Room: The Amazing Rise and Scandalous Fall of Enron* (New York: Portfolio, 2003), 2-4.

[41] For a late example and roundup of Skilling's drunken embarrassments, see Kristen Hays, Tom Fowler and Thomas Korosec, "Skilling Arrested, Accused of Public Intoxication." *Houston Chronicle* 20 September 2006.

extremely common among American corporations, for exactly the reason this promotional phrase suggests. But one of Enron's most fateful partnership plans, through which real CFO Fastow brazenly stole millions from his employer, was known as LJM Cayman. Thus from the antics of shamed executives to the intricacies of corporate accounting, the Globodyne story resembles Enron's to an extent that cannot be coincidental. If screenwriters Judd Apatow and Nicholas Stoller did not themselves conduct research on Enron, it appears they at least commissioned others to do it.

By leaving Globodyne's corporate function unspecified, the film gestures toward the opacity of big business in the new economy, even with all trickery aside. After Dick and Jane have exhausted all other money-making schemes, one of Dick's former colleagues proposes a new Globodyne-style swindle in which they themselves would make off with the loot, rather than playing the victims again. Like a moustache-twirling villain he lays out the plan in all its mischievous glory—but the jumble of acronyms, statutes, numbers, and account or partnership epithets, sounds like gibberish. Dick can only pretend to understand. Thus the film posits incoherence as the overarching theme in financial dealings, from the honest and ordinary to the illicit and nefarious. Indeed, the incomprehensibility of both legal and illegal business begs the question of how people are to know the difference, especially if so many of those with expertise on the subject would probably prefer that they not.

By positing 2000 as "a long time ago" the film gestures at several key events beyond business scandals, including the attacks of September 11, 2001, that might for some have made four or five years indeed feel much longer. Moreover, though no character ever acknowledges them, gigantic Gore-Lieberman campaign posters are ubiquitous in the film. Indeed they appear in virtually every scene that takes place outdoors. They may remind viewers that the Bush administration and its policies, foreign and domestic, were not inevitable. They could also suggest that a different president would have dealt with corporate scandal more effectively (or at least have been less intimate with the likes of Ken Lay). Most subversively, the posters might represent a last gasp of protest that the presidential election of 2000 was "stolen." When the Supreme Court, rather than the electorate, ultimately designated George W. Bush the winner that year, much of the resulting anger targeted not only him and his party, but also cronyism and corruption. Like Gore supporters who insisted on leaving their yard signs up five years later, the filmmakers might have been suggesting that Enron manifested the same societal ills as had Gore's false defeat. There are no Bush-Cheney posters to be found.

On the other hand, if *Fun with Dick and Jane* takes place prior to the election of 2000, as we know it, then presumably the Globodyne scandal happens on Bill Clinton's watch. The campaign posters, then, could equally be interpreted to mean that officials from both major political parties have allowed big business too much prerogative at the expense of the American people. Indeed, though Clinton may not have been on a nickname basis with Ken Lay, the former Democratic president did express interest in symbiosis with Lay and Enron over a round of golf in Houston.[42] His administration also defended Enron when its energy plant in Dabhol, India, created a public relations crisis involving allegations ranging from bribery to human rights violations.[43] A corporation as successful as Enron in its heyday had the financial means to make many friends in high places, regardless of their professed political affiliations. That aspect of the Enron scandal—that the president and many legislators were implicated by association—in one sense does not need to be "remembered" because the business-government alliance is so clearly still with us.[44]

In the movie, Dick and Jane ultimately wreak revenge and deliver justice in an elegant (and completely implausible) Robin Hood-style denouement. They dupe Globodyne's dodgy CEO into signing away $40 million, which goes to the relief fund for former employees who lost their jobs, savings and pensions in the company's collapse. (Enron employees did have such a fund, but no one ever managed to trick Ken Lay into bankrolling it.) This caper is, in a sense, a tamed

[42] Kurt Eichenwald, *Conspiracy of Fools: A True Story* (New York: Broadway, 2005).

[43] McLean and Elkind, *Smartest Guys in the Room,* 81-82.

[44] In a few other subtle details, *Fun with Dick and Jane* further satirizes current conditions of corporate ascendancy. In attempting to stay financially afloat, before resorting to robbery, the couple both submit to indignities involving big business: Dick gets a miserable job at big box retailer "Kost-Mart" (presumably modeled on Wal-Mart), and Jane becomes a guinea pig for a large drug company, whose Botox-like product, obviously not yet perfected, severely disfigures her face for a portion of the movie. As a more general thematic gesture, the screenwriters also throw in the non sequitur that Dick, while in the tenth grade, played son Biff in Arthur Miller's *Death of a Salesman,* a classic work on the soullessness of modern American business.

and sanctioned version of what Dick and Jane first did to stay afloat: robbery with moral justification. To begin with, all Globodyne underlings had been vilely "robbed" by bosses who thought they could get away with it. By effectively robbing them in return, Dick and Jane are serving justice and completing this morality play. Furthermore, while cheating a CEO out of ill-gotten gains was fantastical, its appeal spoke to unresolved conflicts arising from the corporate form. Corporations are legally defined by, and practically advantageous in, their eschewing of personal liability.[45] Accordingly no CEO can be forced to compensate, out of his own pocket, for anything his company has done.[46] This comedy nonetheless imagines otherwise—and it does make a satisfying conclusion.

This formalized robbery also gestures to Americans' persistent admiration for people alienated from the harsh worlds of business and markets, who take matters into their own hands. Such rebels and outlaws are legendary; the most quintessential being bank robbers of the Great Depression era such as John Dillinger and Bonnie [Parker] and Clyde [Barrow]. These icons were and remain widely revered for boldly flouting not only government authority, but also an economic order that so many people found unjust. The timing was not coincidental, and neither were their crimes. In the 1930s, few among the public had much sympathy for bankers. Not only were bank failures generally associated with the compounding Depression, but bank managers specifically appeared to be evading taxes, rigging stocks, making insider transactions, and paying themselves far too well.[47] Someone who bypassed the breadline to rob a bank at gunpoint could become a folk hero, therefore, because doing so seemed fair—even righteous. It would not be surprising if *Fun with Dick and Jane* exploited a similar impulse around an era of corporate accounting scandals. The impoverished couple in this film is always sympathetic, whether attempting robbery with masks and weapons, or with fraudulent paperwork.

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[45] Mark Jickling, "Barriers to Corporate Fraud: How They Work, Why They Fail," in Alexa H. Thomas, ed. *Corporate Scandals: Reverberations and Long-Term Meaning* (New York: Nova Science, 2006), 56.

[46] He may face civil charges personally, as did Lay and Skilling, but the plaintiffs in such a case must prove wrongdoing by the individual as opposed to the company. This is usually very difficult.

[47] Michelman, *Business at Bay,* 112.

In sum, *Fun with Dick and Jane* revises the Enron story by giving it a coherent, and even a happy ending: justice is served and order restored. Significantly, however, justice and order do not come courtesy of the judiciary or the government—neither of which figure into the plot at all—but by the machinations of one individual. This contrived storyline is reminiscent of the melodramatic form in that it blames rotten characters for all problems, and applauds noble characters for all solutions. Neither is allowed to play out on a systemic or even collective level.

By the end Dick has gone from conspicuous consumption to total poverty, and emerges a champion for the common people. He and Jane have been guaranteed their material well-being, but returning to their luxurious former lifestyle is no longer the point. Dick's newfound integrity, earned through struggle, and the story's endorsement of individual enterprise over institutional convention, both reflect American narrative traditions: those of individualism, the "self-made man," and rebellion against corrupted authorities. Dick also, perhaps ironically, earns his virtue through ignorance. Had he never been tricked into accepting his "promotion" and publicly taking the fall for Globodyne, he would never have had his transformative experience. When Dick does learn the truth, he is empowered to strike back. But only the bad guys knew all along what was going on. Here the story seems to acknowledge and even to celebrate how much is not known about the workings of big business. It implies that the "good" people among us are those who, generally speaking, do not understand.

Thus *Fun With Dick and Jane* "remembers" Enron exactly as the bankruptcy and its consequences *did not* happen: in a way that would have made sense in cognitive terms, and a satisfying story in moral and cultural terms. Yet even were it not for the film's romantic resolution, the fact that it provides any ending at all makes it a revisionist memory. At the time of its release, Enron's big-name executives were all still living free and comfortable lives; Lay, Skilling and most others would not even face trial until the following year. Most of the company's employees and shareholders who had suffered in the bankruptcy had not recovered lost money. And the Sarbanes-Oxley Act for Corporate Accountability, enacted in 2002, had failed to usher in any ethical renaissance in American business.

In its final scene the movie concedes somewhat to the reality that corporate crime is still a problem far from resolved. Cruising along in his convertible in sunny southern California, Dick's old friend boasts over the phone that he's landed a promising new job with a prestigious company called Enron. Dick gives the appropriate congratulations. In the end, then, Globodyne is apparently *not* Enron, for Enron qua Enron exists in the world of the movie, and is still flying high (as indeed it was in 2000). Yet ironically, this revelation represented the most holistic accuracy of the Enron memory in *Fun with Dick and Jane,* for it admitted two important truths. First, the bankruptcy could have been foreseen, because despite all claims to the contrary, it was not unprecedented. Enron simply went the way of Globodyne. Second, corporate scandal would strike again, even where least expected. Indeed, the film's last scene suggests the worst may be yet to come. Before the final credits roll, the screen displays text giving "special thanks" to a number of (real) disgraced executives, including Enron's notables. If the film is ever re-made a third time, there should be at least a few additions to this list.

Fantasies of revenge formed a common theme between *Fun with Dick and Jane* and other humorous expressions of Enron memory. The movie envisioned cheating the cheaters—as in bilking Globodyne's CEO—and the stolen funds made for restitution, if not punishment per se. However, a farcical book proposed that justice should ultimately be served on terms having nothing to do with money. This vision was no more realistic than that of *Fun with Dick and Jane*, but it was more baldly vengeful. In 2003, humor writer Andy Borowitz published *Who Moved My Soap?: The CEO's Guide to Surviving in Prison*.

The title mocked Spencer Johnson's 1998 bestseller *Who Moved My Cheese?: An Amazing Way to Deal with Change in Your Work and in Your Life.* Johnson's book was a parable analogizing professional employees to mice. It advised readers to anticipate, adapt to, and make the best of workplace change (movements of cheese); as opposed to complaining, fixating on why the changes had occurred, or simply wishing they had not. Many companies distributed this book to employees, often to the latter's resentment. Their message was usually interpreted as grossly patronizing: that good workers never raise objections to decisions made over their heads, and furthermore that even mass layoffs—often the occasion for giving out this book in the first place—represented "amazing" opportunities rather than bad luck or irresponsible management.

The first instrument of revenge in *Who Moved My Soap* was its title, then, for it was addressed "back" to corporate leadership at the highest levels. It suggested that going to prison offered an exciting opening for career development—to those smart and mature enough to recognize it. Borowitz adopts the authorial persona of one of *Forbes* Magazine's "Top 100 Convicted CEOs," and claims to be writing from a penitentiary in Lomax, Alabama. Most of his book simply makes fun of prison life by describing it from the point of view of a pampered executive. He uses business jargon and market concepts to guide his reader, in a friendly and reassuring tone, through preparation for and survival of a jail sentence—not at a comfortable, minimum-security facility, but in a tiny, filthy cell shared with a violent criminal. Borowitz's snickering hardly needs to be discerned between the lines.

The author assumes, expressing great sympathy, that his reader was caught up in a high-profile accounting scandal just like the one that has landed him behind bars. To this elite and talented pool he presents imprisonment is a fantastic business opportunity, encouraging his counterparts to follow his lead by launching creative startup ventures from jail. As a memory of Enron and other contemporaneous bankruptcies, however, this book is most relevant in its backward-looking passages: the first-person business biography that Borowitz provides. In his narrative explanation of who he is and why he is in prison, the author crudely sketches recent business history, using sarcasm similar to that of the Billionaires for Bush. By pretending to speak as the privileged billionaire, he is actually speaking—quite bitterly—as an "ordinary American" disgusted by the antics of large corporations.

The narrator's company, Shamco International, was an "energy-telecom-pharmaceutical giant" founded in the late 1990s after a merger between smaller firms KleptoCom, Larcenex, and Fungible Data.[48] By declining to identify Shamco with a single industry, Borowitz modifies the approach of business spoofs like *Fun with Dick and Jane* and the "Dilbert" cartoon strip, neither of

[48] Andy Borowitz, *Who Moved My Soap?: The CEO's Guide to Surviving in Prison* (New York: Simon & Schuster, 2003), 7-8.

which ever reveals its central company's function. Such vagueness suggests that one never knows, or that at any rate it doesn't matter, what a company in this era actually does. By contrast, Shamco's stated involvement in three basically unrelated industries more closely refers to Enron and its ilk, for by 2001 the company seemed to be in virtually *every* business, stretched far beyond its means in terms of finance and expertise. Furthermore, one question leading to Enron's abrupt stock devaluation was, simply, what the company did. When its leaders failed to provide an answer directly or promptly enough to maintain investor confidence, sharp doubt arose: perhaps Enron, despite its constant boasts of entering and creating new markets, had not been doing anything! Trading, which was Enron's de facto core business, was neither reliable, nor easy to explain or quantify. And as was discovered, the company's data were, surely enough, fungible.

Borowitz describes the market euphoria of the late 1990s that benefited him richly. "Before you could say 'Dow 30,000,'" he writes, "…Shamco became one of the high-flying momentum stocks…even dwarfing such then-hot Wall Street darlings as tubesocksbymail.com and 1-800-CATFOOD." These "dwarfed" competitors were barely veiled references to some of the dotcom bubble's most notorious failures. He continues, "Shamco eventually came to acquire twenty more companies and six US senators. Suddenly, Viktor [his business partner] and I became feared, envied, and sexually attractive." Here Borowitz makes fun of this period's trend of acquisition sprees, the alliance between big business and legislators, and the cult of the celebrity executive. The latter two issues had been highlighted by the Enron scandal. As to the first, Enron was not known for purchasing smaller companies with abandon, but the almost equally infamous WorldCom (bankrupt in 2003) was.

Borowitz's character recalls his own dramatic downfall. He was celebrating the twenty-sixth birthday of his third wife, a retired waitress named Conspicuosa, with a lavish party. (This scene was probably modeled on the infamous birthday bash of Tyco's Dennis Kozlowski, which was illegally funded with company money. The elaborate ice sculpture gives it away.) Then, out of nowhere, a rather un-festive voice on the CEO's cell phone says "This is the SEC." The author fails to mention what he or his colleagues were actually investigated *for*. Instead, just like Enron's real executives, he dismisses all allegations—along with “Little Miss Whistleblower.” The next scene is of feverish document-shredding.

When he recalls the humiliation of his public shaming, the author again gestures to the sudden reversal of market euphoria and business celebrity. But this time, it seems Borowitz’s own cynicism actually aligns with the posturing of his adopted CEO persona:

> I’d be surprised if you didn’t see my so-called “perp walk,” since it was carried live by every major cable network in the country…the Department of Justice threw 1,702 separate indictments at me, a new high-water mark for politically motivated prosecutorial overkill. Just twelve months earlier, Business Week had hailed me as a capitalist visionary who was reinventing the American corporate landscape; now I had mutated monstrously into a convenient scapegoat for a suddenly souring economy. Yes, I was an easy mark, someone to take the heat off the true culprits: Mr. Alan Greenspan and his cadre of economic do-nothings in Washington, D.C., empty suits who fiddled while the Dow and the NASDAQ burned.[49]

The last line’s description of stock indices “burning,” around this time, was a bit sloppy. The NASDAQ was in much worse condition than any other, and had been since 2000—but even it was trending up rather than down. Otherwise, however, this paragraph is a not unreasonable summary of what happened to the disgraced high-profile CEOs at the center of this era’s business scandals. Once adored by the media, they were suddenly demonized; and long condoned by the government, they were suddenly scapegoats. The only difference between Borowitz’s real narrative, here, and that of his character, is that the latter would claim he had done nothing wrong. The author, in subtext, was vilifying both this condemned CEO *and* the institutions that condemned him with such self-serving zeal.

Through his jailed executive persona, Borowitz also articulated the problem of knowledge and understanding in corporate scandals and their legal and regulatory context. He points to the intimidation and hypocrisy so often at play when executives either claim exclusive expertise, or conversely, insist that they don’t know things that the public might well expect them to. First, Borowitz wrote, many a CEO is “probably used to having a staff of professionals around him at all times to help explain things he does not understand, such as arcane legal terms, intentionally

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[49] *Ibid.,* 11-12.

misleading SEC regulations, and some of the Ten Commandments."[50] Here he gibed at executives who claimed not to have known the rules they broke. But by including "some of the Ten Commandments," Borowitz also struck a blow for the perennial school of anti-big business thought positing corporate crime as ultimately a moral, rather than a legal or technical matter. The most important knowledge deficit for executives, these critics would say, is of right and wrong.

The author advises other jailed CEOs to speak to their fellow prisoners with deliberate obfuscation. He assures readers that this should come easily, as they employed exactly the same strategy to shore up status and power in their former jobs "on the outside." They are encouraged to use Enron congressional testimony to develop "an exotic tongue almost no one on the planet could ever hope to comprehend" and then "watch [their] fellow inmates crumble under an avalanche of perplexity." Under these conditions, the CEO can convince them to work for, and invest in, his cell-block startup businesses—some of which are illegal. The triumphant effect:

> Thanks to your use of incomprehensible Enron-speak, your fellow convicts now strain to understand you—but they pretend to nonetheless, for two reasons. First, because they work for you, and people always pretend to understand their boss; and second, because they are your shareholders, and shareholders always want to believe that the CEO of the company they hold shares in is making sense, even when he is spewing utter gibberish. Their livelihood depends on you now, so they'll be the last people on Earth to say that "the emperor has no clothes"—especially now that you, the emperor, take your showers with all of your clothes on.[51]

This last line reminds us that, notwithstanding all of its business advice and nostalgia for the good life, Borowitz's book is indeed, above all, a "Guide to Surviving in Prison." Overwhelmingly it emphasizes the drudgery and danger of being in jail, even if described in language mockingly borrowed from the business world. Showering while fully clothed is one of Borowitz's pleasantest images. Ultimately, then, his book is yet another revenge fantasy, with punishment—envisioned in graphic and grisly terms—serving as the false but satisfying conclusion to another revisionist narrative of the Enron bankruptcy.

Punishment—real or imagined—may itself be a vehicle of memory. Not only does it perform the narrative pairing of action with just consequence. Punishment also purports to ensure

[50] *Ibid.,* 34.

[51] *Ibid.,* 57, 58.

that a wrongdoer will "remember" his trespass and its impact, or, at the very least, remember the fact that he has misbehaved. Moreover, formalized punishment, such as incarceration, demonstrates to the public that this misdeed is collectively and institutionally remembered. Conviction and sentencing, then, might be considered an extension of Michael Schudson's theory of legislation as memory, for state-sanctioned punishment too produces a permanent record and testimony of events. Each can affirm, or even shape particular memories—for the punished, for the state, for spectators, and for posterity.

Who Moved My Soap? was hardly the first instance, in business history, when people fantasized about taking brutal revenge in the punishment of executives. For example, in the 1720s, when the South Sea joint-stock company turned out to be a speculative bubble, and burst, a member of Britain's House of Commons called for classical-era retribution. The company's directors, he proposed, should be sewn into sacks, each with a monkey and a snake, and drowned.[52] If this government official appeared ready to bypass the law, many lay citizens have been willing to do the same when they have seen justice denied. Sometimes the vigilantism has been mainly for show, as when Jeff Skilling was hit in the face with a (generously frosted) pie during the California energy controversy. Still, Skilling understandably feared for his safety after that incident. And while Skilling stayed out of danger, not all of his historical counterparts have. In 1932 somebody attempted to kill Samuel Insull, perpetrator of a huge utility company pyramid scheme, by shooting into the window of his limousine.[53] As if to affirm suspicions that the law cannot be trusted to punish fairly, when the surviving Insull went to court he was acquitted on all counts—partly due to the opacity of his case. It seems he had "muddled up the books so much that no ordinary juror could be free from reasonable doubts."[54] If Insull's primary crime was his Ponzi scheme, it appears a secondary crime in accounting, which anticipated Enron, kept him safe from formal punishment.

[52] Kindleberger, *Manias, Panics and Crashes,* 174-75.

[53] Michelman, *Business at Bay,* 186-87.

[54] *Ibid.,* 188.

In proposing how executives should be punished, and envisioning revenge by imprisonment, people often scoff at the special treatment of white collar offenses. Suppose, they say, that some CEO has deprived thousands of their incomes, and even more of their pensions and savings—not to mention his company's millions of investors. Why should he be allowed to reside comfortably at some "Club Fed;" a leafy, minimum security federal penitentiary? A "blue collar" criminal faces much harsher punishment for an offense against just one victim.[55] He is treated as more of a threat, the argument goes, because he lacks an MBA, a golf resort membership, and a designer suit. *Who Moved My Soap?* belabors the point that a criminal CEO should be thrown into exactly the same prison conditions as the typical hoodlum.

In sentencing and punishment, however, the real line relevant is between violent and non-violent crime. In other words, even if this CEO has inflicted great harm on millions of victims, it is reasonable to assume that he is not dangerous. He has no record of hurting anyone, physically, and therefore the resources of a maximum security jail are better spent on someone who does. The fact that protestors against big business seem so easily to dismiss this distinction might indicate how trampled they feel by big business, including by its influence over the government and legal process. It might also suggest that they are simply too furious to consider such logics. In fact, however, while white collar crime may be unique in that its sentences tend to be fairly comfortable, it is also exceptionally easy to prosecute. In such cases, due to a complex set of modifications to criminal law tailored to white collar offenses, the government bears a lower burden of proof, and can demand a much higher standard of compliance from a defendant, than in any other type of criminal proceeding.[56]

Moving back from the realm of fantasy to the realm of reality, regarding punishment for corporate scandals, news reports around this time showed nothing so much as inconsistency. Bernie Ebbers of WorldCom was sentenced to 25 years. Richard Scrushy of HealthSouth was

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[55] Set aside, here, are so-called "victimless crimes" like drug dealing and prostitution. The fairness of sentences for these kinds of offenses, as compared with white collar punishment, is more questionable. I will compare executive crime instead with violent crime because both types of offenses harm people in obvious and direct ways.

[56] John Hasnas, *Trapped: When Acting Ethically is Against the Law* (Washington, D.C.: The Cato Institute, 2006), 24, 43, 49-50.

fully acquitted with pomp and circumstance. Martha Stewart did a brief stint in jail but laughed it off, and her persona and brand name (literally synonymous) still represent a strong and growing conglomerate. There appeared to be little logic, and no predictability, in the ultimate results of high-profile white collar crime. If these executives' stories do at least have "endings," and even if they are just, none is quite as elegant as that of *Fun with Dick and Jane*, or as triumphant as the scenario in *Who Moved My Soap?.* And at any rate, none applied to the case of Enron. Most of the criminal trials associated with that case were still to come; likewise the shareholder civil proceedings by which employees and investors would try to win back at least some of their money. They had no guarantee of restitution—much less of any vengeful punishment.

Memory as Forgetting

As time passed after the Enron bankruptcy, most invocations of it became increasingly vague. Insider memoirs, documentary accounts, and well-researched spoofs had had their factual weaknesses, but all did at least recognizably refer to Enron. This was not always the case, however, as the company's name drifted into shorthand, deployed in news stories and other less formal analogies. Here what seemed to be memories of Enron actually represented the erosion of knowledge; a process of collective forgetting. Hollow references to the bankruptcy—that is, ones that demonstrated no substantive recollection of it—nonetheless pointed up what people understood and failed to understand, as well as what about the scandal remained salient, and what did not.

Obviously, corporate scandals continued to occur even after the spate, in the early 2000s, that Enron had seemed to kick off. Two in particular that occasioned references to Enron illustrated a great range in memories of the scandal. When the Italian dairy company Parmalat filed for bankruptcy in 2003, it was compared to Enron, and here the analogy was useful. Indeed, it was probably the most appropriate comparison available to mainstream media. Parmalat had been moving money around via off-balance sheet partnerships, and doing business with itself using special purpose entities, in what amounted to accounting trickery familiar to anyone who knew Enron. On the other end of the spectrum of fittingness, however, was Hewlett-Packard's run of bad publicity in 2006. The company was caught essentially spying on some of its board members, as well as a few journalists. It had hired private investigators to obtain and peruse personal phone records in order to determine the source of an “information leak” judged harmful to HP. Here there was absolutely no likeness to anything that occurred at Enron, and yet analogies and comparisons between the two were common. It seemed “corporations doing bad things” was a sort of blanket storyline; a category in narrative that could encompass even totally unrelated events. In this case, to mention Enron was arguably to *degrade* public understanding of it, because the reference was so general as to be almost meaningless.

Some satire, too, flagrantly forgot the Enron scandal even while pretending to recall it. For example, 2004 saw the release of a semi-improvised “mockumentary” film called *Memron*. [57] Its title phonetically fused the words “memory” and “Enron,” but in fact the movie did very little to memorialize the bankruptcy as it really happened. The action begins on the grounds of a federal prison, where fat CEO “Ken Clay” and all of his upper-level Memron Corp. colleagues (now fellow inmates) are playing golf on asphalt. This opening scene thus combines the revisionism and revenge of jailing the executive, with the cynical assumption that Club Fed is somewhat too comfortable. This was neither too optimistic nor too pessimistic as to executives’ punishment; it simply had no referent, yet, in reality.

Memron’s collapse, opening exposition reveals to viewers, left “60,000 employees fired,” and “86 per cent” of them now live below the poverty line. This is a great rhetorical exaggeration, as Enron only ever employed 30,000 people worldwide, and few of them, after being laid off, ever ended up in legal poverty. Executives in the film speak often in unintelligible jargon, but Ken Clay himself is not particularly bright, mostly acting on the nefarious counsel of men who worked for him. In this characterization alone, Clay’s character may be based in reality, for many people did describe Lay as a fairly “hands-off” CEO, ultimately “duped” by underlings such as Skilling and Fastow. (He could only be considered fat, however, in some metaphorical sense.) Like Borowitz’s fictional jailed CEO, Clay has a much younger trophy wife, and is completely oblivious to her brazen infidelity. Clay’s wife is Italian, and free to arrange trysts even as her husband stands by smiling, because he does not understand her language. As in *Who Moved My Soap?,* clichés and

[57] *Memron*, dir. Nancy Hower, 79 min., Magnolia Home Entertainment, 2009, DVD.

stereotypes reign even on matters of executives' personal lives. Linda Lay was neither foreign-born, nor wild, nor scandalously young for her husband (though they did first meet when she was Ken Lay's secretary, and he was married to someone else).

The main story arc in *Memron* is about the efforts of former employees to regain their confidence and professional security after being laid off. One proposes a lawsuit, but a lawyer advises "you can't sue a bankrupt company." In fact, under some corporate bankruptcy statuses you can. In Enron's case, people already were. Indeed the only reason that Enron still legally exists is to be the defendant in civil cases brought by former workers and shareholders. What is left of a bankrupt company's funds, the reasoning goes, is a fair target for damages claims. Here *Memron*'s narrative forced closure on a story that was actually still unfolding.

Ken Clay, as it turns out, has a "plant" among his former employees—the one Memron worker who was not laid off. This man is now paid to spy on his ex-colleagues and report back to Clay on their activities. As he discovers, they are banding together to start an "air company." Here is another clear reference to new economy corporations that seemed willing to puff even the most inane business concepts, or, again, to the possibility that some of them might not do or make anything at all. Still, this plot development has no basis in the Enron story. Ultimately, Clay's minion takes over Memron—with the bumbling former CEO easily kicked aside—and buys the new air startup to achieve spectacular success. All of its employees, former Memronians, are laid off a second time. The film ends with the consolation that at least they can, in this case, sue.

Overall, *Memron* suggests how faulty collective memory can be, for in virtually everything but name(s) the film departed completely from that which it claimed to "remember." It further demonstrates the slipperiness and triviality of Enron, as a referent, compared to other historical events. If a movie was made with such loose a basis on, for example, the battle of Wounded Knee, then its near-total abandonment of fact would be much more obvious and much more controversial. By contrast, there was nothing at stake, evidently, in falsely memorializing this business scandal. At the same time, *Memron* can be read as an abstract impression of what mattered and what lingered in perceptions of the Enron bankruptcy. The filmmakers remembered, evidently, injustice and impoverishment, silly business models, and a cast of executives composed of half idiots and half crooks. They seemed to expect that their audiences would as well. The result was a document now committed to collective Enron memory—however inaccurate.

History has shown that Americans tend to remember business and economic events in terms of their human interest components, as opposed to banal financial factors. Thus the panics of the nineteenth century appear, in hindsight, as a series of bank runs. The ultimate worthlessness of Confederate currency is represented by the scene in *Gone With the Wind* in which southern dollar bills are used to cover a hole in the wall. The Great Depression is a montage of bread lines, the Dust Bowl, and vagrants desperate for work. Surely this tendency toward such images in memory is understandable. The effect of, for example, a recession or business failure, on people's lives, is no doubt more salient, and for longer, than its technical causes. These effects also make more sense to more people—with "making sense," in some cases, meaning a real-life experience all too personally felt.

Enron, however, did not signify any great economic downturn—even if we take its effects combined with other corporate collapses around the same time. Neither the stock markets nor the economy as a whole suffered any cumulative damage that can be linked to Enron, Tyco, WorldCom, or such others. Moreover, even if we do take the Enron bankruptcy as a sobering moment in American business history, it was different from past panics, recessions, and depressions, in that it was a scandal. In this instance, specific people and a specific company, widely identifiable, were blamed and vilified. They had caused the problem, or so people perceived, by knowingly acting against the greater good (of employees and shareholders, if not the public), and also against the law.

Even while a scandal is unfolding, as we saw, it can be difficult to grasp and to narrativize if it hinges on business practices, finance structures, or regulations and laws unfamiliar to most people. Teapot Dome is instructive as precedent for Enron in the attendant *lack* of public engagement. Business historian Irving Michelman characterized the general attitude toward Teapot Dome as "apathetic," and observed that the press largely turned it into a story, like *The Smartest Guys in the Room*, "about people." Part of the problem, with this business scandal as with many others, was that the relevant facts were difficult to understand, and also that details were revealed to the public in an investigative process that simply took too long.[58]

Over time, obstacles to narrative become obstacles to memory. Even the most egregious business scandals, it seems, have proved easy to forget and difficult to memorialize at the collective level. Teapot Dome, for example, probably has little name recognition among the general public. At any rate, very few people would be able to summarize it even as a 1920s incident of business-legislative collusion. The same is true of Samuel Insull's infamous frauds of the 1930s. Watergate, although not categorically a business scandal, is considered a defining moment in recent American history, and even left behind the spurious suffix "-gate" to be attached to subsequent events, denoting shame or gaffe. Yet even Watergate is already a vague and confused "memory" among many of those Americans too young to remember it personally.

If the early 1970s are too long ago for people to be expected to remember, the Iran-Contra affair, the so-called Keating Five scandal, the disgrace of the Savings and Loan crisis, and Bill Clinton's "Whitewater" have all occurred more recently. Nevertheless, in each case, memory among "ordinary people" is already fading. That is to say, compared to the Civil War, the Holocaust, or racial segregation, Americans are far less likely to be able to say of these events, even in the most general terms, what happened and who was involved. Again, there are straightforward explanations for this. But the fact remains, regardless, that scandals seem especially forgettable.

Perhaps the one notable exception is in those relating to sex, betrayal, and marital infidelity. This category of scandal is one of the most familiar, and arguably it produces far more lucid collective memories than disgraces in business and politics. Bill Clinton's affair with White House intern Monica Lewinsky, for example, seems according to the popular media one of the most significant events of his presidency. Likewise John F. Kennedy is remembered, in part, for sexual adventures that included Marilyn Monroe. From ancient to modern, even world history is colored—whether accurately or not—with lascivious imagery: Cleopatra's two-timing of Marc Antony and Julius Caesar; Mata Hari's bedroom espionage during World War I.

[58] Michelman, *Business at Bay,* 80-81.

Even if we do not assume a prurient public, or some kind of Pavlovian effect on memory whenever it involves sex, there is a plausible explanation for this tendency. Sex scandals are immediately understandable. One needs no technical knowledge or legalistic mind to grasp, at least generally, what has happened and why it is problematic. Indeed, unlike mismanagement of finances or abuses of executive power, sexual misbehavior is a familiar concept from ordinary people's daily lives. It has analogies—though they need not be first-hand—in their own personal experiences. Thus it is not only comprehensible, but also even relatable.

The unique accessibility of sex scandals, for purposes of formulating a coherent narrative, probably explains an otherwise puzzling tendency in documentation of the Enron bankruptcy. From the most serious "insider" memoirs and exposés, to the most ridiculous spoofs, nearly every single retrospective narrative about Enron attempted to identify the company with sexual aberrations. The "Women of Enron" calendar, the strip club excursions, and Jeff Skilling's dating life were highlighted nearly every time this story was told. On the whole, there was probably nothing particularly exceptional about the sex, or even the flirtation, that went on at Enron. And even if there was, none of it had anything directly to do with the bankruptcy. The reason that sex was so emphasized in Enron memory was that it helped to establish, more than any explanation of accounting tricks or trading rule-bending, that something wrong was afoot. Sex was invoked, in memories of the Enron scandal, because people "get it." This ploy may have been misleading, but evidently it works.

The emphasis on people and personalities, like the emphasis on sex, was disproportionate but probably useful in expressions of Enron memory. These accounts' depictions of executives—including but not limited to their supposed sexual exploits—was another means of making Enron memory more accessible, and also of fitting it into an existing canon of scandal narratives. For in addition to portraying Jeff Skilling as a ladies' man, Ken Lay's marriage as a sham, and Enron's offices as a meat market, these retrospective narratives also drew on collective memories of the con man. Here was another iteration of the deceptive charmer; and one that was actually somewhat more appropriate. The trope of the con man, at least, actually related to the Enron story's fundamental issue: money.

The con man as a literary, historical and cultural archetype was a ready analogy for Enron as a swindle. The term “confidence man” was coined to describe dapper criminals in nineteenth century American cities, who would charm an unsuspecting victim into handing over his watch or some other valuable item, and then make off with it. It may be that few people could correctly identify the origins of the epithet “con man” (just as most, likely, could not identify the namesake of the “Ponzi scheme”). Nonetheless, the term is understood. To call Enron a con, or its executives con men, thus simplified and humanized a vast and complex corporate operation. The scandal was thereby likened to an interaction between two individuals: smooth-talking deceiver (Enron) and gullible innocent (investors).

Jeff Skilling, for all his faults, would be hard to describe as a con man because he showed no ability to charm or ingratiate. If he had taken off with stolen loot, then, a better historical analogy might have been the highwayman. Andy Fastow, likewise, was rarely called a con man, and in his case this might be due to a lack of contact with the public. The only people he had personally conned were SEC officials, and perhaps some of his colleagues. Ken Lay, on the other hand, was dubbed a con man early and often. He was the face of Enron, for investors, the media, and in Washington, and his demeanor was always cheerful and friendly; even “grandfatherly.” Some who had berated him, particularly in Congress, did elaborate as to why they thought the epithet appropriate. He was an affable deceiver, they said; someone who consciously made false representations in order to gain confidence, and then exploited it to his own gain.

As John F. Kasson has pointed out, as soon as the concept of the con man gained currency in the Victorian era, people were already recognizing “the ironic parallels between this brazen swindle and the manipulations of the most stupendously successful capitalists.”[59] Thus to call Ken Lay a con man actually did not warp the term’s original meaning, aside from its equation of one interpersonal exchange with a web of corporate transactions. On the contrary, Ken Lay as con man was very much in keeping with a longstanding suspicion of wealthy businessmen.

[59] John F. Kasson, *Rudeness and Civility: Manners in Nineteenth-Century Urban America* (New York: Hill and Wang, 1990), 103-5.

Literary analysis of the con man as a character type also illuminates his function in a narrative—including how he sometimes reveals *victims* as guilty parties. John G. Blair argues that the con man actually “[exacts] moral complicity” from those he deceives. In other words, they cooperate with the con, in part, because they see a potential gain in doing so. This means the con man brings victims’ integrity, not just their powers of discernment, into question.[60] Given the number of people complicit in the “con” that was Enron, including many employees who were fully and uncritically along for the ride, such an idea may also be appropriate as applied to Lay and his company.

Conclusion: The Wrong Memory at the Wrong Time

There is little in the way of theoretical framework from which to draw in analyzing Enron’s collective memory. The examples most often invoked in memory studies are historic events that satisfy some or all of the round hole criteria mentioned before, such as battles, massacres, genocides, enslavements, or social or political upheavals. However, I do not believe that Enron has been lost to a collective “amnesia,”[61] for although some very powerful people would likely prefer that this event be forgotten, the company name still echoes from one arena of discourse to another. Those who invoke it do at least claim to remember Enron, and in effect they are urging others to do so as well. Nor do I believe that Enron, at least at this point, represents the “unknowable” in history. Allan Megill states that such an epistemological void appears when an event is either a) “too traumatic to put into language;” b) “too foreign to be understood in the present;” or c) lacking in evidence.[62] The Enron collapse falls into none of Megill’s categories. It is “knowable” though arguably it is not known.

Michael Schudson’s treatment of the collective memory of Watergate is useful because in this scandal as well as that of Enron, conventional memorialization was out of the question.[63] Even a catastrophic defeat can inspire proud identities and affirming collective memories, as, for

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[60] John G. Blair, *The Confidence Man in Modern Fiction: A Rogue’s Gallery with Six Portraits* (London: Vision, 1979), 132.

[61] Such amnesia is discussed in Barbie Zelizer, “Reading the Past Against the Grain.”

[62] Megill, “History, Memory, Identity,” 37-62.

[63] Schudson, *Watergate in American Memory*.

example, W. Fitzhugh Brundage points out regarding the Confederacy in *The Southern Past*. Narratives of bravery and martyrdom, along perhaps with a conception of a despicable enemy, can validate or even glorify a "cause" long after it is "lost." But simple embarrassment, especially regarding the behavior of a society's supposed leaders, offers no similar consolation. Thus there will no more be a monument to Enron in Houston, than there is a national day of observance for Watergate. It is possible that, as Jay Winter might put it, the memory of the Enron collapse has been "hidden behind" a (more dignified) memory of another event: the September 11 attacks, which occurred just a few months prior.[64] Yet even in a bitter and irreverent narrative, Enron's memory could be glossed over. Oliver Stone's 2008 film *W*, about George W. Bush, scrutinized his anti-terror initiatives and foreign policy, and even insinuated that he had a weak mind and character. But the film never so much as mentioned the series of corporate scandals that occurred during Bush's first term.

As memory studies has shown, collective memory is instructive as to identity and political controversy among those who do the remembering. In this respect, Enron is no exception to the rule; thus an analysis of the inchoate collective memory of Enron will hopefully have value in itself. More broadly, however, this study attempts to identify, define and theorize a type of collective memory as yet overlooked. Holocaust scholar Lawrence Langer recognized from the testimonials of survivors that their memories did not always conform to interviewers' expectations. There were assumptions, and sometimes very real pressure, attempting to mold the survivors' stories into narratives about the triumph of good over evil, the resilience of the human spirit, and the ultimate invincibility of a moral soul. In an effort to best honor the true content of the testimonials, Langer proposed new concepts of memory that could accommodate embarrassment, guilt, shame, and despair; such as "humiliated memory," "tainted memory," and "unheroic memory."[65]

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[64] Winter, "The Memory Boom," 63.

[65] Lawrence Langer, *Holocaust Testimonies: The Ruins of Memory* (New Haven: Yale University Press, 1991).

Langer attempted to advance new modes of understanding individual memory; my theoretical suggestions relate to the interpretation of collective memory. Based on case studies of Enron, I propose that we need theories that acknowledge vagueness, ambiguity, confusion, apathy, and tedium as factors that, far from precluding the formation of a collective memory, can in fact command it. The new theoretical concepts I might suggest sound odd or even facetious: "vague memory;" "confused memory;" "indifferent memory;" "annoyed memory;" "bored memory"—or even "barely memory"—? Yet I maintain that developing some such line of theory is important. It may lack the drama and pathos of the kinds of devastating events that most typically figure into memory studies. But if our society can be so deeply affected by the peaks and valleys of the stock market and the vicissitudes of large corporations, then it needs to remember events like the Enron scandal, for many of the same reasons that it needs to remember massacres, wars and genocides. In turn, then, as people create and maintain collective memories of events such as corporate bankruptcies and financial crises, parties to Jay Winter's "boom" need a vocabulary with which to identify and interpret these memories.

Edward Linenthal writes, "Events are memorialized before they are assimilated into historical consciousness." The ambivalence, bizarreness, and wild inaccuracy of some expressions of Enron memory reviewed here can thus be taken as evidence that they appeared too soon; that people did not yet know, or had not yet decided, how to remember Enron. Nevertheless, it appears that the richest years for commemorating Enron were roughly 2002 through 2005. In other words, most Enron remembering, however scant or sloppy, has already been done.

This is why a discussion of Enron memory belongs not at the end of my story, but in the middle. The Lay-Skilling trial was yet to come, but for most of the public it would be an afterthought. The financial crisis of 2008, likewise, was approaching shortly thereafter, but by that time it seemed even more obvious: Enron had been largely forgotten. It may be that the bankruptcy will *never* be memorialized, recognizably—much less clearly or accurately. This void can be attributed to the ill fit between an event like the Enron scandal, and the ritual and concept of collective memory. But it is also probably because the bankruptcy, after just a few years, was already fading into history; “remembered” too soon. No collective memory that could endure by mass appeal, or by solemn dignity, stood in the way.

Chapter 4: A Trial, a Death, and a Class Action Lawsuit

In January 2006, more than four years after the fact, Ken Lay and Jeff Skilling finally went on trial, together, for allegedly precipitating and in turn profiting from Enron's disastrous collapse.[1] Lay faced six counts of conspiracy and fraud; Skilling was accused of twenty-eight crimes, which also included insider trading and making false statements. In the intervening years several other business scandals, including those of WorldCom, HealthSouth, and Martha Stewart, had made criminal defendants of high-powered executives, but all along the white collar world awaited Lay and Skilling's day in court. Enron above any other company symbolized the rash of corporate fraud discovered in 2001-2003, the ever-richer and ever-greedier caste of celebrity executives, and even the dashed promises of the "new economy." Thus the verdict on Skilling and Lay would indicate how strongly public outrage and political vengeance had endured.[2] Pundits billed this "the business trial of the century"[3]—though perhaps they assumed an overly sunny forecast for the next ninety-four years on Wall Street.

Narrative would be integral, operating at several levels and coming from all sides. The Enron bankruptcy had to be re-narrativized, in retrospect, while a new set of narratives—of the trial underway—would also emerge; connected to but distinct from original stories of the scandal. First and most obviously, the prosecution and the defense would craft opposing accounts. Both strove for coherence, but to distinctly different ends. Other parties with a stake in the proceedings, such as concerned Houstonians and former Enron employees, in turn offered their

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[1] Despite numerous trials of other Enron executives, the case of Lay and Skilling was known in mainstream journalism as "the Enron trial," as if it were the only one. Because I am not writing in detail about any other Enron trials I will follow suit, using this term interchangeably with "Lay-Skilling trial" specifically to refer to these proceedings.

[2] Kurt Eichenwald, "Big Test Looms for Prosecutors at Enron Trial," *The New York Times* 26 January 2006, Business/Financial Desk, 1.

[3] E.g. see Greg Farrell, "Skilling and Lay to Take Stand," *USA Today* 31 March 2006, Money, 1B.

own stories. While the legal teams actually had more, materially, to lose here, their narratives tended more toward abstract psychology and ethics, where locals and ex-Enronians tended to emphasize money and other practical matters instead. Meanwhile journalists and outside observers, as always, made narratives of the trial's events, both performing and justifying their perennial role in the bankruptcy and its fallout. Thus this trial, and indeed any trial, may be read as a struggle over narrative.[4] Everything that narrative does—designate relevant facts; establish sequences of events; link causes to effects; and point to a logical, usually moral resolution—trials are designed to do as well, with the verdict signifying victory of one narrative over another.[5] The Enron trial would decide the bankruptcy's official story once and for all.

Further, because the trial was supposed to be the final episode in the Enron narrative, various interested parties brought to it an expectation of closure. Here the concept carried meanings ranging from logistical to philosophical. At its most concrete, the closure that the trial promised was legal: a final pronouncement as to who had done what, and a judgment of appropriate consequences. The trial also suggested the possibility of financial "closure" in the form of settlements to pending lawsuits (against Lay and Skilling), for which a criminal verdict would be crucial precedent. At the same time, some people who still felt anger or vengeance toward the Enron executives sought more symbolic forms of closure from the trial. Psychologically, they needed to see Lay and Skilling judged guilty. Finally, the dramatic exigency of narratives' moral meaning also required resolution along these lines, preferably involving punishment as just deserts.

Historically, however, white collar criminal trials have often been indecisive—when they even happened at all. Samuel Insull's trial, for example, ended in acquittal by default at the hands of a befuddled jury. Yet even such a lackluster finale was more than some corporate scandals ever saw. No trials occurred, for example, connected with the electrical price-fixing conspiracy

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[4] See Edward J. Larson, *Summer for the Gods: The Scopes Trial and America's Continuing Debate Over Science and Religion* (New York: Basic Books, 1997).

[5] Robert Ferguson observes that even judicial opinions, the final rendering in any legal proceeding, often engage in narrative manipulation, sacrificing factual complexity and comprehensiveness in favor of bolstering the story's (and their findings') integrity. (*The Trial in American Life* [Chicago: University of Chicago Press, 2007], 14).

uncovered in the early 1960s, because involved people and companies pleaded guilty or no contest. What legal drama this scandal did offer—grand jury indictments of Westinghouse and GE executives—garnered little public attention, especially compared to the TV quiz show rigging scandals of 1959. [6] (It seemed price-fixing carried scant intrigue to compete with a story "behind the scenes" of popular entertainment.) One thread of the Enron saga had followed a similar course: Andy Fastow pleaded guilty in 2004 proceedings that were neither climactic nor particularly captivating.

In the "court of public opinion," it was said, Lay and Skilling had been convicted years ago. This might explain the comparative lack of national interest, among the public, in the trial's details. But while few professional observers had particularly high hopes for the defendants, most approached the trial with a genuine curiosity as to what it might reveal. Given how diverse the criminal charges were, and also how many of Enron's activities had been legal or at least arguably so, those who were less incensed acknowledged persistent questions—and apparently had faith that trial would resolve them. Even Bethany McLean, whose celebrated exposé had raised the first warning about Enron and who had since made her name as an expert on the scandal, believed the defendants might legitimately be proven innocent. [7] Indeed, her testimonies of trial-watching suggest that she initially hoped they would be, and she was not the only seasoned Enron skeptic who held that perverse sentiment.

Houston officials coolly prepared for the media swarm, offering maps, guides, and parking permits to visiting journalists, but no special treatment or discounts.[8] Such conservation of resources needs no explanation, but the city may have had reason for doing so apart from the obvious (fiscal) rationale. Houston was weary of being equated with Enron, and of dramatized reports that the bankruptcy had devastated its community. Of the company's 30,000 employees,

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[6] Irving S. Michelman, *Business At Bay: Critics and Heretics of American Business* (New York: A. M. Kelley, 1969), 169.

[7] Bethany McLean and Peter Elkind, "No More Mr. Nice Guy," *Fortune* 153, Iss. 9, 15 May 2006, 72-75.

[8] Carrie Johnson, "Jury Chosen for Lay, Skilling; Former Executives Face Fraud and Conspiracy Charges in Enron's Home Town of Houston," *The Washington Post* Financial, 31 January 2006, D1.

only 4,600 had been local[9]—and while many of these men and women expressed interest and opinions in the Lay-Skilling trial, they had recovered from their layoffs and coped with their financial losses.

Moreover, Houstonians argued that the impact of Enron's bankruptcy on the city's economy had been greatly overstated: Doug Miller, publisher of a purchaser's index of business activity in the area, said the company's collapse made "not even a blip on the screen." If the layoffs had not all occurred at the same place and time—nationally televised—they would have gone largely unnoticed.[10] "Enron and the trial, at this point, have nothing to do with Houston," said Barton Smith, an economist at the University of Houston. "In fact, Enron was never very important. When you look at the (economic) data you can't see an effect [of the bankruptcy]. In 2002, if you looked really closely, you could [only] see…a temporary effect on the downtown office market."[11]

Houstonians may have been protesting too much when they claimed that Enron, in which they had once taken pride, ultimately brought them no harm or shame. But regardless, the Lay-Skilling trial certainly would have made an ugly centerpiece, even temporarily, for Houston life, and so civic leaders did their best to counteract its ignominy. The Visitors Bureau prepared information packets for out-of-towners, available at the courthouse, emphasizing "positive" and forward-looking elements in the city's business and culture. The Greater Houston Partnership had considered barraging reporters with "positive economic information" about the city,[12] but the plan was scaled back—again, perhaps not only to save money and time, but also as a PR play to

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[9] Gary McWilliams, "The Buzz: Houston, We Have the Enron; Plenty of Seats Go Unfilled for Heralded Proceedings; 'Chapter 37 of a Long Book,'" *Wall Street Journal (Eastern Edition),* 29 April 2006, B3.

[10] Bruce Nichols, "This Enron The Big One: City, Scandal's Victims Have Vested Interest as Lay-Skilling Date Arrives," *Knight Ridder Tribune Business News,* 28 January 2006, 1.

[11] Mike Tolson and Tony Freemantle, "Houston After Enron," *Houston Chronicle* 28 May 2006, A1.

[12] Johnson, "Jury Chosen for Lay, Skilling."

appear unconcerned. Representatives from the Bureau were simply "available to answer questions" throughout the trial.[13]

For the most part it did appear Houston had turned a corner, both in economics and in esteem, since the dark days of the Enron scandal—whether its impact had been exaggerated or not. Oil prices were climbing, and a "boom mentality" seemed to be on the rise once again in "a city that always looks forward." Since Enron's demise the city had hosted one Super Bowl and two professional All-Star Games, drawing attention and visitors from around and even outside the country.[14] Houston was proud to be prospering not only as an end in itself, but also for the benevolence that it made possible. When Hurricane Katrina had struck the Gulf Coast a few months before, the city gave shelter to a staggering number of refugees, and was still harboring an estimated 120,000 as the trial began.[15] For this occasion, Houston stories in the national news were more flattering.

A few enterprising Texans did seek to exploit the attention and crowds that the Enron trial promised. A children's book about a pack of rats, entitled *The Kingdom of Norne* (2006), offered a bedtime parable of corporate scandal. Norne—which is Enron spelled backward—was a worthy nation of diligent and supremely smart Nornians. They had the misfortune, however, to live under the incompetent King Yal (again, the name of his analog in reverse),[16] whose pyramid (scheme) of cheese proved as illusive as the Emperor's exquisite robe from a different bedtime story. When their kingdom collapsed the Nornians found themselves destitute.

This book's reviews were few but positive: parents and teachers expressed faith that it was comprehensible to its target audience, who might grow up to create a new world in which figurative "rats" did not rule. Perhaps the story, as translated for children, achieved the narrative simplification and moral that had thus far proven so difficult for adults—by abandoning systemic

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[13] Mark Babineck, "Houston Isn't On Trial This Time, Groups Say: Unlike Some Big Media Events in the Past, It's a Tale of Two Men, and Not The City Itself," *Knight Ridder Tribune Business News,* 28 January 2008, 1; Tolson and Freemantle, "Houston After Enron;" Johnson, "Jury Chosen for Lay, Skilling.

[14] Tolson and Freemantle, "Houston After Enron."

[15] McWilliams, "Houston, We Have the Enron."

[16] Here is a rare account of the Enron collapse that implicates Lay more than anyone else. King Yal has unnamed "advisors," but there is no Duke "Gnilliks" or "Wotsaf" to even take a small part of the blame.

conditions, legal nuances, and ethical ambiguity. One reader commented online that the story "might provide the most concise memento of one of the biggest corporate scandals in American history." Hopefully "concise" does not ultimately have to mean juvenile, but at any rate, Norne's creator did know of which he wrote. Publishing under the nom de plume Busta Scam, the author was electrical engineer Brian Durbin. He had lost a substantial amount of money as Enron's stock lost value, but the loyalty that his wife—a former Enron accountant—felt for the company had compelled them to hang on to these shares even as they did more and more damage to the family finances.[17]

Durbin was not the only Houstonian to greet the trial with a sales pitch and an assumed name. David Tonsall, a 42-year-old former employee who adopted the artistic alias EnRun, released his first rap album for the occasion, titled "Corporate America." Tonsall had been an Enron pipeline worker and lost $200,000 in retirement savings and other investments when the company bankrupted. His album seemed a mixture of derision, catharsis, and the cute. Among its songs was one called "Drop the S off Skilling," and the rest generally followed the same theme and tone. Tonsall distributed free CDs outside the courthouse on the first day of the Lay-Skilling proceedings and boasted that 2,500 copies had already sold online. Like the children's book, the rap album offered a reductive narrative of the bankruptcy, but in experience if not empirics its integrity could not be denied. "I hope they're convicted," Tonsall told a reporter, before the trial began, "and I hope [Lay and Skilling] get to sit next to some guy who is going to knock their heads around for a couple of years." [18]

Tonsall had reason to remain angry even now. But even if he was not, his comments and lyrics suggested he believed fantasies of punishment and retribution toward Enron's leaders were still marketable. Sneering and smugness, at least, were well precedented. For example, when seven managers were imprisoned for the electrical price-fixing conspiracy, industry union

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[17] Busta Scam (Brian Durbin), *The Kingdom of Norne* (James A. Rock, 2006); summary and description at http://www.senseofwonderpress.com/KON.htm. Accessed 19 August 2009; customer reviews at http://www.amazon.com/Kingdom-Norne-Brian-Durbin-Writing/product-reviews/1596635169/ref=cm_cr_dp_all_helpful?ie=UTF8&coliid=&showViewpoints=1&colid=&sortBy=bySubmissionDateDescending. Accessed 19 August 2009.

[18] "Four Former Enron Workers Weigh In On Trial," *Knight Ridder Tribune Business News,* 22 January 2006, 1.

representatives sent each a “Monopoly” board game to help pass their time.[19] The game’s simulation of ruthless capitalism, its constant threat of “Jail,” and of course its name and theme, apparently made it an appropriate incarceration gift for the occasion. Like Tonsall, these workers felt wronged by powerful executives, but now were ready to gloat.

The third and most widely noted Enron entrepreneur, at the time of the trial, was local historian Sandra Lord. Beginning in 2006 Lord offered a four-hour guided tour of Houston that she called “Lifestyles of the Rich and Infamous,” pointing out the former offices, homes and haunts of the disgraced Enron corps for $30 a head. “Enron is a piece of history,” Lord said. “Enron is part of our language. It has become so ubiquitous I could do this tour ten years from now and still have a lot of interest I am sure.” Lord’s assessment of Enron in “history” and “language” was well-founded, but her confidence in the public’s interest—at least in her tour—was not. Her buses seemed never to fill even at the height of the Lay-Skilling trial.

Lord’s narrative attempted a delicate compromise: perpetuating and trying to capitalize on Enron’s disgrace *of Houston* while still insisting that the company never defined the community. Her tour traded upon the literally concrete—the *locations* of the scandal’s events—affirming the importance and material reality of their setting in this particular city. Yet in her emphasis on Enron as “history,” Lord joined the hometown chorus that Houston had not been nearly so “devastated” by the bankruptcy as media “hype” would have it. “Life has moved on,” she rebutted. “Nobody is sitting around Houston wringing their hands about Enron today.”[20]

Such renderings of the Enron bankruptcy and its fallout; the children’s book, the rap album, and the guided tour; in the end won far fewer patrons than press coverage—and even that was scant. They are more significant for their colorful and democratic narrative offerings than for their actual impact on perceptions of Enron in the national media or even in Houston. Most of the attention paid to the trial, and indeed most of its attendees, were more serious than sensational. Here was yet another change of scene since the time of the bankruptcy. Official Houston wanted

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[19] Michelman, *Business at Bay,* 153.

[20] Shawn McCarthy, “And To Your Right, the Firebombed Fastow Residence,” *The Globe and Mail (Canada)* 13 February 2006, International, B1; James Doran, “Houston Makes Fast Buck out of Enron as Trial Opens,” *The Times (London)* 28 January 2006, Business, 67.

no hubbub and, Busta Scam, EnRun, and Lifestyles of the Rich and Infamous notwithstanding, essentially it got none.

Had the defense gotten its way, the trial would not have been held there at all. Convinced that embittered locals were prejudiced against them and their company, Lay and Skilling had argued no Houston jury could be fair. Judge Simeon “Sim” Lake III denied the defendants’ petition to be tried elsewhere, but at any rate they may have overestimated the persistent hostility of their hometown. Few people who were not directly connected to trial participants ever attended the proceedings.[21] The *Houston Chronicle* covered the trial assiduously, and its online reporting in particular was highly popular[22], but very few readers wrote in about the case. When they did, it was just as frequently to defend Lay and Skilling as it was to condemn them.[23] Most Houstonians, including former Enron employees, professed simply to have “moved on.”[24] Many looked forward with greater interest to civil litigation against Lay and Skilling, for only then could those who suffered from Enron’s collapse hope to recover any money.[25] Granted, this was not the sort of attitude that the defense would have sought in a juror—but neither was there much evidence of the consummate, unanimous rage by which Lay and Skilling felt already condemned.

The jury that did take the booth would of course remain anonymous and nondescript during the proceedings, but the little information that was available about its members also pointed to an orderly, businesslike trial rather than any drama of vengeance. Observing reporters, as well as Judge Lake, praised them throughout the 54-day trial for their punctuality, attentiveness and patience. They maintained focus on the evidence and testimony being presented, sometimes taking notes on legal pads, even when others in the courtroom nodded off

[21] McWilliams, “Houston, We Have The Enron.”

[22] Mike Tolson, “The Enron Verdict: Coverage Entering New Phase for Media,” *Houston Chronicle* 30 May 2006, Business, 1.

[23] E.g. see Ray Collins, “Steffy’s Saving Trial Time, Cost,” Letter to the Editor, *Houston Chronicle* 6 May 2006, B8.

[24] E.g. see “Four Former Enron Workers Weigh In On Trial.”

[25] “Ex-Enron Employees Render A Less-Than-Unanimous Verdict,” *Knight Ridder Tribune Business News,* 22 January 2006, 1.

or began to fidget.[26] Their attention was most likely to stray, in fact, when lawyers and witnesses delivered vitriol[27]—even though it had been scripted, cynically, to appeal to them. Eight women and four men, the jurors did not appear obvious allies to either side. Along with Judge Lake himself, corroborating his reputation for running court efficiently and by the book, all arbiters in this case took it quite seriously. It was to be a trial in earnest.

For The Prosecution

The Justice Department's Enron Task Force had been preparing to prosecute Lay and Skilling for four years. Perhaps even more important, here, the fundamental requirements of evidence, was the comprehensibility of this courtroom narrative. Having learned from previous white collar trials that technical details of accounting or securities trades could confuse a jury—to the point of reasonable doubt—the government adopted an overall strategy of streamlining and simplification.[28] Its core argument was that Lay and Skilling had lied to employees and investors about Enron's straits in the months leading up to its bankruptcy, in order to protect and enrich themselves. The government stressed that jurors need not determine the causes of the company's collapse; they needed only to judge whether Lay and Skilling had handled the disaster honestly.[29] "This is a simple case," attorney John Heuston said in an opening statement. "It's not about accounting. It's about lies and choices."[30] Here was one way to deal with complexity: deny it.

Anecdotes and intricacies were welcome, however, if they might help the government to establish Enron as a suspicious company, or its leaders as suspicious men. The prosecution had

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[26] Mary Flood, "Alert Jury," http://blogs.chron.com/MT/mt-tb.cgi/5778, *Houston Chronicle* online, 8 February 2006. Accessed 3 December 2006.

[27] Loren Steffy, "Skilling, Lay Lawyers Wave their Wands Frantically," *Houston Chronicle* 17 May 2006, Business, 1.

[28] Alexei Barrioneuvo, "Prosecutors Shift Focus on Enron," *The New York Times* 11 January 2006, Business/Financial Desk, 1. Business law expert John Coffee, a close observer of the Enron scandal and other similar bankruptcies, had declared that an acquittal of Lay and Skilling would prove that some white collar cases are simply "too complicated" for a conventional legal trial. (Eichenwald, "Big Test Looms for Prosecutors at Enron Trial.")

[29] Alexei Barrionuevo, "In Opening Arguments, an Enron Undone by Lies, or Panic," *The New York Times* 1 February 2006, Business/Financial Desk, 1; Alexei Barrionuevo and Simon Romero, "U.S. Levels a Final Blast at Enron Chiefs," *The New York Times* 16 May 2006, Business/Financial Desk, 1.

[30] Barrionuevo, "In Opening Arguments, an Enron Undone by Lies, or Panic."

wanted to introduce evidence about the 1987 Valhalla incident, in which Lay seemed to have condoned accounting tricks among his oil traders, and about the California energy crisis of 2000, in which Enron Energy traders had recklessly manipulated the state's newly deregulated market. Judge Lake designated both matters irrelevant to the case at hand, which legally they were. [31] The government was permitted, however, to present evidence about the defendants' "characters," and it did so even at the expense of argument's momentum. Thus, for example, Skilling's decision to invest a fairly small amount of Enron money in an ex-girlfriend's company was worth a substantial digression, even though this minor transaction had no connection to Enron's collapse. Skilling admitted he was supposed to have it specially approved, but did not. The jury was to infer more generally that he tended to disregard inconvenient rules.[32]

This narrative detour, and others like it, was ultimately personal rather than technical. As noted previously, the prosecution calculated that too much time and attention dedicated to business arcana would work in the defendants' favor—and the other side had made the same judgment. Once more the issue of technical expertise, and loaded questions as to who could or could not "understand" relevant facts, were pivotal in narratives of the Enron collapse. While the defense would try to establish Enron as a highly complex accounting case in which sophisticated observers saw no evil, the prosecution built a straight story of right and wrong; of "Truth" and "Lies" according to the double-sided cardboard poster that lead government attorney Sean Berkowitz flashed during his closing statement.

Yet the government did not really abandon or ignore the issue of technical expertise. Instead, it attempted to exploit it uniquely by turning it back on the defense. The prosecution sought to tie such nuances, in jurors' perception, to an arrogant and decadent business culture

[31] Eichenwald, "Big Test Looms for Prosecutors at Enron Trial;" "Skilling and Lay's Lawyers Seek to Delay Trial by One Week; Judge Excludes 'Enron Memos,'" *Platts Global Power Report* 19 January 2006, 1.

[32] Alexei Barrionuevo, "Ex-Treasurer Testifies Skilling Left Enron in Weak Shape," *The New York Times* 22 March 2006, Business/Financial Desk, 3. Lake did draw a line as to what types of "character" evidence were admissible, however. Information on witnesses' drug use, pornography habits, and involvement with prostitutes was ruled not pertinent to the trial. The defense, not the prosecution, petitioned to address such topics, presumably to impeach the former Enron executives who had turned witnesses for the government. According to anonymous parties to the case, the collection of pornography on a computer seized from Fastow triggered a separate and unrelated federal investigation. Carrie Johnson, "Judge Puts Limit on Testimony at Enron Trial," *The Washington Post* 13 February 2006, Financial, D3; Barrionuevo, "Prosecutors Shift Focus on Enron."

that by opacity and luxury discredited *itself*. “Don’t let the defendants, with their high-paid [expert witnesses] and their lawyers, buy their way out of this,” Berkowitz told the jury. “You can’t buy justice; you have to earn it.” [33] The link, in such a statement, between abundant money and expertise, is significant, for both are things that “ordinary” Americans—as exemplified by the jury—do not have. And if it seemed the former could often purchase the latter, Lay and Skilling’s legal effort was indeed an apt case in point: estimated at $50 million, combined, theirs was said to be the most expensive defense in US history.[34] Moreover, particularly in the booming business era of the previous decade, money and expertise had been conceived as part and parcel. The “new economy” was one of knowledge and information, and the new means of making an astronomical fortune now often had nothing to do with traditional industry, but instead with the mystical maneuvering of new financial instruments that made little sense to most of the public.

Thus the government gambled that any amount of expert knowledge that Lay and Skilling tried to deploy would backfire by alienating the jury. Anybody with a sense of values could understand what had happened at Enron, the prosecution insisted. Like any criminals, Lay and Skilling had acted recklessly and caused tremendous suffering. Refusing to admit it or repent, they deserved to go to jail—even if, or perhaps especially because, they were highly-educated, sharply calculating multimillionaires who had done everything in their formidable power to avoid it.

For the Defense

Narrative form pervades the legal trial. Yet another synergy between the two is in their shared, intrinsic focus on individuals.[35] The more personal Enron narratives became, the more dangerous for the Enron defendants. For in the context of trial, even more than before, it was clear who the relevant characters were—and thus implicitly where blame, if there was any, should land. Neither Lay nor Skilling had ever wanted to appear at all in narratives of Enron’s collapse,

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[33] David Teather, “Fraud Verdicts: Downfall of the Men Who Made Enron a Byword for Corporate Corruption,” *The Guardian (London)* 26 May 2006, Financial Pages, 31.

[34] “Enron Trial Wraps Up with Summations; Now Goes to the Jury for Deliberations,” *Platts Global Power Report* 18 May 2006, Company News, 5; Carrie Johnson, “Skilling Gets 24 Years for Fraud at Enron; Former Workers Tell of Hard Times Over Lost Jobs, Retirement Savings,” *The Washington Post* 24 October 2006, A1.

[35] Ferguson, *Trial in American Life,* 3.

much less to be personally audited for competence or integrity. Yet this was exactly what these proceedings were for. A story about people is not a story about numbers, and the former is much more accessible and, for someone in a position to judge, morally intuitive. Thus Lay and Skilling faced an uphill climb as they attempted to make this case technical rather than moral or personal. On the vital issue of comprehensibility, they had to make the unappealing argument, rebutting the prosecution, that Enron was *less* simple than it appeared.

The defense did call expert witnesses and presented a surfeit of testimony and evidence about Enron's dealings and why they were legal (if not always wise). The defendants seemed most comfortable when the court's attention was on Enron's trading and finance strategies, to which, after all, the company owed its wild success and of which Lay and Skilling were clearly still proud. Yet the defense could not adopt an entirely opposite strategy to that of the prosecution—that is, a relentless emphasis on esoteric accounting practices or securities trading rules at the expense of ethical and personal factors. It has been proposed that complex white collar trials like this one should be assigned expert judges and juries; individuals familiar with relevant technicalities;[36] but for the time being both sides still have to convince a non-specialized audience. Therefore, whether the defense liked it or not, it had to depart from arcana at least some of the time. Defense lawyers, too, had to build an accessible narrative about Enron's collapse; but unlike that if the prosecution, this story was to portray Lay and Skilling as sympathetic characters.[37]

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[36] The argument is that individuals with relevant background make more efficient and competent jurors. Meanwhile, however, others seek to summarily *exclude* experts from juries or to prohibit them from drawing upon any specialized knowledge or skills, during deliberations, lest they be biased or unduly influential upon fellow jurors. (It is certainly more common that lawyers favor lesser educated and thus, supposedly, more gullible juries.) For the time being it is probably both by default and by caution that American courts have no absolute policy as to the issue of juror expertise. For examples of various stances in this discussion, see Daniel Solove, "Should We Have Professional Juries?" 20 March 2009, http://www.concurringopinions.com/archives/2009/03/should_we_have.html. Accessed 21 July 2009; Michael B. Mushlin, "Bound and Gagged: The Peculiar Predicament of Professional Jurors," *Yale Law & Policy Review* 25 (2007): 240-287; Beth Z. Shaw, "Judging Juries: Evaluating Renewed Proposals for Specialized Juries from a Public Choice Perspective," *UCLA Journal of Law and Technology* (Nov. 2006): 1-37.

[37] Robert Ferguson states "the defense tells no story until it has to," and relates law school dicta that defendants may create reasonable doubt with miscellaneous contradictions, even ones that are logically inconsistent with one another (Ferguson, *Trial in American Life,* 14-15). In other words, defendants don't need narrative. Principle aside, I believe that these defendants, at least, did—perhaps because they were already so widely known and reviled, because previous public excuses and alibis had been unconvincing, or because juries may be more willing to sentence minimum security jail time than harsher forms of

Enron, the defense argued, had been a great company. Its pioneering business models not only transformed how energy business was done, but also brought technologies and resources to people who had previously gone without. While its corporate structure and financial transactions were complicated to the unschooled observer, they left nothing illicit to be found. Indeed, the only wrongdoing that had occurred at Enron was Andy Fastow's admitted stealing from Enron via the LJM hedge funds—and neither Lay nor Skilling had even known about, let alone condoned or benefited from, those thefts. Eventually Fastow aroused suspicion and was fired. As rumors began to swirl that Enron was in trouble, the media seized an opportunity to tarnish its golden image, and investors poised to profit when a company's stock falls (known as "short sellers") completed the self-fulfilling prophecy. Lay and Skilling, both committed and competent managers who cared deeply about the company, had no criminal liability, but had nonetheless already suffered severely from Enron's collapse. Far from being punishable, the defense asserted, they deserved to be vindicated in this trial, and to get on with their professional and personal lives just like everyone else.

If this story was harder to follow than that of the prosecution, it was no coincidence. By definition, a defensive narrative at trial is a series of rebuttals. The government's accusations had made a simple narrative of greed and deceit. But when one by one the charges had to be answered with alternate explanations, the sum was no graceful ensemble. Indeed, the defense left a number of holes in its corresponding narrative, woven piecemeal.

For one, Fastow had been *enabled* to steal by express permission to manage the LJM funds by himself, which was a waiver of Enron's own conflict of interest rules. Then as speculations arose about Fastow and Enron's well-being more generally, the company's leaders had been equivocal, ham-handed, and even hostile. Finally, it was unclear why media outfits like the *Wall Street Journal* would have sought aggressively to bring Enron down. (At one point Skilling even suggested the *Journal* had stockpiled negative articles about his company and

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punishment. The first two of my speculative reasons why these defendants needed narrative relate to the exceptional passage of time between their alleged offenses and their trial; the third, to the exceptional nature of white collar crime. Perhaps none of these is correct, but at any rate, I believe Lay and Skilling's defense teams knew they needed to create a successful narrative, and furthermore that their failure to do so was a primary reason for the convictions.

released them with strategic timing, perhaps in cooperation with the short-sellers, who Lay said were "organized" and even "conspiring".)[38] Overall, the same two business geniuses who had taken credit for Enron's groundbreaking successes seemed in this narrative to be pleading ignorance of their own company's inner workings, and the logical consequences thereof. If the defense was tasked with constructing a sort of mirror narrative—one that would answer questions raised by the prosecution and yet absolve Lay and Skilling of wrongdoing—it never quite made up for this disadvantage.

Lay and Skilling, however, also had indirect means of pleading their cases. They had worked assiduously with their legal teams to prepare for the trial in its narrative contest, but "optics" were crucial as well. There is a playbook—figurative and in more than one instance literal as well[39]—for white-collar criminal defendants, and Lay and Skilling followed it fairly consistently. Both men tried to appear confident and genial throughout the proceedings. In remarks to reporters at the end of a session Lay frequently referred to his religious values, and God's will, while Skilling took a more secular but also standard tack, steadfastly reiterating his innocence. Lay's family came to court every day, with Skilling's wife, ex-wife and additional relatives also usually present. Hand patting, muted tears and occasional (dignified) expressions of disagreement with the prosecution were advisable for these defendants' supporters.[40]

Even clothing was a subject of advice and scrutiny, with the first edict that neither the defendants nor their families should dress ostentatiously.[41] A blue shirt and red tie, as Lay customarily wore,[42] were to achieve an approachable yet professional look. Always the more

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[38] McLean and Elkind, "No More Mr. Nice Guy."

[39] Ferguson, *Trial in American Life,* 72-3.

[40] Jayne O'Donnell and Mindy Fetterman, "Wives, Ex-Wives Faced Trials of Their Own; Spouses Were Under a Lot of Pressure, Analysts Say," *USA Today* 26 May 2006, Money, 3B. Skilling's current marriage, it seemed, was less camera-ready than Lay's. For one, its very foundation was somewhat questionable: Rebecca Carter had been Enron's corporate secretary, and Skilling had broken off their engagement before he was indicted. He may ultimately have married her to obtain spousal privilege, which released Carter from testifying against him. She was not in the courtroom for his sentencing, and afterwards Skilling thanked his whole family, emphasizing his three children, but made no mention of his wife. However, I find no evidence that the couple has separated or divorced since Skilling entered prison.

[41] O'Donnell and Fetterman, "Wives, Ex-Wives Face Trials of Their Own."

[42] Mary Flood, "Lay Proclaims His Innocence: He Blames Fastow, Bad Publicity, and a 'Classic Run on the Bank,'" *Houston Chronicle* 25 April 2006, A1.

daring, Skilling wore crisp white shirts although experts warn they can accentuate a flushed face. Skilling also varied his ties, with green apparently being a particularly audacious choice—one juror would later say that one evoked "crumpled dollar bills."[43] While both Lay's and Skilling's attorneys denied dressing their clients, they did throughout the trial manage commentary and speculation as to the defendants' appearances and behavior. When a court officer indicated that Skilling had made threatening gestures and profane murmurings to a former colleague, who was testifying against him, lawyer Dan Petrocelli called the report "absurd" and "an attempt to prejudice Jeff."[44] Likewise, although Lay was reportedly "groaning and growling" while the government presented its case—and would stoop even lower later on—his lawyers constantly defended him as "a strong man" who had "the truth on his side."[45]

In the substance of trial strategy, one of the most significant and most highly anticipated decisions that the defense faced was whether to call Lay and Skilling themselves to the witness stand. Since at least the nineteenth century, big business leaders have often been considered inarticulate and unreflective, especially when pressed to explain and justify their own activities. Thus far neither Lay nor Skilling seemed to have proven any exception to this rule. A talent for manipulating markets and making money, it has often appeared, does not necessarily come with an aptitude for charming a general audience[46]—and historically, criminal trials have born out this pattern. "Ordinary" observers typically do not respond well to executives in white collar proceedings, and so most executive defendants look silently on.[47] Everyone knew that if the Enron defendants did testify it would mean their attorneys felt particular pressure,[48] and sure

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[43] Cheryl Lu-Lien Tan, "Pursuits; Style—What They're Wearing: The White Collar Blues," *The Wall Street Journal (Eastern Edition),* 27 May 2006, 5.

[44] Bethany McLean and Peter Elkind, "Fightin' Words," *Fortune* 153, Iss. 4 (6 March 2006): 41-42.

[45] Susan J. Douglas, "If Ken Lay Was Black…," *In These Times* 30, Iss. 6 (June 2006), 14; Peter Elkind and Bethany McLean, "Judgment Day," *Fortune* 153, Iss. 1 (23 January 2006), 58-64.

[46] Jack Blicksilver, *Defenders and Defense of Big Business in the United States, 1880-1900,* American Economic History: A Garland Series, ed. Stuart Bruchey (New York: Garland, 1985), 224.

[47] Alexei Barrionuevo and Kurt Eichenwald, "At Enron Trial, A Calculated Risk," *The New York Times* 4 April 2006, Business/Financial Desk, 1.

[48] Greg Farrell, "For Lay and Skilling, Day of Judgment Near; After 55 Witnesses, Closing Arguments Begin Monday," *USA Today* 11 May 2006, Money, 1B.

enough, after the prosecution rested an undeniably well-made case, Lay's and Skilling's lawyers determined it was worth the risk. As soon as they made the announcement, nearly all observers agreed that the defendants' fates most likely depended on their own credibility as witnesses.

One factor in this assessment was how Lay and Skilling would speak, on the stand, about each other. Each had the opportunity to discredit his counterpart, but also, in attempting to do so, risked discrediting himself—and this relationship was not simple to begin with. Though often portrayed as a duo, Lay and Skilling had actually never been friends or even, especially in later years, closely connected colleagues. Indeed, while each man always acknowledged and appreciated the other's strengths, Lay and Skilling had often found themselves at odds due to disparate habits in work and communication. After the bankruptcy, not surprisingly, they blamed each other—though only in private remarks.[49] This was likely because both knew (or at least feared) that from then on they were in it together. Legally speaking, they were right, for when Lay and Skilling sought to be tried separately Judge Lake again had denied them. To make the best of the situation the two defendants worked as tenuous allies. Aside from a few less than complimentary remarks about each others' personalities in the workplace, they vouched for one another throughout the trial.

Lay, in the mainstream media, had been the more iconic of the two for having founded and long led Enron, and also for his now-reviled connections to the Bush family. Most of the evidence and testimony in the trial, however, targeted Skilling instead,[50] and thus the lower-profile former COO faced his own disadvantage. In their respective testimonies Lay and Skilling distinguished themselves from one another, in part deliberately—as on matters of their separate roles at Enron—but also stylistically, in the way each man featured in and also crafted his own narrative of the bankruptcy.

Skilling went first. Long known for his brashness, foul mouth and quick temper, he was on his best behavior—with the offensive gestures and cursing under his breath being glaring, and

[49] Elkind and McLean, "Judgment Day."

[50] George Flynn, "Enron Trial Moves Into Key Phase with Ex-CFO Fastow to Take Stand," *Platts Oilgram News* 84, No. 44 (7 March 2006), 1; Carrie Johnson, "Lay Faces a Second Trial, Alone; Judge Will Weigh Separate Federal Charges of Bank Fraud," *The Washington Post* 28 March 2006, Financial, D1.

telling, exceptions. He remained for the most part cool and confident, even trying at times to make the jury laugh, but a complete transformation from his former self was neither plausible nor, as we saw, possible. Even if he did not, in fact, harass an opposing witness in the courtroom as was reported, previous antics along the same lines were fair game for prosecutors as evidence about Skilling's "character." With discomfort he had to admit to calling a hedge fund manager an "asshole," on a public conference call, when his queries got too probing for Skilling's taste.[51] Likewise he had famously hung up on *Fortune* magazine's Bethany McLean, after calling her investigation into Enron "unethical," rather than answer any further questions from her. Acknowledging Skilling's reputation for "bluntness," his defense team actually tried to exploit it. They claimed that such an artless communicator could never have managed to lie so elaborately and for so long. He may have been a bit rough around the edges, the argument went, but Skilling was not the sort of man who would or even *could* deceive on a criminal scale.[52]

Far from being random unflattering anecdotes, these incidents were important to the case, and Skilling's lawyers knew it. Both had occurred during his brief tenure as CEO, and indicated he was unprepared to defend or even discuss Enron's business and finances with people who had legitimate reasons for asking. Skilling still maintained that Enron's collapse was due to a "classic run on the bank" rather than any error or wrongdoing, and as to his August 14 resignation, Skilling had always insisted it was for purely personal reasons; that such outbursts were due to stress unrelated to the company. Given how quickly Enron collapsed after Skilling's exit, however, this question was a point of major controversy. He also sold most of his Enron stocks shortly after this departure, which looked highly suspicious in context of the massive losses he left to employees and outside shareholders. While the prosecution had attempted to show that Skilling made a mess and then fled, this defendant argued instead that he had discharged his job responsibly and left it honorably, with his personal hardship only compounded by what came next.

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[51] Alexei Barrionuevo, "Witness Says Enron Hid Huge Loss From Investors," *The New York Times* 3 February 2006, Business/Financial Desk, 3.

[52] Carrie Johnson, "His Character as His Witness, Ex-Enron CEO Readies for the Stand," *The Washington Post* 6 April 2006, Financial, D1.

It was demands from his children, emotional exhaustion, and even possible mental health problems, according to Skilling, that had prompted him to leave Enron and his CEO post. Time spent with the families of employees who had died in an explosion at an Enron power plant had disturbed him emotionally and reordered his priorities.[53] He also lost a close friend, former executive vice president Cliff Baxter, to suicide shortly after the company bankrupted, and more than once Skilling professed having "wanted to die" himself.[54] He also had a drinking problem which had led to more than one embarrassing run-in with police, and subsequent court-ordered rehabilitation and community service.[55]

The purpose in this narrative examination of Skilling's testimony is not to deny his personal exigencies and emotional traumas. Rather, it is to show how he presented these as alternative, rather than additional, explanations for his abrupt abandonment of Enron, and his apparent misrepresentations of the company's condition. Here Skilling rehearsed the tragic narrative from his congressional testimony. He suggested that he deserved pity rather than punishment.

Again, such personal revelations were a pragmatic sacrifice rather than an ideal strategy for the defense, and Skilling in particular was obviously more comfortable when technical details were at issue instead. He had pored over company documents, account records and prior testimony and stated that the trial was his chance to "get the story out" about Enron; to prove that nothing he had done was illegal, or even in most cases unusual.[56] Defense lawyers questioned the competence of some of the prosecution's witnesses,[57] reiterating the familiar but now risky line that only certain people with technical expertise were qualified to have opinions about Enron.

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[53] Alexei Barrionuevo and Simon Romero, "Ex-Counsel at Enron, Not Skilling, Takes Stand," *The New York Times* 7 April 2006, Business/Financial Desk, 3; Alexei Barrionuevo and Kurt Eichenwald, "Skilling, on the Stand, Implies Fraud Was Unnecessary," *The New York Times* 11 April 2006, Business/Financial Desk, 1.

[54] Johnson, "Skilling Gets 24 Years for Fraud;" Carrie Johnson, "Skilling, Nervous and Emotional, Takes the Stand; Ex-CEO Tells How Excitement at Enron Turned to Exhaustion," *The Washington Post* 11 April 2006, Financial, D1; Barrionuevo and Eichenwald, "Skilling, on the Stand, Implies Fraud Was Unnecessary."

[55] Johnson, "His Character as His Witness."

[56] Barrionuevo and Romero, "Ex-Counsel at Enron, Not Skilling, Takes Stand."

[57] Carrie Johnson, "Board Secretary Implicates Lay, Skilling," *The Washington Post* 25 February 2006, Financial, D1.

Only proper understanding of business and accounting practices, Skilling insisted, would enable the court fairly to judge.

When it was discovered—and decried—that Skilling had hired a jury consultant, he claimed it was to make his testimony more accessible.[58] "I tend to get technical," Skilling explained, [59] pretending to concede as a pesky habit what he actually seemed to feel was his best hope for acquittal. In truth the consultant, Reiko Hasuike, probably also advised Skilling about juror perceptions and how to communicate persuasively. The defendant's choice to describe her as a sort of aid in translation—from business jargon to plain language—demonstrates simultaneously an avowed commitment to facts and details, and an understanding that those, raw, would never win Skilling's case.[60]

Opacity is a matter of course for business people who, even if entirely legally, have made their fortunes in contemporary trading and finance. Their job is to capitalize on information, and that rarely involves sharing it. They take pride as instantaneous innovators and problem-solvers, and anyone unable to keep up is left behind. This is why constructing a narrative did not come easily to Skilling: the typical communicative mode of the world in which he had flourished was clipped, utilitarian, and exclusive by design. Even without the profanities, it is easy to see why such a style of meaning-making does not usually play well to a general audience—and why Skilling failed even with the best narrative help his money could buy.

This tension, between technical expertise and accessibility, connects more broadly to lay juries' tendency to view white collar defendants with disdain. If, in such trials, the executives are proxies for the modern business world, and jurors represent "ordinary" Americans, then this confrontation exemplifies a widespread suspicion and resentment that long predated Enron. One of the defense's most common complaints, in the trial, was that the government was trying to

[58] Claire Poole, "Skilling: 'I Have Nothing to Hide,'" *Daily Deal* 18 April 2006, Law And Reg; Alexei Barrionuevo and Vikas Bajaj, "U.S. Takes First Shots at Skilling," *The New York Times* 18 April 2006, Business/Financial Desk, 1; Dominic Rushe, "Consultant Puts Enron Boss on the Spot," *The Sunday Times (London)* 23 April 2006, Business, 11.

[59] Rushe, "Consultant Puts Enron Boss on the Spot."

[60] Skilling was not the only person involved in this trial to enlist the services of someone like Hasuike. Lay hired his own jury consultant, and the prosecution also bought expert advice in the jury selection process. Johnson, "Jury Chosen for Lay, Skilling."

"criminalize normal business practices,"[61] and it was a legitimate point. But given the mystique and moral doubt that had always surrounded those practices, prosecutors' work of demonization was for the most part already done for them.[62]

Unlike Skilling, Ken Lay proactively took up matters of morality and personal character throughout the trial. Lay's statements to reporters almost always referred to values, family, or God. His defense highlighted his modest beginnings and self-made success, and called numerous Houston community leaders—including a ConocoPhillips ex-chairman, a former US commerce secretary, and two Baptist ministers—to testify he was an upstanding man and a valuable citizen.[63] (No witness had come forward to praise Jeff Skilling's character). The beleaguered Lay said he had lived the "American nightmare:" having won, with nothing but his own perseverance, fortune and fame, and then lost both, and then some, to a malicious media and traitorous former colleagues.[64] Still, Lay maintained, he deserved credit for "going down with his ship." Without drawing any explicit contrast to Skilling's drastic unloading of Enron stocks in September 2001, Lay emphasized that he had held on to $.5 billion in shares—and lost "ninety percent of his net worth" when the company failed.[65] As Enron's "captain" that was the only honorable thing he could have done.[66]

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[61] Alexei Barrionuevo, "2 Enron Chiefs Are Convicted in Fraud and Conspiracy Trial," *The New York Times* 26 May 2006, Business/Financial Desk, 1; "The Drama Goes to Trial; Enron," *The Economist (US Edition)* 28 January 2006, Business.

[62] Nor did it help, most likely, that Lay and Skilling each seemed to have chosen a lead attorney in his own image: respectively the older, folksy Mike Ramsey and the outspoken, cowboy boot-wearing Dan Petrocelli (Peter Elkind and Bethany McLean, "Too Close for Comfort," *Fortune* 153, Iss. 3 [20 February 2006]: 32). There may not exist anywhere a white collar criminal defense lawyer of this caliber to whom juries *would* take kindly, but at any rate neither Ramsey nor Petrocelli was particularly likeable. Like his client, however, Petrocelli did seem to win some admiration, if it was somewhat grudging. His jokes tended to go over better in the courtroom than anyone else's, and juror Freddy Delgado said after the trial that if ever facing prosecution he would hire Petrocelli "if [he] had the money." (Carrie Johnson, "Enron Case A Grueling Trial for Its Lawyers; With No Key Evidence, Skill Was at a Premium," *The Washington Post* 29 May 2009, A1.)

[63] Alexei Barrionuevo, "Who Will Steal the Enron Show?" *The New York Times* 29 January 2006, Business/Financial Desk, 1.

[64] Alexei Barrionuevo and Simon Romero, "Folksy Lay Opens Up to the Jury," *The New York Times* 25 April 2006, Business/Financial Desk, 1. In other words, Lay was a self-made success but an "other-made" failure.

[65] "Enron Trial Wraps Up with Summations."

[66] Lay actually did sell $24 million in Enron shares in the months leading up to its bankruptcy (Carrie Johnson, "Enron Trial Is In Jury's Hands; After Four Months, Deliberations Begin," *The Washington Post* 18 May 2006, Financial, D1; Douglas, "If Ken Lay Was Black…"), but the transactions looked less suspicious than those of Skilling and at any rate still left him with substantial company stock.

In an intriguing twist in Lay's presentation of character, he was posed as a champion and ally not only to his employees and ordinary Houstonians,[67] but also specifically to local African-Americans. Black leaders such as Rep. Sheila Jackson Lee (D-TX) and Rev. William A. Lawson, who founded the prominent Wheeler Avenue Baptist Church, both in court and in media statements defended him as an honest and magnanimous person, who far from being a thief was a formidable benefactor with real respect and care for them.[68] Big businessmen have a long history of donating money to churches, in part to "secure immunity from criticism."[69] Andrew Carnegie, self-appointed "trustee and agent for his poor brethren," was particularly notable for his paternalistic philosophy of philanthropy. Carnegie felt that using "surplus wealth" for the "common good" was the best answer to attacks on concentrations in capital.[70] Without denying that Lay could have been genuinely pious and generous, he appears to have followed in this tradition and also brought to it a racial dimension.

Lay had indeed donated to the NAACP,[71] the United Negro College Fund, and the Urban League,[72] but the trial-time emphasis on such connections may have been on cue from HealthSouth CEO Richard Scrushy's surprising acquittal with support from black pastors in Birmingham, Alabama.[73] In any event, it would seem that Lay, his attorneys, and his black supporters all calculated that endorsements of character from African-Americans would lend him a unique authenticity. When Lay claimed to have lived a spiritual and virtuous life, and to have succeeded purely of his own determination, apparently black people were deemed the most

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[67] Claire Poole, "Lay 'Achieved American Nightmare,'" *The Daily Deal* 25 April 2006, Law and Reg.

[68] Barrionuevo and Romero, "Folksy Lay Opens Up to the Jury;" Carrie Johnson, "On the Stand, Founder of Enron Doles Out Blame," *The Washington Post* 25 April 2006, A1.

[69] Blicksilver, *Defenders and Defense of Big Business,* 103.

[70] *Ibid.,* 256.

[71] Johnson, "Lay Faces a Second Trial, Alone."

[72] Mike Tolson and Michael Hedges, "Lay's Criminal Record May Vanish With His Death," *The Houston Chronicle* 6 July 2006, A1. Lay also apparently gave to "Hispanic causes."

[73] Jane Sasseen and David Poleck, "White Collar Crime: Who Does Time?" *Business Week* Iss. 3970 (6 February 2006), 60. For what it's worth, Scrushy's jury was predominantly black, while Lay's and Skilling's consisted of nine white individuals, two Latinos, and one Indian. (Alexei Barrionuevo, "Enron Jury Chosen in First Day, Setting Stage for Opening Arguments," *The New York Times* 31 January 2006, Business/Financial Desk, 1.)

credible in vouching for him. Perhaps this was due to a common historic portrayal of slaves and their descendants as morally righteous but materially deprived; people who had to work doggedly, and to pray, for everything they achieved.

Before Lay's testimony, many knowledgeable observers—including some who thought Jeff Skilling's fate had been sealed long ago—believed Lay was more likely to be acquitted. Even if some of his conduct at Enron was questionable, some reasoned, Lay was despite the disgrace of the scandal still too revered and well-connected ever to go to jail. [74] But if Lay did take the stand with such factors in his favor, he risked squandering whatever goodwill he had left. Having staked so much on a presentation of largesse and moral virtue, he, even more than Skilling, had to deliver an affable and obliging testimony. His odds seem to hang in the balance.

Lay had declined to testify before Congress or the SEC during the time between bankruptcy and trial. Thus although he had given a few interviews and public statements, this was his first occasion to present a narrative under oath. The pressure did appear to make a difference. Lay never contradicted Skilling's story—indeed the two men testified largely about different matters given how rarely their jobs intersected during the relevant time period—but he did strike a dramatically different tone, and went against his usual demeanor. Known for politeness, charm, and generosity, Lay appeared irritable and sometimes downright defiant on the witness stand, even under questioning by his own attorneys. He interrupted them frequently and even asked defense lawyer George "Mac" Secrest, in response to more than one question, "Where are you going with this?"[75] There was no angle from which these could appear wise moves on Lay's part. He was off-script and apparently out of control.

For all the strategic and stylistic differences between the defendants' testimonies, they shared two arguments that, if not ultimately convincing, were still significant in their narrative implications and in their connections to larger, ongoing issues at the time of the trial. The first will be familiar from the immediate post-bankruptcy period of congressional hearings: the association

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[74] Jeffrey Ryser, "Kenneth Lay, CEO During Enron's Rise and Fall, Dies of a Heart Attack in his Aspen Vacation Home," *Platts Global Power Report* 6 July 2006, 1; "Four Former Enron Workers Weigh In On Trial;" Tom Fowler, "Former Employees Watch, Wait, and Weigh In," *Knight Ridder Tribune Business News,* 3 April 2006, 1; Lynn J. Cook et al., "The Enron Verdict," *The Houston Chronicle* 26 May 2006, 3.

[75] Flood, "Lay Proclaims His Innocence."

of Enron's collapse with the terrorist attacks of September 11, 2001. Both Lay and Skilling tried to quell suspicion by citing the impact of that day. Lay blamed it for a stock market nosedive that spurred short-selling and the subsequent "run on the bank" that supposedly killed Enron.[76] Skilling claimed that he sold 500,000 shares on September 17, the first day the stock market re-opened after the attacks, out of his own concerns about their economic effect.[77]

"I had no knowledge of accounting improprieties, no knowledge of write-offs," Skilling said of these stock sales. "I had a tremendous investment in Enron I was worried about."[78] The defense, it seemed, was attempting to win empathy by re-conjuring the shock and uncertainty that attended the events of September 11. These executives, just like everyone else, they argued, were devastated and simply trying to weather the panic. Prosecutors, however, recognized the emotional pitch in this argument and found it shameful. "Mr. Skilling used our nation's tragedy to cover his tracks," said lead prosecutor Sean Berkowitz. "That's offensive, and he shouldn't get away with it."[79]

Whether or not jurors found Lay and Skilling's September 11th explanations credible, the attacks were still entangled with Enron narratives. And just as before, in the immediate aftermath of the scandal, Enron executives were trying to align themselves with ordinary Americans when they evoked terror and tragedy. Their detractors—now prosecutors—once again suggested that these men were not allies of the public, but indeed were part of a persistent threat. If not "economic terrorists," the government lawyers averred Lay and Skilling at least sought to benefit from the events of September 11th by hiding behind them; disguising their crimes like looters who moved among clouds of smoke and debris.

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[76] Peter Morton, "Final Nails in Enron Coffin: Reaction: Lay, Skilling Found Guilty in Landmark Fraud Trial," *The National Post (Canada)* 26 May 2006, News, A1.

[77] Simon Romero and Alexei Barrionuevo, "Jurors in Enron Trial Begin Deliberations," *The New York Times* 18 May 2006, Business/Financial Desk, 2; Barrionuevo and Bajaj, "U.S. Takes First Shots at Skilling;" Carrie Johnson, "Enron Founder's Lead Lawyer Underwent Surgery Last Week," *The Washington Post* 28 March 2006, Financial, D3. After citing the terrorist attacks as his reason for diversifying stock holdings, Skilling struggled to explain (and claimed not to recall) his attempt to sell 200,000 shares on September 6, 2001 (Poole, "Skilling: 'I Have Nothing to Hide;'" Barrionuevo and Bajaj, "U.S. Takes First Shots at Skilling.")

[78] Poole, "Skilling: 'I Have Nothing to Hide.'"

[79] Romero and Barrionuevo, "Jurors in Enron Trial Begin Deliberations."

The second defense that both Lay and Skilling mounted was informally dubbed “blame the media.” Both defendants claimed that reckless business journalists had brought down their company with unfounded suggestions that Enron was a house of cards. More interested in attention and sales than in diligent reporting, the defense claimed, the culpable media enriched not only themselves but also scores of short-selling “vultures” by dragging the once-lauded Enron through the mud. This argument can actually be traced back to the Gilded Age, for even then disgraced executives impugned the motives of any critics, including journalists, who soiled their reputations. Such claims, in that era, even anticipated Lay and Skilling by alleging conspiracies between newspapers, government, and stock speculators.[80] Of course, according to the Enron defendants injustice had only compounded since the bankruptcy: both Lay and Skilling feared they had already been convicted on the public stage by a sensational media that loved to vilify.

Unlike the invocation of September 11th, this narrative strand contained much ambiguity for its lack of obvious heroes or villains. While mainstream perceptions all agreed that terrorism was evil, and everyone could remember and sympathize with dramatic reactions to the attacks, “the media” and its strategies of reporting news and making money were more controversial. In a contemporary poll American respondents ranked sixteen US institutions by confidence, and the media wound up near the bottom. These findings might have been encouraging to the Enron defense in its “blame the media” argument—were it not for the other ratings that the poll also showed. The other lowest-ranked institutions included “big corporations,” “Wall Street,” and lawyers.[81] In other words, “ordinary people” began with a low opinion of *everyone* who had played a role in the Enron story, or who now held a stake in the Enron trial. Judgment, then, would more likely favor the lesser of evils than any party that had truly done right.

Lay and Skilling might actually have been able to use this moral ambiguity to their advantage. For while appearing to have been “good guys” in the Enron story was clearly a stretch for these defendants, a jury that refused to anoint *any* good guys was not necessarily sympathetic

[80] Chester McArthur Destler, “The Opposition of American Businessmen to Social Control in the Gilded Age,” *The Mississippi Valley Historical Review* 39, no. 4 (March 1953): 641-72. 645, 653.

[81] The poll was conducted by Harris Interactive Inc. Lorraine Woellert, “The-Reporter-Did-It Defense,” *Business Week* Iss. 3983 (8 May 2006), 34.

to their accusers either. The government, once again, was posing as protector of the people against corrupt businessmen. But as we saw in the post-bankruptcy hearings and in debates on reform legislation after Enron, Americans had very little faith in their self-designated federal champions. And not only was the government ethically questionable to begin with; it appeared that the Enron Task Force itself did engage, while prosecuting this case, in a number of specific activities that at least deserved scrutiny. One argument that Lay and Skilling could not make in court—at least not explicitly—was that they were the victims of prosecutorial misconduct. But expert observers suggested not only that this argument, if allowed, could have worked, but indeed that it might actually have been fair.[82]

Justice Unbound

Skilling lead lawyer Dan Petrocelli declared that "right from the inception," the government's pursuit of the Enron case had been "reckless" and "overzealous."[83] Ken Lay posted online that "only those who have seen its teeth truly grasp the arbitrary power of the Enron Task Force,"[84] and claimed that Enron prosecutors were perpetuating a "wave of terror."[85] Although Judge Lake ruled, by the opening of the trial, that the Task Force had never overstepped the law in its preparation,[86] many observers—besides the defendants themselves—thought otherwise. The prosecution, they believed, had badgered and intimidated scores of Enron managers, threatening exorbitant legal expenses and decades in jail if they did not testify against Lay and Skilling. Once they agreed, the suspicion went, these witnesses were pressured to reinterpret or

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[82] For example, about halfway through the Lay-Skilling trial, Donald Watkins (no relation to Sherron) pronounced the defendants "doomed" for "ignor[ing] political and social angles" and for failing to "put the government on trial." Watkins had represented HealthSouth CEO Richard Scrushy in a $2.7 billion fraud case in which Scrushy was acquitted on all counts. Greg Farrell, "Lawyer for Scrushy sees Skilling, Lay as 'Doomed;' Watkins says Defense Should Have Put Government on Trial," *USA Today* 7 March 2006, Money, 4B; Loren Steffy, "Count on Enron's Mess to Go On and On and On," *The Houston Chronicle* 19 May 2006, Business, 1.

[83] Simon Romero, "A Verdict Interrupted," *The New York Times* 6 July 2006, Business/Financial Desk, 1.

[84] Andrew Gumbel, "Enron, the Trial: Ken Lay Strides into Court as the Circus Hits Town," *The Independent (London)* 31 January 2006, Business, 57.

[85] Nichols, "This Enron The Big One."

[86] Mary Flood, "Judgment Day for Enron: More Than Four Years After their High-Flying Company Collapsed…," *The Houston Chronicle* 29 January 2006, 1; John R. Emshwiller, "Will Enron Probe Spawn Further Criminal Cases?; Flush With Conviction Victories, Prosecutors Have Possible Targets But May Be Set to Wind Down," *The Wall Street Journal (Eastern Edition),* 6 June 2006, C1.

even fabricate their memories. The defense also complained that the government was deflecting attention from documents showing that some of Enron's now-controversial transactions had been properly and thoroughly approved at the time[87]—by lawyers, accountants, or supervisors.

The prosecution's choice of key witnesses was also a liability. Having reached plea bargains with eight former Enron executives, most notably former CFO Andy Fastow, the government's strength was in turncoat testimony from professed criminals. These individuals, with "insider" perspective, could portray Lay and Skilling as collaborators if not masterminds, but they also prompted obvious questions of credibility. Fastow, for example, got a drastically lighter sentence than Lay and Skilling faced in exchange for his cooperation. By testifying, he stood not only to win more lenient punishment for himself, but also for his wife, who was also implicated in the LJM thefts and in fact had already served one year in jail.[88] If Fastow and other witnesses like him had lied before, to serve their own interests at the expense of others, why wouldn't they do so again? For them the ends had changed—from dizzying wealth to shortened jail time—but the means might easily be the same.

Though the government denied that it had any single "star witness,"[89] Fastow's testimony was clearly intended to be damning. He proclaimed that Skilling himself had proposed the LJM hedge fund maneuvering that put Fastow on both sides of the bargaining table—an arrangement that, as everyone knew, left supervision to Fastow's conscience alone. Skilling, supposedly, welcomed the revenues resulting from this conflict of interest and urged Fastow to set up more funds along the same lines. (In one of the trial's several colorful quotations, Skilling allegedly had said "get me as much of that juice as you can.")[90] Moreover, Fastow said Skilling knew he was

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[87] Gumbel, "Ken Lay Strides Into Court as the Circus Hits Town;" Alexei Barrionuevo and Simon Romero, "Fiery Plea By Defense in Houston," *The New York Times* 17 May 2006, Business/Financial Desk, 1.

[88] The family's house had also been firebombed by an arsonist shortly after they were indicted, though it was unclear whether the house was specifically targeted. McCarthy, "And to Your Right, The Firebombed Fastow Residence; Doran, "Houston Makes Fast Buck as Enron Trial Opens."

[89] Barrionuevo, "Who Will Steal the Enron Show?"

[90] Alexei Barrionuevo, "Enron Executive Points a Finger at Former Chiefs," *The New York Times* 8 March 2006, Business/Financial Desk, 1; Claire Poole, "Fastow: I Was a Hero at Enron," *The Daily Deal* 8 March 2006, Law and Reg. In a relatively dry trial, other favorite anecdotes include Lay allegedly "giggling" at the prospect of circumventing accounting regulations—later amended to have been more on the order of a chuckle—and Skilling apparently crying out "they're on to us!" at a meeting of senior executives, referring to reports of Enron's stock being overvalued. The latter sounds entirely plausible…given Skilling's irreverence

stealing from the company, and that Skilling condoned the theft. Yet Fastow had no proof that his stealing was ever approved, or even known. In other words, regarding the only obvious crime here, it was his word against the defendants.' Fastow was supposed to be the more trustworthy party for having admitted years of criminal deceit.

Even those former Enron employees who testified for the government without plea deals might be suspect. When Sherron Watkins, celebrated whistleblower, took the witness stand, she could not remain the "folk hero" who had appeared in congressional hearings, the *Smartest Guys in the Room* documentary, or her own memoirs. Now her motives and credibility, though perhaps not as seriously as Fastow's, were also subject to questioning. Watkins told of how she urged Ken Lay to avert the "wave of accounting scandals" that she saw coming in August 2001—but said the complacent or even clueless CEO took no action, perhaps in deference to Skilling and other corrupt underlings. Watkins had plenty of self-serving reasons to have written that famous memo, and when read in full it seems to recommend covering up accounting problems rather than fixing them. Years later, her relationship to Enron's illicit activities was no less ambiguous. But this time, in the context of trial, doubts as to Watkins' integrity would be pointed up by an "other side" seeking to discredit her testimony.

Granted immunity from prosecution, Watkins had nothing to lose by testifying, but evidently something to gain: as the defense did point out, her new career as a speaker and consultant on corporate ethics and leadership would not be well-served if the so-styled crooks who had made her famous were judged to have done nothing wrong. Moreover, it was clearer than ever that Watkins herself was not without blame in her own activities at Enron. During her testimony, Lay attorney Chip Lewis asked her why, given her $47,000 in Enron stock sales amid the company's meltdown, she had never been indicted for insider trading. Apparently with total candor, she replied that she didn't know—and even admitted that she was "wrong" to unload

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and sarcasm, especially when under fire. Indeed on the witness stand he reprised the line in a theatrical impression of a favorite *Saturday Night Live* sketch. (Andrew Dunn and Laurel Brubaker Calkins, "Witness Links Skilling to Deception," *The Philadelphia Inquirer* 23 March 2006, Business, C3; Alexei Barrionuevo, "Enron Prosecutors Have Another Key Witness, From Jail," *The New York Times* 20 March 2006, Business/Financial Desk, 1; Tim Reason, "Glisan: No Notes From Skilling Meetings," *CFO.com* 23 March 2006, Enron; Greg Farrell, "Witness: 'They're On To Us;' Former Enron Executive Says That's How Skilling Reacted to Critical Article," *USA Today* 3 March 2006, Money, 2B; Carrie Johnson, "In Enron Trial, Witnesses' Quirks and Stamina are On The Stand," *The Washington Post* 18 March 2006, Financial, D1.)

these shares because she had nonpublic information, at the time, about the company's difficulties.[91] This is precisely the definition of insider trading, and it had landed Skilling, along with many other executives, in court. Thus Watkins' remark might be taken as refreshingly honest, or as gallingly strident. For the baldness of her admission proved she was not beyond reproach, but it also proved she had absolutely no fear of punishment. Otherwise she would have equivocated more in her answer, or even offered a rehearsed defense. Perhaps even a witness like Watkins did have a "deal" with the government—albeit informal and unspoken.

The Enron Task Force, for all its time, money, and manpower, did not have a single "smoking gun" document to incriminate either Lay or Skilling on any of their charges. Otherwise, it might not have resorted to questionable tactics and compromised witnesses, of which Fastow and Watkins are only two examples. Here, then, was a missed opportunity for Lay and Skilling; a narrative—probably the only viable one—that the defendants could have originated and controlled. For the chronology that they had assembled in response to the prosecution, really an awkward set of excuses and denials, was unconvincing. As mentioned before, Lay and Skilling could not formally allege prosecutorial misconduct. But a proactive story that showed the Enron Task Force to be flawed or even unethical might have won them a mistrial, and thus a second chance, if not acquittal outright.

The defense, however, never attempted an offense. On one level, this is curious: Lay and Skilling obviously felt scapegoated, and as we have seen there were both attitudinal and factual reasons why jurors might have bought an argument that the government was out of line. Moreover, even a mistrial would, to the Enron Task Force, have been searing and likely crippling. The loss of momentum and erosion of public support—both already running low at this late date—would have severely dampened the next attempt to prosecute, even leaving aside all the additional time, effort, and replacement staff that a take-two trial would require.

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[91] Watkins has repeatedly given the same answer to the same question, including in media interviews. Melissa Block, "Whistleblower, Enron Employees Hear Verdict," Interview with Sherron Watkins, *National Public Radio* "All Things Considered," http://www.npr.org/templates/story/story.php?storyId=5431226, accessed 6 March 2010; Alexei Barrionuevo, "Warning on Enron is Recalled," *The New York Times* 16 March 2006, Business/Financial Desk, 1; Carrie Johnson, "Whistle-Blower Shifts Focus of Enron Trial," *The Washington Post* 16 March 2006, Financial, D1.

Moreover, for the government, symbolism was even more important than anything legal or logistical. When Skilling's lead attorney, Dan Petrocelli, said this was "the most important, most high-profile, most must-win case the United States has ever prosecuted,"[92] his drama was exaggerated but not outlandish. Indeed the case's political significance was probably the primary reason for such a long lapse in time between Lay and Skilling's alleged crimes and their trial date. The government, though it had brought the Enron case, actually had quite a bit to lose here. As discussed previously, public officials had not come through the Enron scandal with as righteous an image as they would have liked. The trial was the government's last chance to appear authoritative and disciplinarian toward crooked tycoons, as epitomized by Lay and Skilling, rather than cooperative or even deferent. The prosecution was vulnerable because its client of sorts, the federal government, risked being judged guilty in its own right. For them a routine legal draw would have amounted to a grave political defeat.

Though advocates for the defense, such as Petrocelli, were comfortable articulating this dynamic—"they'll do anything, and they have,"[93]—they were ultimately unwilling to trace the idea out to its broadest implications. Here may be the reason why Lay and Skilling never "put the government on trial." Robert Ferguson, in a study of high-profile trials in American history, writes that certain arguments that are never made—certain issues that are never raised—can be just as helpful in understanding the fundaments of a trial, as can those points that see hours of hot debate.[94] In other words, what is avoided speaks volumes, particularly when one speculates as to *why* neither of the opposing parties opted to bring it up. In this case, the topic carefully sidestepped was the historical relationship between Enron and the government. Specifically, in the company's dealings with regulatory agencies, Congress, and the Bush and even the Clinton administrations, there was a great deal of relevant, well-documented background information for this trial. Yet almost none of it would appear as evidence.

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[92] Teather, "Fraud Verdicts."

[93] Barrionuevo and Romero, "Fiery Plea by Defense in Houston."

[94] Ferguson, *Trial in American Life,* 16.

Why the reticence, here, of the defense team? If Lay's and Skilling's lawyers had concertedly tried to portray them as victims of a collusive government setup, then they would have confronted a "before and after" comparison—the pivotal event being Enron's bankruptcy. There was abundant proof that Enron in its heyday had garnered all manner of official approval and enjoyed many high connections. The defendants would maintain those governmental entities and figures had been fully justified in their faith and admiration for the company, and that Enron never did anything to purchase it. Certainly Enron executives did not abuse their clout by calling in policy favors or regulatory winks of any kind. Then post-scandal, the defense would have to argue, the very same people and parties had suddenly turned against their company, inventing copious allegations and complaints with no basis but a collective urge to blame someone.

Essentially, this story would have claimed that officials and institutions that had shown nothing but integrity and good judgment in their dealings with Enron before the bankruptcy, had instantly and simultaneously lost all scruples in the rush to implicate Lay and Skilling. At their vindictive will they appointed and directed the Enron Task Force, which likewise stopped at nothing. Like Fastow's supposed reverse transformation; swindler to revelator; this story would have been a hard sell. Politicians certainly have been known to abruptly denounce erstwhile friends when the latter are tainted by scandal. But people like Lay and Skilling would not draw natural empathy as suffering from such abandonment—because any loyalty they might have claimed appeared more likely due to campaign donations than to personal merit.

Why, for its part, did the prosecution avoid the topic of Enron's relationship to government? The most likely truth, on this neglected issue, was that federal agencies and public officials were too credulous and complacent both before and after Enron folded. They had bestowed too much favor on the company as long as it was convenient for them, enjoying campaign contributions and perks in exchange. (As discussions about campaign finance reform had shown, many legislators even acknowledged this "conflict of interest," if reluctantly and equivocally.) Then, indeed, when Enron became a household name and the icon for 2001 and 2002's mess of corporate scandals, the wind changed direction abruptly, and almost everyone moved their sails. Lay and Skilling did not want to provoke questions about the "before" scenario, and the prosecution just as urgently needed to gloss over the “after.” Thus although the defense did have the option of crying foul on the government, this silence was by mutual consent, and to mutual benefit.

Trials do not always serve, holistically, the communities in which they take place, nor resolve the deeper issues that give them their real meaning. Because it lacked any discussion of business-government relations, the Enron trial failed to do anything more than produce a verdict. Of course, this was its only purpose, and the American adversarial model of litigation hardly encourages, or even allows parties to present themselves in shades of gray. Still, this narrowness of debate speaks to why the Enron story that was significant in public discourse was already effectively over, and why this trial probably deserved even less attention than it got.

We saw in narratives of the Enron bankruptcy from 2001 and 2002 that Americans were deeply concerned about the connections between business fraud and politics. In order to be relevant, then, to the concerns that laypeople most frequently voiced about Enron, this trial would have had to illuminate the characters, motives and actions not only of Lay and Skilling, but also of legions of government leaders and civil servants. Thus for all the talk of how complicated the Enron trial was, the questions that most people actually wanted answered were far more complex still.

The public’s ideal trial would have had scores more defendants, hundreds more charges, thousands more witnesses. It would exceed the definition and parameters of a trial—and this is no coincidence. For connected to mistrust of the government is mistrust of its legal mechanisms. If some people feared Enron had been allowed to break the law, others pointed out, with no particular radicalism, that some of the company’s most widely denounced activities were legal. Thus perhaps both law and lawmakers had facilitated this devastating bankruptcy. If so, there was little reason to believe a trial would rectify anything. But of course, this possibility too was resolutely off the table in courtroom proceedings. It was no wonder everyone else had “moved on.”

The Verdict

Thus it was a qualified climax to which these proceedings built: a plain pronouncement on the criminal statuses and immediate futures of two individuals. After bombastic closing statements from both sides, Judge Lake delivered the jury instructions, noteworthy for including a dictum that no "ostrich" or "idiot" defense was grounds for acquittal. This legal defense has a name because it is familiar: numerous executives have used it in court, as did Standard Oil's president in his 1942 congressional testimony (like Jeff Skilling in his).[95] Not all claims of ignorance are necessarily false; for even in early forms of big business, and all the more so now, diversified and decentralized corporations are simply too large for their top executives to know all, or even most, of what goes on beneath them.

Yet Judge Lake, in the Enron case, rejected this line. His instructions stated, essentially, that even if convinced that either defendant had been unaware of wrongdoing at Enron, the jury could still convict for negligence and incompetence. Thus in a move that might be passed off as purely procedural, Lake in his official capacity rejected one of the defense's most important arguments: that Lay and Skilling had been unaware of fraud at their own company. The judge decreed that these self-styled expert-geniuses could not be acquitted based on claims of what they did not know.[96] Here was one more argument both defendants had tried, at times, that would be disallowed from the official narrative.

The jury retired to deliberate. Its members were allowed no public comment, but opinion still held that they were taking their task quite seriously. Lay's lead lawyer, Mike Ramsey, said he was "encouraged" when he heard the jury was reviewing audio and videotape.[97] This comment reflected once again the defense's assumption that all technicalities were on their side, and that a jury interested in detail would eschew matters of moral fault. Most observers and commentators, however, weighed the defendants' chances in a bigger picture—in which the prosecution's airtight presentation and Lay's botched testimony appeared much more prominent—and were all but

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[95] Louis Galambos, *The Public Image of Big Business in America, 1880-1940: A Quantitative Study in Social Change* (Baltimore: Johns Hopkins University Press, 1975), 14.

[96] Carrie Johnson, "Judge Lets Enron Jurors Consider if Defendants Turned a Blind Eye," *The Washington Post* 11 May 2006, Financial, D1.

[97] Mary Flood, "Jury Seeks 3 Exhibit Lists, Full Transcript," *The Houston Chronicle* 25 May 2006, A1.

certain of overwhelming conviction. In an indicator that would have been familiar, if hardly welcome, to Lay and Skilling themselves, futures trading markets also reflected this widespread prediction. “Lay-Skilling contracts” almost unanimously favored the odds that the two men would be found guilty, with the only real speculation pertaining to how many counts each would be convicted on.[98]

On May 25, after six days’ deliberation, the jury announced its decision: Lay was guilty on all six of his counts, and Skilling convicted of nineteen out of his own twenty-eight. Those Houstonians and former Enron employees who commented appeared satisfied: “If [the guilty verdict] hadn’t happened it would have been an open wound,” said Chris Jones, who had worked for Enron. “This brings closure for some people.”[99] (If speaking for himself, Jones might have been referring to psychological closure, but in a broader sense the trial offered narrative closure as well.) Letters to the editor in local newspapers had locals affirming Lay and Skilling’s guilt and suggesting unconventional punishments, while others condemned the impulse toward “jubilant ‘public lynching.’”[100] Although many people who had lost money in the Enron collapse were more interested in Lay and Skilling’s civil rather than criminal liability, the verdict was good news even for them. The dozens of lawsuits pending against the two men could now go forward, strengthened by this conviction, and attempt to win back some of the so-called “stolen” money.

For their part, onlookers in the business and white collar legal worlds seemed regretful—not so much that Lay and Skilling had been found guilty, but rather, that they *were* guilty. That is to say, it seemed some business leaders and defense lawyers, like Bethany McLean, had hoped for a revelation that these Enron executives had not actually done anything unethical or illegal. This signified, again, a faith in the legal process that may or may not have been warranted. At any rate, people generally agreed that prosecutors had simply presented the better case. A few murmured that the projected sentences—up to twenty-five years for men who were not young—were too harsh, designed to make an example of Lay and Skilling. This complaint was familiar

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[98] Phil Milford and David Voreacos, “Lock Them Up? Bettors Say It’s a Lock,” *The Philadelphia Inquirer* 23 May 2006, Business, D2.

[99] Morton, “Final Nails in Enron Coffin.”

[100] Jeffrey F. Smith et al., “Letters,” *Houston Chronicle* 27 May 2006, B8.

from previous high-profile business cases, such as that of 1980s junk bond financier Mike Milken. As a “symbol of greed,” Milken was sentenced to ten years after pleading guilty to offenses usually punished by a maximum of eighteen months.[101]

Overall, however, the consensus held that Enron and its top executives had been fairly judged. Not only did Lay and Skilling seem to have in fact done what they had been charged with doing; it also appeared that the trial had duly proven it. Joe Lauria of *The Business*, for example, emphasized Judge Lake’s impeccable reputation, and in a legal prognosis on the defendants’ prospects for appeal rebutted, one by one, potential arguments that the trial had been procedurally flawed.[102]

The defendants’ responses to the bad news were fairly predictable in light of their previous public statements. Lay led a prayer circle, assuring his family and supporters that all would “come through this stronger and more reliant on God,” who had “another plan,” and said he still considered his life “blessed.”[103] Skilling simply reasserted his innocence and vowed to appeal. “Obviously, I’m disappointed,” he said of the verdict, to reporters outside the courtroom “but that’s the way the system works.”[104] Both would continue on the themes of scapegoating and conspiracy, insisting that the passage of time and the cooling of tempers would ultimately show they had been honest and diligent managers.

The Enron Task Force, meanwhile, gloried in victory. “The jury has spoken,” said director Sean Berkowitz, “and they have sent an unmistakable message to boardrooms across the country that you can’t lie to shareholders, you can’t put yourself in front of your employees’ interests, and no matter how rich and powerful you are you have to play by the rules.”[105] Such panorama demonstrates once more the crucial symbolism of this trial, for the government, over

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[101] Charles R. Morris, *Money, Greed, and Risk: Why Financial Crises and Crashes Happen* (New York: Random House, 1999), 131.

[102] Joe Lauria, “Enron: The Aftermath: As US Prosecutors Celebrate Their Victory, The Chances of a Successful Appeal Look Slim Indeed,” *The Business* 28 May 2006.

[103] O’Donnell and Fetterman, “Wives, Ex-Wives Faced Trials of Their Own;” Morton, “Final Nails in Enron Coffin.”

[104] Morton, “Final Nails in Enron Coffin.”

[105] Barrionuevo, “2 Enron Chiefs Are Convicted in Fraud and Conspiracy Trial.”

others of its kind. No doubt, the Enron case was hard-fought, but it stood for something greater: an assurance that in the end, the federal government could have the final word in this embarrassing scandal.

Perhaps most telling was the Enron Task Force's tacit indication that its work was done. After the Lay-Skilling trial, government lawyers refused to say whether they were pursuing any more Enron-related indictments, whereas leading up to the trial they had seemed to warn that anyone affiliated with the company—especially if he did not cooperate with the government—had reason to fear. Some former prosecutors speculated that from now on, Enron would be the SEC's affair. One veteran, Jacob Frenkl, said more decisively: "Enron beach is closed, and not just for the summer." Yet it was widely known that dozens more former Enron executives, dwelling obscurely in vacation getaways or compounding their wealth in new jobs, were also great candidates for indictment.[106] Some of them were so seriously implicated that even under Judge Lake's stringent standards of evidentiary relevance, they became important characters in the trial's proceedings—in coveted absentia. At any rate, the government seemed to have decided that if Lay and Skilling were put away, Enron as a whole had been adequately prosecuted. This trial likely would have been but a part of a much longer-term investigation and federal court offensive had the Task Force's mandate been earnest, and purely legal.

The most illuminating comments at trial's end, however, came from the jury. Finally, after months of speculation, all parties involved in and outside of the trial could hear directly how these twelve locals interpreted the proceedings and reached their judgment. First, the panel showed it had embraced rather than balked at the technical components in the case. (Upsetting lawyers' and PR consultants' assumptions as to who focuses more on "facts," the majority of these jurors were female.) Yet if information and expertise clearly had been important to the panel, it was not for the reasons that defense lawyers would have liked. Jurors acknowledged the scope of business language and rules that the trial had required them to master.[107] Wendy Vaughan, a

[106] Emshwiller, "Will Enron Probe Spawn Further Criminal Cases?"

[107] Vikas Bajaj and Kyle Whitmire, "'I Didn't Know' Did Not Sway Houston Jury," *The New York Times* 26 May 2006, Business/Financial Desk, 1.

local business owner, said such a complex case "was like having a 2,500-piece puzzle dumped on the table." Another juror added that "not all the pieces were there."[108] But the jurors never suggested that their attention to such arcana automatically favored the defense. Learning it was simply prerequisite to making their decision—which, as it happened, did quite the opposite.

The technical knowledge and business mastery of the defendants themselves actually worked against them—though here the government's hopes were not fulfilled either. Jurors never expressed resentment or alienation toward Lay or Skilling simply for their sophistication or their elite training. Rather, it was the defendants' obvious expertise as combined with claims of ignorance that the panel could not reconcile. Often purported, by himself and others, as a genius, Skilling appeared too adept to have been fooled or blind-sided: "When he got on the stand and knew what a [technically complicated] chart was and how it worked, we knew he was involved," said elementary school principal Freddy Delgado. Likewise Lay's authoritative essence was not easily scuttled once it became inconvenient. Just as jurors observed that he attempted, disastrously, to "command the courtroom" during proceedings and "take control" of his questioning,[109] so it seemed he had always held the helm at Enron despite all claims to the contrary. It was simply impossible for the jury to imagine Lay deferring to anyone—at least, not without calculation and purpose. His rudeness and obvious frustration, even in dealing with his own attorneys, hardly helped in this regard.

For all this skepticism and exaction, however, jurors also attended seriously to the ethical and philosophical parameters of the Enron case. Delgado took Andy Fastow's testimony with a grain of salt because, he said, anyone willing to funnel stolen money through his children was not credible. Moreover, this juror said he identified as "CEO" of his school, and could not fathom being as unaccountable or as opaque as Lay and Skilling appeared.[110] Members of the jury said the defendants' stock sales spoke volumes; that "cash[ing] out at the expense of employees"

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[108] Carol Rust, "Defendants Sunk by Their Testimony," *The Washington Post* 26 May 2006, A1.

[109] *Ibid.*

[110] Mark Babineck and David Kaplan, "Enron Jurors: We Prayed, Too," *The Houston Chronicle* 27 May 2006, A1.

demonstrated poor character.[111] More than one juror remarked on the sadness of the situation, regardless of the defendants' guilt or innocence, and expressed deep disappointment in their conclusion that some of the region's most dazzling and inspiring successes had been ill-won. Hardly vengeful, administrative manager Doug Baggett regretfully pronounced that in Enron's aftermath "everyone was a loser."[112]

Fusing the trial's demands on both their technical and their moral sensibilities was the sheer weight of jurors' commitment. They spoke proudly of the sacrifices they made to perform their assignment—which had strained their intellects, their analytic faculties, and also their schedules—thoroughly and effectively. Through sixteen weeks of testimony, jurors worked nights and weekends to stay abreast of their job responsibilities. "We went home so tired we hardly knew who we were," said payroll manager Carolyn Kuchera. It was a complex kind of exhaustion, due to more than scant sleep and intense concentration. They accepted that Lay and Skilling's fates were in their hands, and insisted that they get the verdict "right the first time."[113] Such a serious charge, in the words of retiree Nancy Thomas, had "taken a whole lot out of…our hearts and our minds." [114] Jurors announced not only that they had become an emotionally bonded, interdependent "family," intimately aware of events in each other's lives, but also that they had begun every single day of the Enron proceedings by praying as a group. Being from different religious backgrounds, they took turns leading prayer, but invariably they asked for "guidance" as they sought the case's "truth."[115]

The service of the panel was clearly a point of pride, both for observers of the trial and also for its members themselves. "The Enron jury is the walking definition of 'grace under pressure,'" Houstonian Sylvia Villareal wrote to the *Houston Chronicle*. "In this often cynical and weary world, they gave us a close-up look at the dignity, wisdom and courage of ordinary

[111] Rust, "Defendants Sunk by Their Testimony."

[112] Babineck and Kaplan, ""Enron Jurors: We Prayed, Too."

[113] Rust, "Defendants Sunk by Their Testimony."

[114] Bajaj and Whitmire, "'I Didn't Know' Did Not Sway Houston Jury."

[115] Babineck and Kaplan, ""Enron Jurors: We Prayed, Too."

citizens."[116] Such a pronouncement might have been particularly assuring given that these jurors were the only people to land in the public eye, as associated with Enron, essentially through no choice of their own. Thus even if someone like putative whistleblower-heroine Sherron Watkins had in fact been out for herself all along, the truly "ordinary" Americans who had been *forced* into the Enron story could at least remain sympathetic characters. With accolades for the jury's dedication and precision came credit to the individuals, the city of Houston, and even the country as a whole that were welcome—and perhaps even, in context of the embarrassment of the Enron scandal, needed.

Yet in a final testament to the sagacity of the panel, jurors showed that they did not take themselves too seriously. For even aside from the few jokes they made to reporters after delivering the verdict, they had shown levity by coordinating their outfits on every secular holiday that fell within the trial's period: pink and red for Valentine's Day, and the signature bright plastic beads for Mardi Gras. On March 2 they appeared to have agreed on a Western theme: spotted in the jury booth were "a distinctive color-blocked Western shirt," a number of vests and bolo ties, and a "Western cut suede skirt." Most observers from out of state hadn't a clue what occasion the jurors were celebrating—and part of the amusement was in the fact that no one was allowed to ask. Those in the know confirmed it was Texas Independence Day, for which Texan children are encouraged to wear "country and Western attire" to school.[117]

Later, jurors explained that the theme dressing celebrated their friendship but also affirmed, for their audience and for themselves, that Enron must be kept in perspective. Alternate juror Gary Creakbaum revealed he had brought in a king cake on Mardi Gras, and fellow panelist Doug Baggett said that although he was initially wary of "cutesy displays" he ultimately endorsed them as "a subtle way of saying 'we still have lives.'"[118] This jury was absorbing information and considering arguments at a level of tedium that would probably be trying to anybody, yet simultaneously they brought whimsy into an extremely tense situation. Such a gift was

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[116] Jeffrey F. Smith et al., "Letters."

[117] Mary Flood, "Fancy Duds," http://blogs.chron.com/MT/mt-tb.cgi/6550, *Houston Chronicle* online, 2 March 2006. Accessed 4 December 2006.

[118] Babineck and Kaplan, ""Enron Jurors: We Prayed, Too."

necessarily unique to the panel, because such levity would have been inappropriate coming from any other party in the courtroom. Here we revisit a critical theme in democratic engagement with business scandals: the intersection of critical thinking and humor. The jury proved that “ordinary” American citizens could be all at once technically proficient, morally astute, and judiciously jovial—all while embracing a civic responsibility to determine both what had happened and what should happen next.

In sum jurors’ comments, after delivering the verdict, reflected the same dedication and proficiency that people had long attributed to them even as they sat silent. Such remarks also showed that courtroom theatrics had been performed essentially in vain; that the trial’s moralizing speeches, fury, and pleading had all been deemed simplistic and irrelevant. This did not mean, however, that jurors viewed the Enron case as strictly technical either. In other words, both the prosecution and the defense, in the Enron trial, had underestimated the jury—even though they knew it was better-educated than most. (Six jurors had college degrees, and of these two also had master’s.)[119] The government had thought it could win in a morality play, while the defendants believed that straight “facts” would always tilt the jury in their favor—or at least confuse them enough that they wouldn’t dare to convict.

Instead, this jury actually appeared to function more or less exactly as the trial system, ideally, envisions: as wise arbiter and proxy for the common people. Like anyone else who did not have a personal stake in this case, jurors could see plainly that Enron was neither “simple,” merely about “truth and lies,” nor was it prohibitively complicated. Lay and Skilling did not deserve snap moral judgment, but neither did it take multiple advanced degrees to understand what they had been doing. Daily prayer was strengthening and inspiring. Meanwhile, cake and costumes were still occasionally in order. The jury defied both the posturing government and the shrill defense by tacitly insisting that life goes on. This verdict was, impressively, a synthesis of technicality, morality, and perspective that the jury had been left to do entirely on its own.

In this sense the Enron trial succeeded in spite of itself. While it was no particular surprise that Lay and Skilling were convicted overall, the jurors’ explanations as to how and why

[119] Barrionuevo, “Enron Jury Chosen in First Day.”

they found these defendants guilty bode well for the ongoing dialogue about big business and fraud. Even though crucial issues of corporate-government relations were excluded from these proceedings, “the people” (via the jury) demonstrated that they accepted platitudes neither from executives nor from public officials. The jury as representative of the population, or their post-verdict comments as representative of their true feelings, might be more tenuous if not for the ample evidence from before, during and after the Enron scandal. Most Americans, this evidence suggested, had taken this approach toward corporate crime all along.

Robert Ferguson writes that a trial becomes an “enduring event” if it articulates an urgent broader conflict, if it promises an element of surprise, and if its issues and parties are iconographic. The Lay-Skilling trial fulfilled none of these criteria. The public rage it ostensibly sought to address—over the Enron bankruptcy specifically—had peaked years ago. To be sure, Enron stood for a broader conflict as well, but this trial featured neither the appropriate parties nor the appropriate means to play it out. While there were a few surprises during these proceedings, most notably Lay’s testimony, the arguments and even the trial’s outcome were more or less as predicted. At any rate, as we saw, many people did not stake much on either of these anyway. Finally, what icons there were here—the two defendants and perhaps Fastow and Watkins—had been iconized already. The trial made no new stars. Thus the Enron trial will not be historically significant. Indeed most people have already forgotten about it, to the extent they were ever aware of it to begin with.

One reason is Enron’s relative impact compared to the much more sweeping financial disasters that followed later in the same decade. Yet even before most Americans could anticipate something much worse still to come, the Enron trial—though not the Enron bankruptcy—vanished from consciousness almost immediately, almost completely. This was because, unlike the monumental trials in Ferguson’s study, this one did not represent a climax for the story that engendered it. The decisive moments in the Enron story had come in 2001, and this trial, especially because it was so long in coming, was a narrative afterthought. For this reason, the government could never redeem itself as thoroughly as it would have liked. For despite the satisfying repetition of the word “guilty” twenty-one times, the fact is that very few people were listening by that point. Coverage of the Enron trial was neither as thorough, nor as prominent, nor as dramatic as coverage of the Enron bankruptcy.

Once again, we see the supremacy of narrative over basic sequences of events. Here the two held a sort of standoff as to whether the Enron trial would be historically important or not. If everything that occurred that was pertinent to this corporate scandal fell on a simple timeline, with each event given some objective weight, then it might have mattered much more that Lay and Skilling were convicted and sentenced to jail. But in ordinary public perception, the narrative arc of Enron was already complete before the trial even began. Judgments had already been made not only on these two defendants, but also on their company, big business in general, and public officials in their relation thereto. In one sense, American citizens were ill-served by the Enron Task Force's decision not to pursue any other prosecutions—but in practical terms, they had not cared much even about these ones. This is not to discount the outrage that so many had felt over the Enron scandal. Instead, it is simply to acknowledge that what "closure" they got from the criminal proceedings was superficial and clumsily timed. The Lay-Skilling trial, for narrative purposes, was both too little and too late.

Kenneth L. Lay, 1942-2006: The Con Man Makes His Great Escape

It was only due to a surprise punctuation, roughly two months after the trial, that there was much reflection at all on the Enron story in total. Here was one dramatic plot twist that even the closest followers of the Enron saga could never have anticipated. On July 5 in Snowmass, Colorado, Ken Lay was reported dead of heart disease. Just 64, Lay had been thought relatively healthy, and his heart problem was previously unknown. In yet another illustration of the power of narrative, people were much more interested in this death than they had been in the trial. Thus to the extent that the lay public revisited Enron in 2006, it was due not to the government's meticulously planned prosecution, but instead to the former CEO's sudden, unceremonious exit.

Almost instantaneously, conspiracy theories hit the internet: the body that was pronounced dead at the hospital was not Lay's. He had snuck out of town, bound maybe for

South America, that haven of Nazis and other public enemies of the West.[120] Perhaps like Juliet he had feigned death, to be carried from his bed in a storm of shock and grief, and then made his escape from the morgue by paying off the night staff. President George W. Bush, actually a loyal friend all along, could have arranged for the CIA to put "Kenny Boy" in the Witness Protection Program, supplying him with a new identity and a new life. Someone even suspected that Lay had undergone plastic surgery to resemble and to replace Cuban president Fidel Castro, who had either already died or was expected to do so soon. [121] And in a final, ludicrous nod to the notion of Enron executives as "economic terrorists," Lay's face appeared imposed on Osama bin Laden's head. The former CEO would elude authorities by growing a beard, wearing a turban, and hiding in some remote cave.

The most plausible explanation, if we are to demand one, for Lay's abrupt death, is that that emotional and psychological trauma had seeped from his mind into his body. Even his most bitter detractor would have to admit that the experience of losing, all at once, his company, his career, his reputation, and many of his friends, must have been deeply upsetting for Lay. As Enron's founder, he had always taken great pride in the firm, and so, although its disgrace did not hurt him financially nearly as much as it did others, it probably did affect him emotionally to a far greater extent. He certainly said as much, as did other chief executives, particularly Skilling.

Then came the Enron trial, a protracted experience of humiliation in the very same community in which he was once a pillar. Lay also underwent a separate, individual trial immediately afterwards, and was convicted on four additional bank fraud charges.[122] Some unsympathetic commentators after Lay's death protested that he could not possibly have had a heart attack, because he had no heart. If such poetic license may be borrowed in his (qualified) defense, it is possible that Lay did have a heart, but that it had been broken. There is medical

[120] This story, discounting the fake death, was otherwise not too great a stretch after financier Robert Vesco's flight to Costa Rica in 1973. Vesco faced criminal charges, but had not yet been tried.

[121] This "theory," and many more, can be contemplated at the website of Americans for Equal Justice. In its own words, AEJ is "an organization devoted to tracking the whereabouts of the former Enron CEO:" http://kenlayisalive.org. The site also features photos and comments apparently ranging from full seriousness to blatant mockery.

[122] Judge Lake—for Lay waived his right to a jury in this matter—found that Lay had illegally used $75 million in personal loans to buy stock. (Morton, "Final Nails in Enron Coffin.")

research to the effect that emotional trauma can bring on cardiac problems; this is increasingly likely as people age. Experts also said that depression and even the high altitude of the Aspen area might have put intolerable strain on Lay's heart.[123]

The one "conspiracy theory" worth taking seriously is that of discreet, premeditated suicide. Much was made of the (relatively) favorable timing of Lay's death: after he became sure that he was bound for jail but before beginning his sentence. Also noted, his autopsy was performed inordinately quickly, and by a coroner brought in from another county who promptly pronounced that Lay had died of a heart attack, with no sign of foreign chemicals in his body. Autopsies showed, however, that Lay had had two prior heart attacks.[124] It was never publicized that he had been on heart medication, but if so, he could simply have stopped taking it. Lay may have decided, perhaps in consultation with his wife or his whole family, that he would rather die prematurely as a free man than suffer decades of imprisonment. When he reported to jail he would have left his family bereaved and disgraced, bound to handling indefinite litigation. It is harrowing, but one might imagine making such a choice given the circumstances. Though least dramatic as a "conspiracy theory," this one is actually the grimmest.

Lay had two memorial services: one in Aspen, near where he died (and where he and his wife had long maintained a home away from home), and one in Houston. The latter attracted several well-known figures in politics and business, including former Secretary of State James Baker, Reliant Energy CEO Joel Staff, and Houston Astros owner Drayton McLane. The most high-profile attendees were former president George H. W. Bush and his wife Barbara.[125] Jeff Skilling did not attend, although his wife, who had also worked with Lay for years, did.[126] (Skilling's absence may or may not have been meaningful, but at any rate it garnered no

[123] Lynn J. Cook et al., "Friends, Foes See Death as 'Tragic' End," *The Houston Chronicle* 6 July 2006, A8.

[124] Bill Hensel, Jr., and Lynn J. Cook, "Lay's Will Leaves Everything to His Wife," *The Houston Chronicle* 21 July 2006, Business, 1.

[125] Current president George W. Bush at one time would have been much obliged to come pay his respects, but in the political heat of the Enron scandal he had all but renounced Lay and Enron. Evidently Bush Jr. chose to maintain the distance he had taken from Lay; he stayed away from the funeral, and made no comment to inquiring journalists regarding the death, conceding only that he and Lay were "acquainted." (Tolson and Hedges, "Lay's Criminal Record May Vanish With His Death.")

[126] Mike Tolson et al., "Memorial Service: Ken Lay Praised and Defended by Family and Friends," *Houston Chronicle* 13 July 2006, A1.

comment.) The officiating minister, Rev. Dr. Bill Lawson, compared Lay to Martin Luther King, Jr., and to Jesus. His premise was that Lay, like King and the Messiah, was wrongly persecuted, and that like theirs, his untimely death was a profound loss to the world. Lawson averred that future generations will recognize Lay as a righteous man.[127]

Again much was made of Lay's empathy and generosity toward the less fortunate, and African-Americans in particular. "Most people will give to the museum. Most people will give to the opera. Most people will give to the ballet," said Rev. Lawson. [128] Lay, however, was a "unique philanthropist" who "was willing to reach down and touch people like me."[129] As a well-known pastor and community leader, there was no obvious reason for Lawson to position himself as *beneath* Lay, but he may have been invoking the persistent hierarchies of race. Lawson described Lay as "rich and powerful"—not as white—but it is worth noting that the three institutions he cited as opposed to those of "people like [him]" are historically some of the nation's most exclusive and culturally homogenous.

Sheila Jackson Lee also praised Lay once again. "Kenneth Lay loved the community of Houston and America," she said, "and we thank him for it."[130] A black Democrat, Rep. Lee was the only lawmaker to issue any official condolence statement. Finally, a personal anecdote rendered Lay's sanctity in the most human terms. Rev. Steve Wende of First Methodist Church recalled for mourners what one Houston courthouse maintenance worker said to him about Lay. '"When this…trial started,"' this woman supposedly remarked, '"one of the first things he did is walk over…, tell me I was doing a great job and thank me for the way I was cleaning the floors. I've been working here for years [and] he is the first man in a suit ever to look me in the eye and say anything kind."'[131]

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[127] "Ken Lay's Memorial Attracts Power Elite," http://money.cnn.com/2006/07/12/news/newsmakers/**lay**.reut/, *CNNMoney.com* 12 July 2006. Accessed 4 December 2006.

[128] Tolson and Hedges, "Lay's Criminal Record May Vanish With His Death."

[129] Tolson et al., "Memorial Service."

[130] Tolson and Hedges, "Lay's Criminal Record May Vanish With His Death."

[131] Tolson et al., "Memorial Service." Wende did not mention the woman's ethnicity, but her socioeconomic status evidently went without saying.

Lay's obituaries were less partial. Most of them simply performed the typical function of the form: announcing his death, summarizing his life, and discussing the significance of his career. Obituaries usually refrained from moralizing tirade, which though probably justified might have been in bad taste. Neither, however, did they pretend that Lay died a prosperous and upstanding self-made businessman. They frankly rehashed his descent from dazzling success to consummate shame. Further, they usually related him more broadly to the spate of corporate scandals of 2001-2003 and, occasionally, to their impact on public policy.[132] To the historian, it is noteworthy that only here, in obituaries and other articles about Ken Lay's death, did any expressions of collective Enron memory refer to the Sarbanes-Oxley Act. (None mentioned McCain-Feingold.) The fact that legislative reform went unmentioned in all other forums, including the analytically sophisticated *Smartest Guys in the Room,* suggests how little relevance and salience it had, as a legacy of Lay or Enron, for most "ordinary" Americans.

Informal treatments of Lay's death gave voice to more impulsive, less informed reactions to the news. Some who were still furious about Enron said stiffly that he had gotten what he deserved. But more commentators, in internet posts or letters to the editor, expressed anger at what they perceived as the ultimate guile.[133] Unlike the conspiracy theorists mentioned earlier, these protestors accepted that Lay was indeed dead. However, the sentiment behind their remarks was similar: that the convicted and disgraced Lay had still found a way to avoid any real accountability.

Lay made the cover of the *New York Post* on the day after his death. The report inside was titled, "LAY HIM LOW: ENRON'S CHIEF CROOK DUCKS BIG HOUSE BY DROPPING DEAD."[134] A few editorial cartoons added dark humor to this general idea. One featured Lay as an angel; wings, halo, and all; flying out of a birdcage. Recalling the bitter practical joke played on

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[132] Bethany McLean and Peter Elkind, "Death of a Disgraced Energy Salesman," *Fortune* 10 July 2006; "Kenneth Lay, founder of Enron, died on July 5th at 64," *The Economist* 6 July 2006; Shaheen Pasha, "Enron Founder Ken Lay Dies," *money.cnn.com/2006/07/05/news/newsmakers/**lay**_death/* , CNNMoney.com, 5 July 2006. Accessed 4 December 2006.

[133] Cook et al., "Friends, Foes See Death as 'Tragic' End."

[134] Marsha Kranes, "Lay Him Low: Enron's Chief Crook Ducks Big House by Dropping Dead." *New York Post* 6 July 2006.

electrical price-fixing convicts in the ‘60s, this image appears on a Monopoly game “GET OUT OF JAIL, FREE” card, which reads “THIS CARD MAY BE KEPT UNTIL NEEDED OR DEAD.”[135] Another cartoon depicts an “Enron retiree” attempting to purchase flowers in honor of the late executive; she asks the vendor what she might buy with a quarter.[136] Whether this is the most she can afford or whether this sum represents her esteem for Lay is not clear, but the two readings are not mutually exclusive. Such statements are intriguing because they are actually even colder, toward Lay, than saying he deserved to die. In effect, when expressing anger that Lay had been able to “escape,” these writers and artists suggested he deserved something *worse*. Death represented a rest and a reward that Lay had not earned.

Another cartoon shows a mortician announcing to a crowd, in bafflement, “Apparently he took it with him.”[137] One man in the disgruntled assembly is clutching a newspaper whose headline reads, “CHANCE OF $ SETTLEMENT FOR ENRON VICTIMS?” Here was where the sense of being duped went beyond the mere frustration of vengeful fantasies. For indeed, because Lay died before exercising his right to appeal the conviction, his criminal record was wiped clean per standard legal procedure. This meant that the government’s avowed plan to seize $43.5 million from Lay’s estate, as forfeiture for his crimes, was moot. To the extent that those appropriated moneys would have been used for relief of former Enron employees and shareholders, Lay did take that possible consolation with him. The aggrieved still pursued civil remedies privately, of which more will be said later.

Whether rightly or not, Lay had always been the figurehead for Enron; once basking in its glory, then cowering in its disgrace. There is an impulse to anthropomorphize the corporation, for it is so vast and diffuse that it is difficult for many to conceptualize. Thus the equation of Enron with its founder was cognitively convenient. Also, to interpret the scandal with a focus on its characters deflects attention away from the underlying systemic factors that were involved, which are more complicated and more disturbing. But if the Enron story was “about people,” then what

[135] Rex Babin for the *Sacramento Bee.*

[136] *Time* Magazine, Cagle Cartoons, week of 1-8 July 2006.

[137] “Branch” (artist), *San Antonio Express News* 2006.

did it mean that the one person who most commonly stood for the company had died? For those who had been seeking narrative closure on the Enron scandal, on the surface level, it had been granted. To the extent that Lay was Enron, Enron was gone. On a deeper level, however, Lay's death represented a permanent denial of closure. He had been convicted, but he had never confessed, never repented, and never returned money to those from whom he had "stolen." Justice can hardly be served on a criminal who has escaped. Lay's sentence was forever suspended. The verdict of "the people" would never be carried out.

Thus Skilling was the lone convict at the sentencing hearing on May 25. In the audience were not only his family and legal team, but also several former Enron employees, members of the Lay family and, remarkably, more than half of the jury that had convicted him.[138] In what has become a fairly common feature of such hearings,[139] "victims" of the offender's crimes—in this case, Enron workers and investors—were permitted to make statements. In a particularly potent example, Dawn Powers Martin, a veteran of Enron's credit union, said Skilling was a "liar, a thief and a drunk" who had cheated her and her daughter out of retirement funds. Ann Beliveaux, who had worked eighteen years for Enron, told Skilling "The worst mistake Ken Lay ever made was to hire you…and let you run the company. When things got bad, you just shoved off, because you knew what was coming."[140]

[138] Greg Farrell, "24 Years for Skilling in Enron Case; Several Fraud Victims Speak at Sentencing of Former CEO," *USA Today* 24 October 2006, Money, 1B.

[139] Robert Ferguson notes that the "victim" is increasingly visible in the trial process in recent times (*Trial in American Life,* 30, 62). He believes the rising emphasis on "victim's rights" reflects a "culture of complaint" and a collective inability to accept adversity as part of life (66-67). Further discussion of this idea will follow, when the lawsuits against Lay and Skilling are considered in context of other similar class actions. Ferguson also suggests that victim statements have come into vogue because American secular culture holds little faith in *divine* judgment; in any just, ultimate narrative in which crimes and criminals will be denounced and punished (67). Perhaps victim statements ensure that even if a defendant is acquitted, someone has been able to pronounce him guilty publicly and in person—perhaps on the premise that this is a form of punishment in itself.

[140] Farrell, "24 Years for Skilling in Enron Case." Beliveaux's statement reflected the somewhat popular view that Lay's worst fault was ignorance and naïveté; that the Enron scandal's real mastermind was Skilling, who had "duped" even his boss. This interpretation seemed to gain little traction in court, if only because Lay's lawyers did not pursue it, but for those who held this attitude it may have seemed fitting for Skilling to languish in jail after Lay died peacefully in his own home.

Skilling got twenty-four years.[141] The sentence was on the high end of initial estimates, but experts doubted it would have been any lower had Lay survived. Judge Lake also ordered Skilling to forfeit all of his assets—valued at $43 million—to a restitution fund for former Enron employees and shareholders.[142] Still maintaining his innocence and planning his appeal—for which prospects were considered dim—Skilling reported to a low-security prison in Waseca, Minnesota on December 13, 2006. He was transferred in 2008 to a facility near Littleton, Colorado, where he remains today.

It will be interesting to see what kind of public voice Skilling asserts in the future, both in the continued legal process and outside of it; both during his jail time and after his release. He has vowed to fight his charges until "the day [he dies],"[143] but whatever the result, Skilling insists—as did Lay—that history will exonerate him. Even if it does, however, he stands to win very little. He might find some relief from the slew of lawsuits he faces, but in this case it seems safe to say that money would be little consolation—even for someone like Skilling. The fallout from the Enron bankruptcy, he has said, ruined his life. It permanently ruptured his career, his family, and his fundamental well-being. Skilling has more than once expressed a wish to die—and at this point two of his close associates, Cliff Baxter and Ken Lay, have done so, although only the former was a clear suicide.

It may never be appropriate for a scholar to speculate on the psychologies of her subjects. If, however, there is any place where these men's true self-concepts and criminal status deserve my final evaluation, it is here. After his verdict was announced, one reporter asked Skilling if he would ever admit to himself that he had done something wrong, and Skilling gave a definitive no—"because I didn't." Lay, though less strident in tone, had always taken the same attitude. Obviously, any defendant who has pled innocent will deny his alleged crimes, lying and perjuring himself as necessary. But for what it is worth, I think the Enron executives in this context

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[141] Johnson, "Skilling Gets 24 Years for Fraud at Enron."

[142] Farrell, "24 Years for Skilling in Enron Case."

[143] David Litterick, "I'll Fight This Till I Die, Says Skilling[;] Former Enron Chief Protests His Innocence as he Takes The Stand," *The Daily Telegraph (London)* 11 April 2006, City, 1. At the time of this writing, Skilling's appeal is before the Supreme Court.

were telling the truth. They had committed criminal offenses, but they genuinely believed they had not. In their writings and statements both before and after the bankruptcy, both men appear to have been remarkably out of touch not only with the specifics of energy, securities, and accounting regulation, but indeed with the very conceptual meaning of rules, at least as applied to themselves and to Enron. True business visionaries, Lay and Skilling made their reputations and fortunes in defying norms and questioning arbitrary boundaries. It seems they ultimately failed to recognize which lines were there for a reason, or at least which lines could not be crossed without consequences.

Here is what makes the Enron case more textured, and more interesting, than almost anyone—on either side—would acknowledge. It is both a story of crooks who tried to cover their tracks and of successful businessmen who were scapegoated. What "really happened"—if such a statement is allowed in a study of narrative—is that Enron went down in disgrace due to a long legacy of bad decisions, some deceptive and some merely dumb. It did become a "poster child" for corporate corruption, and while the ramifications of this designation may have been unfair, the designation itself was not. The same could be said of the short-selling and "run on the bank" that Lay and Skilling so often cited. People were feverish in the rush to sell Enron stocks, or to profit from their devaluation, and though the net effect was damaging one cannot argue that the instinct behind it was wrong.

Executives like Lay and Skilling had misbehaved, and committed crimes, but they could not see it. In the end *their* incomprehension, not that of the public who came to hate them, was the problem. The fact that these men could be guilty, and unanimously judged guilty, all the while proclaiming innocence with complete honesty, illuminates conflict and confusion in the society of which defendants, prosecutors and jurors were all representatives. It speaks to Americans' simultaneous reverence and revulsion toward technical expertise and money. It shows the underside of the phenomenon of the celebrity executive. Finally, it illustrates a business culture that spurs innovation faster and faster, until it outpaces rules, even outpaces understanding. The public, and even legislators and regulators, struggle to understand what businesspeople are doing. Yet it also appears that businesspeople themselves lack crucial knowledge as to the meanings of their own actions, and also about the activities of people they supposedly manage.

Conclusion
Lerached: Justice Denied and Delayed, Again

The last year Enron made major news was 2006. And even at that time narratives of the Enron story as a whole—from its founding, to its heyday, to its collapse, through the trial and its aftermath—found only tenuous resolution. Whether he deserved to or not, Ken Lay had died, and Jeff Skilling was behind bars but still denying everything. Yet there was still one more surprise episode to this story that would cement most decisively Enron's moral ambiguity and incoherence, and foreclose any simple narrative of right and wrong in the world of business and law. Fittingly, it was a scandal, both deplorable and darkly amusing, and it involved millions of dollars and large-scale deception.

As they stated repeatedly during the trial, many aggrieved former Enron employees and shareholders were more interested in litigation against Lay and Skilling than in criminal proceedings. While sending the men to jail might have brought some satisfaction, only a successful lawsuit could actually bring hope for financial compensation. Accordingly, there were dozens of civil complaints against these and other Enron executives, as well as the company as a whole. Lead plaintiffs' counsel in the single largest class action suit, the $40 billion *Newby vs. Kenneth Lay et al.*, was Bill Lerach of Milberg Weiss LLP.[144] He was the nation's best-known litigator in cases of this kind, having made his name suing companies like AT&T, Microsoft, and Prudential, with settlements in the tens of millions.

Having railed his whole career against "corporate scam artists," Lerach was a natural for the Enron lawsuits. Because the company had become iconic for executive exploitation of investors, it would indeed have been more remarkable if Lerach, iconic himself, had *not* represented the plaintiffs. Yet as the lawsuits proceeded, it turned out that the Department of Justice, striking gold in a years-long investigation unrelated to the Enron bankruptcy, found

[144] "Lay's Meteoric Rise, Fall and Death Leave Complicated Legacy and Legal Uncertainties," *Platts Power Markets Week* 10 July 2006, 1; Nathan Koppel, "Lerach May Recover $50 Million in Fees; Trial Lawyer Who Pleaded Guilty to Kickback Scheme Due Piece of Enron Payout," *The Wall Street Journal (Eastern Edition)* 23 November 2007, B5.

evidence that Lerach's own methods of doing business were illegal. In 2006, he was indicted for his firm's payment of secret kickbacks—estimated at a total of $11.3 million—to individuals who agreed to be lead plaintiffs.[145]

Lerach did not lack for clients. Even absent a headline news corporate collapse or executives convicted of lying, he would represent any investors who had lost money from a particular stock's decline in value. As one might imagine, he had quite a large customer pool, particularly around this time. Why, then, had Lerach needed to pay people to put their names on his cases? It was a matter of expediency, which translated to money—estimated in this case at $250 million.[146] Whomever the court recognizes as lead counsel in a class-action suit of this kind stands to win a far greater share of any settlement than other firms and attorneys who join the legal push afterward. Being named lead counsel is largely a matter of getting there first, but one needs a lead plaintiff to put on even the most hastily filed complaint. Apparently, money encouraged people to commit quickly.

The individuals who suffered, as a result of Lerach's illegal payments, were certainly not the lead plaintiffs who received them. Nor did the kickbacks particularly affect other parties to the lawsuits—or, they wouldn't have, had Lerach never been caught. The issue here, according to the government's allegations, was abuse of the legal system. In other words, while Lerach's clients might not have been bothered by his misconduct, the citizenry as a whole deserved a model of litigation based on the merits of claims rather than a money-greased race to the best promise of profit.

If this premise sounds familiar, it is no surprise, for it is largely the same logic by which the Enron scandal indicated a systemic problem. The stock market is based on a necessary assumption that companies compete, with transparency, on the sole basis of real business success. Strategic misrepresentation and movements of money should not be allowed to give or maintain a favorable standing that a firm has not earned, just as they must not be permitted to

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[145] WSJ News Roundup, "Lerach Pleads Guilty in Milberg Bribe Case," *The Wall Street Journal (Eastern Edition)* 30 October 2007, B11.

[146] *Ibid.*

buy a designation as lead counsel or a disproportionate share of legal winnings. Lerach had manipulated the system in which he worked in a manner analogous to that of Lay and Skilling.

This was only one in a series of fascinating corollaries between the hapless story of Bill Lerach and those of his favorite Enron lawsuit targets. For throughout the process of his indictment, it was widely acknowledged that, just like Lay and Skilling, Lerach was for the government a coveted big name. This "superlawyer" held special symbolic significance, and his punishment was primarily intended as an example and a deterrent to others in his line of work.[147] As with Enron executives, Lerach's errant practices were probably widespread, perhaps even *de rigueur*. But if this particular man and his closest associates were caught and punished, that would serve the investigation's real purposes, which were both more and less than prosecution for kickbacks.

Lerach's public disgrace also mirrored those of Lay and Skilling in that he came to epitomize the corruption of the very ideas he held most dear. Just as Enron's smartest guys had made their lives' work in energy deregulation, trading models, and innovative management, Lerach had based his entire career on a conviction that ordinary shareholders must be able to hold even the largest and richest corporations accountable for flawed information and bad decisions. Yet in the end Lay, Skilling and Lerach all seriously discredited their long-cherished causes, and moreover defeated themselves, by engaging in lies and exploitation.

Once Lerach was in the spotlight for these charges, broader complaints about his trade, though they were hardly new, enjoyed fresh consideration. The allegation, in the cases Lerach filed, was always fraud—that shareholders had been deliberately misled as to a company's condition or earnings—but business leaders had argued for years that such lawsuits usually have no grounds but resentment and regret. To be "Lerached," as it was known, was to be sued by one's shareholders if only for having a bad quarter. Investing always entails risk, but lawsuits like

[147] Nathan Koppel, "Investigation of Milberg Lands a Pivotal Figure; Lerach Agrees to Plea, Could Go to Prison; Gains Forfeited to U.S.," *The Wall Street Journal (Eastern Edition)* 19 September 2007, B4; "Lerach 'Retires,'" *The Wall Street Journal (Eastern Edition)* 5 June 2007, A22; Carrie Johnson, "Lerach Gets Two Years in Prison for Kickbacks," *The Washington Post* 12 February 2008, D1.

these—according to corporate defendants—sought to neutralize it by winning "back" in settlements money that had been lost fair and square on the market.

Enron, of course, was not a good example in this pro-business argument, for here the stock devaluation had been a massive, scandalous bankruptcy, and the executives in question had formally been pronounced liars. But even if Lerach and others like him did ply most of their business suing companies that didn't deserve it, Enron proved that some investor lawsuits have legitimate grounds. Indeed, if one of the causes of the Enron collapse was lax regulation and a condoning federal system, then evidently shareholders could not rely on the government to protect or, much less, to recover their money in real instances of fraud. How else than by threat of lawsuits would companies be kept honest? And how else than by suing could cheated shareholders hope for any recompense? Although nobody lost livelihood or savings directly from Lerach's illegalities, they were dangerous in their implications, just like those of Lay and Skilling.

In one crucial move, however, Lerach departed from the unsavory company of Enron's two top executives: he pled guilty. Admitting to obstruction of justice and making false statements under oath, Lerach agreed to two years' imprisonment, 1,000 hours of community service, and a $250,000 fine.[148] At his sentencing, he apologized to his family and former colleagues, and he publicly admitted to acting unethically and illegally.

Still, like Enron's leaders Lerach was clearly uncomfortable in taking any real blame, and so he too indulged in some almost laughable deflections. First, he questioned the motivations of the federal prosecutors who had been investigating him for years.[149] Second, he claimed his punishment was far too harsh given the impunity of "Wall Street CEOs who line their pockets while making stupid decisions that rob shareholders and pensioners of billions of dollars."[150] Third, the very language he used to announce his wrongdoing still managed to sound almost self-righteous. "In my zeal to stand up against this kind of corporate greed over the years," Lerach wrote, "I stepped over the line."

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[148] "Lawyer Sentenced to 2 Years in Class-Action Kickback Scheme," *Associated Press* 12 February 2008.

[149] Johnson, "Lerach Gets Two Years in Prison for Kickbacks."

[150] William S. Lerach, "Loser CEOs, Raking It In," *The Washington Post* 11 November 2007, Outlook, B1.

Finally, like a child scowling under a wagging finger, Lerach had much to say about everyone else's misbehavior even though he was the one in trouble. In an op-ed column that ran in *The Washington Post* Lerach railed against executives of Citigroup, Merrill Lynch and Enron—and made only a passing nod to his own crimes.[151] The only connection he forged between corporate fraud and paying kickbacks to plaintiffs was, essentially, that the former was immeasurably worse, and that punishments should reflect that. In a more useful op-ed Lerach might have admitted that a corrupt system of "standing up to corporate greed" could leave shareholders doubly victimized: first cheated by a fraudulent company, then exploited by a self-interested lawyer. It even appeared that Lerach and his colleagues were part of a kind of ecosystem that had grown up around large corporate fraud. His livelihood had depended on executives who acted unethically, or at least who could be made to appear dishonest.

Bill Lerach's admitted crime was the last gasp of Enron narratives in the mainstream media—and not every report even linked him to Enron litigation at all. This was not a major story, and surprisingly few commentators reflected on the disturbing parallels between Lerach's illicit practices and the frauds of the executives he so vilified. Perhaps pundits and journalists did not see these connections, or perhaps they deliberately left the job of picking them apart to some future historian. At any rate, this case in point about the inherent messiness, entanglement and contestability of narrative—that is, the Enron "case"—ends in a perverse neatness. The Lerach bust as the Enron scandal's final episode is so morally symmetrical that only a boldly romantic storyteller would ever have dared make it up.

[151] *Ibid.*

Epilogue: The Financial Crisis of 2008

When future generations write about American business and economics in the early twenty-first century, Enron will all but certainly be overshadowed by the financial crisis of 2007-2009. The mortgage and credit crash that occurred later in the decade, which led to numerous bankruptcies and controversial government bailouts, had further-reaching effects by far, both economically and politically, than did Enron. For one, it caused a severe recession, which made the vagaries of globalized finance all too tangible to millions of Americans in the form of foreclosures, layoffs, devalued retirement funds and stock portfolios, and a constriction in public services—to name only some effects. The crisis, most convulsive in 2008, also took longer to play out, since the scope and the implications of numerous, interconnected news items—ranging from bad to worse— seemed unclear, for quite some time, to even the most trusted intellectual authorities. As we have seen, any event that, in the moment, registers as historic—especially if it has some quality of disaster—needs a narrative. The financial crisis presented even more an acute demand than that of Enron, and so, of course, the storytelling began. Accounts yielded thus far alternately echo, abandon, or seem entirely to ignore the still-recent bankruptcies of Enron and its ilk.

Telling the Financial Crisis

First came the explanations from on high, which proved contentious from the start. Federal officials and pundits of the national economy shrilly disagreed with each other on what had happened and what should be done. That dynamic was hardly new, although it was probably more intense, and more consequential, than prior to the recession. More distressing, these same experts had also begun contradicting *themselves*; negating their own previous statements—whether willing to admit it or not—on, for example, interest rates, lending standards, and securities ratings. The primary storytellers of the national economy, to whom everyone was looking urgently at this time, appeared to be fumbling.

By October 2008, in the throes of what was by then known generally as "the financial crisis," America's most reliable and most convincing economist may have been Kenan Thompson of Saturday Night Live's "Weekend Update." Appearing in suit and tie as an expert talking head on this fake news show, "The Fix-It Guy" never altered his story. Indeed, he did not even have one; simply screaming two syllables—*"Fix it!"*—in response to every question about the desperate state of the US economy. Thompson was hysteria embodied, with his head appearing ready to snap off his shoulders and his wild eyes close to popping out of their sockets. Imagine his deafening primal shriek in this representative exchange:

> ANCHOR: So how do we go about fixing it specifically?
> FIX-IT GUY: Take it one step at a time. Identify the problem. *Fix it!* Identify another problem. *Fix it!* Repeat as necessary, until it's all *fixed!*[1]

Prescriptions like this demonstrated roughly the level of certainty to which American audiences were by now accustomed. It was perhaps even relieving to hear one prognosticator who did not pretend to know what he was talking about. Articulating not only terror but also rage and a total lack of comprehension, the Fix-It Guy offered more catharsis than satire. And as Thompson reprised his role numerous times in late 2008 the laughter grew fainter and fainter.

Amid the turmoil and chaos of this time, cultural memory was everywhere. The busts and panics that have pockmarked the US economy for as long as there has been one were perfect prologue to the upheaval of 2008, in which every newscast seemed to convey the American Dream turning to nightmare: people losing their homes, making less money or no money, and watching one by one all elements of their professional and material security falling into question. Many adults could easily remember, as recently as the early 1990s, seeing lines of people waiting outside commercial banks or Savings & Loan offices, anxiously waiting to take out their money (and hoping that it was still there). The quip "is that a breadline or a bank?" was grimly applicable to this episode while also referring to the nation's most infamous, in which homelessness and

[1] "FIX IT," http://www.youtube.com/watch?v=yo3uxqwTxk0. Accessed 15 January 2010.

hunger, for many more people, had been no metaphor.[2] Although the 2008 recession had not, and would not, even approach the dire situation of the 1930s, comparisons to the Great Depression in particular ran rampant. Many superlative statements about the dismal state of affairs were qualified only with "…since the Great Depression." The fear, which hardly needed to be made explicit, was that current trends, particularly in banking, the stock market and the job market, if uncurbed might lead the crisis to rival or even surpass those dubious 1930s records.

As in the case of Enron and the spate of corporate scandals that had accompanied it several years prior, this crisis could have been foreseen. In some exceptional instances, and for some specific factors, it was—but foreboding economic prophecies had been unpopular, as usual. Leaders both in business and government were inclined now to portray the mortgage and credit collapses as externally motivated and utterly disarming—not unlike a terrorist attack, although the 9/11 analogy was no longer so timely. Likewise, as more and more high-risk modes of finance, and seemingly predatory (or at least careless) lending practices came to light, a set of reformed sinners—bankers, mortgage brokers, securities traders and the like—came forward for confessional interviews and book deals, just as some former Enron employees had done. Yet overall, it seemed that by 2008 nobody consciously "remembered" Enron. It did not make a ready analogy, apparently, nor did people see it as a prelude to this far worse disaster. We have seen how low the standards are, in politics and media, for making associations between fairly incomparable phenomena. Thus it seems odd that Enron was almost never mentioned in discussions of this financial disaster, which included high-profile corporate bankruptcies. In two syllables: why not?

First, the blame and the fury for the 2008 crisis found no single corporate target—or at least no consistent one. Names like Fannie Mae, Freddie Mac, Bear Stearns, Lehman Brothers, and AIG paraded through the news, and while each did arouse a flurry of indignation, none had to suffer very long before being upstaged by the next in the public theater of ignominy. Enron, by contrast, probably remains the most disgraced name in American business, even though

[2] Michael A. Bernstein, "The Contemporary American Banking Crisis in Historical Perspective," *The Journal of American History* 80, No. 4 (March 1994): 1382-96.

WorldCom's bankruptcy, which followed just a few months after Enron's, was larger—later to be outstripped, in turn, by Lehman. It seems Enron was just isolated enough, and just compelling enough, to appear in a class by itself even though that was far from the case.

Enron also stood out, as we have seen, by virtue of its colorful cast of characters and their intriguing back-stories and interrelations. "Kenny Boy," the villainous Skilling, and folk hero(ine) Sherron Watkins spent far more time under individual spotlights than did any single person in the 2008 crisis (with the possible exception, though unwarranted, of Bernie Madoff). Just as the mortgage and credit disasters, and the attendant recession, lacked an obvious corporate scapegoat, so too did they seem to lack a human face. Both of these notable absences might be attributed, at least in part, to lessons learned in 2000-2003, when so many companies and executives went from celebrity to shame. It seemed some kind of savvy had developed as to how to minimize the prominence of one's company or oneself—thus, how to stay on the margins of a narrative—even when caught in a widely publicized bankruptcy or a cycle of significant failures. Given the abundance of literature and professional advice on corporate and personal image, and specifically on how to manage it while under fire from business journalists, protestors, regulators, and politicians, this is entirely possible.

Yet whether coincidental or not, it was in some ways appropriate that the 2008 financial crisis was never pinned on any one, or even any three or four, corporations or individuals. The Enron scandal, and the others that closely followed, surely were symptomatic of certain systemic failures and of flawed paradigms of thought and valuation. But the overarching problem there; namely, inaccurate reporting of finances and assets, and condoning thereof; was fairly discrete and identifiable compared to what caused the 2008 crisis. It was also more plausibly attributable to specific firms and people who had misbehaved, and who had done so on purpose. Six years after Enron, it was not so much that crucial values were inflated, as that crucial values were indeterminate.[3] To name the two fundamental, mass misconceptions that turned US financial

[3] Daniel Gross, *Dumb Money: How Our Greatest Financial Minds Bankrupted the Nation* (New York: Free Press, 2009), 97; Lawrence Grossberg, "Modernity and Commensuration: A Reading of a Contemporary (Economic) Crisis (Department of Communication Studies, University of North Carolina, Chapel Hill, electronic): 1-56. 7-8.

markets into the proverbial house of cards by 2007: first, mortgage-backed securities and mortgage-backed financing were considered safe because home property was ostensibly a solid asset; and second, debt began to be evaluated on the basis of its salability (in the form of securities and derivatives) rather than on the traditional basis of whether the borrower would actually be able to pay it back.[4]

Granted, a certain amount of genuine uncertainty had always been part of Enron's deceptive accounting. Conversely, a certain amount of deliberate puffing, for the purpose of continued faith and continued investment, had always contributed to the mystique of those arcane financial instruments whose worth was finally impugned beginning around 2007. Overall, however, the financial crisis and recession resulted from a seemingly sudden vacuum of information, even with all potential lying aside. Into that vacuum rushed doubt, which quickly became anxiety, and then panic. Thus localized blame—politically expedient and emotionally relieving though it may be—was not only less practical, but also less possible. Perhaps this is why the financial crisis and recession of 2007-2009 cannot in sum be called a scandal, nor is it easy even to locate a central scandal or scandals *within* them.[5] It was not only insufficiently clear who had transgressed. It was also even more ambiguous than in the case of Enron what the relevant rules and norms were, and therefore how to tell when and where they had been broken. In any event, it would be difficult even to conceive of, much less to prosecute, a "scandal" in which nearly everyone who worked in the huge US financial sector was implicated.

Nevertheless, anger and blame were inevitable, and as manifested in recognizable patterns both were about as generalized as in the above "scandal" formulation—and just as unwieldy. "Banks" or despicably rich "bankers," as well as "the media" or perhaps "the business media," were as specific targets as any mass backlash ever adopted in the long term. Essentially, the allegations ran, reckless financiers had played fast and loose with ordinary Americans'

[4] Jeff Madrick, "They Didn't Regulate Enough and Still Don't," *The New York Review of Books* 5 November 2009, 54-57. 55.

[5] There were several discrete scandals associated with the 2008 crisis, including Bernie Madoff's Ponzi scheme, the heavily subsidized sale of Merrill Lynch to Bank of America, and AIG's payment of executive bonuses at the generous rates determined prior to taking bailout money from the government. However, none of these stories received as much attention, or for as long, as Enron did—if only because they occurred in context of a crisis so much more serious.

investments, and the cheering section at CNBC, along with other breathless business reporters, had continued to forecast an ever-growing market with ever-rising returns. Both groups—who were purported to have expert knowledge—must have known, or should have known, that the "bubbles" in mortgage and derivatives eventually had to burst.

The 2008 Crisis in History

Suspicion and blame toward both banks and the media had historical precedent long pre-dating the trauma of the Great Depression. Business historian Stephen Mihm has shown that during the nineteenth century—which witnessed intense controversy over currency coinage as well as a flourishing industry in counterfeit bills—Americans who mistrusted the banks often likened them to counterfeiters for the arbitrariness and spontaneity with which they seemed to open and fail, and to provide or deny. This analogy obviously denigrated bankers, but it also in some way elevated counterfeiters. Indeed, Mihm found abundant evidence that many in the US used counterfeiting, effectively, as a means of banking, insofar as it ensured liquidity in amounts small and large. Many who manufactured fake money or attempted to buy things with it had been dealt out of the formal market of real currency, perhaps because they were disabled, unemployed, or widowed. Writ large, this sometimes meant mass amounts of counterfeit functioned as "loans" to people who otherwise could not have secured them. (This practice was particularly common, and important, in the developing but highly disorganized economy of the American West). In any of these cases, counterfeiting provided where banks refused or failed, and accordingly, many counterfeiters were well-known and appreciated within their communities, and received help as needed in hiding from authorities.

By equating these two sources of capital, Americans suggested in effect that they held certain fraudsters in higher esteem than bankers, because they were more reliable both logistically and ethically.[6] Rejecting the sanctioned institutions in favor of an informal, unregulated alternative, they judged purveyors of money (or "money") by the practical effects of their activities,

[6] Stephen Mihm, *A Nation of Counterfeiters: Capitalism, Con Men, and the Making of the United States* (Cambridge: Harvard University Press, 2007), 15, 25, 51, 74, 106, 156, 158-60, 210.

not by legal status. It appeared in the late 2000s that bankers still had to prove they brought more contributions than risks to the American economy and society—and once again, they had failed.

Likewise sources of news and information have long been suspected—often with good reason—of compromised reporting on markets and finance. Many of the first journalists of early modern Europe were partial to certain business interests: companies would reward newspapers for positive stories by purchasing advertising space or by financing writers' travel. Sometimes firms even supplied their own news coverage, planting in newspapers stories that they themselves generated, to pass them off as the work of independent journalists. In the nineteenth century United States, investor columns were often used to manipulate markets. For generations, some American financial reporters got away with using inside information, collected on the job, to their own investing advantage.

Though such alliances and tricks are more easily detected today, it appears that in some form they persist. Enron had a number of external advisory committees, including journalists, who gave counsel on the company's media image for a $50,000 annual honorarium. One might well question those reporters' inclination, in that context, to write critically about the company. In the 2008 crisis, business commentators came under fire for capitalizing on the rash mood of the preceding few years. Some had been promoting stocks that they themselves owned.[7] If not an obvious offense in itself—given appropriate disclosures—these optimistic analyses certainly looked more suspicious in hindsight.

Both banks and the media were and are implicated in any mass crisis of valuation. At the peak of American counterfeiting it was barely relevant, says Stephen Mihm, whether a bank note was *real*, as long as it was accepted, as currency, in exchange for something else.[8] The same pragmatic principle might be applied to the highly complex financial instruments of the early twenty-first century: collateralized debt obligations (CDOs), for example, functioned perfectly well in capital exchanges as long as the people who handled them—usually bankers—agreed,

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[7] Charles P. Kindleberger, *Manias, Panics and Crashes: A History of Financial Crises* (Hoboken: John Wiley & Sons, 2005), 168-69.

[8] Mihm, Prologue, *Nation of Counterfeiters.*

collectively, that they held value. Likewise analysts and journalists of finance were only able to understand and report on what they saw if they shared in this estimation. (The emperor's robe was on display again.) Under such circumstances it was not important, in practical terms, to establish any objective valuation of CDOs—and this was convenient, as such calculations proved incredibly difficult.

Americans, evidently, have always understood this concept of value-by-consensus—from the willingness of so many to deal in counterfeit bills in the nineteenth century to the explosion of consumer debt via credit buying when an ever-expanding group could never realistically commit to paying their bills. Yet while people are always aware of this flexibility in valuation, they do not always welcome it. Just as shopkeepers of the nineteenth century cursed their luck upon realizing they had accepted counterfeit money, so investors felt wronged when they saw their investments shrivel during the recent mortgage and credit crises. As long as someone benefits from a misconception of value, it seems, he finds nothing objectionable. But when suffering *himself* from such a misconception, then a swindle has taken place. Moreover, he feels, others (often, experts or "the media") should have detected fraud and sounded an alarm. The 2008 crisis amounted to a mass re-valuation of financial assets; an unpleasant process of scrutiny like the one a clerk might apply to a suspicious-looking bill. In both cases, the scrutiny came too late.

Mihm suggested that amid the panics of the 1830s, so many banks were insolvent that it made little sense for officials and regulators to spend time investigating counterfeit operations. Their efforts, he argued, would have been better spent bolstering those institutions that were supposed to be—and needed to be—legitimate and reliable.[9] It does make sense, however, to focus on the illicit, even when the licit is in shambles, if one of your main objectives is to publicly reaffirm which is which. The 2008 analog is latter-day con man Bernie Madoff, an investment broker who was firmly ensconced in the financial community of New York City. Madoff ran a fairly classic Ponzi scheme, using money from new clients to pay dividends to existing ones rather than actually investing any funds in an outside market, as he purported to do. This pyramid strategy only works as long as new contributions grow exponentially—being either simply higher amounts

[9] Mihm, *Nation of Counterfeiters,* 107.

of money, or coming from an expanding pool of unsuspecting "investors." If Madoff's fraud was predictable, so was its outcome.

In some circles Madoff was accepted as the financial crisis personified. Indeed at least one scholarly analyst of contemporary political economy, Andrew Gamble, endorsed him as "the face of the financial collapse."[10] Yet it appears Madoff had been carrying on this fraud for over twenty years. Theoretically, he could have been discovered at any point—including during the boom times of the late 1990s, for example, when he probably would have seemed a random outlier rather than "the face" of anything in particular. (Indeed, the Securities and Exchange Commission [SEC] staff had tried to call attention to Madoff more than once, beginning as early as 1992, but those investigations were mis-handled).[11]

Madoff's self-promotion on his professional website read in part:

> In an era of faceless organizations owned by other equally faceless organizations, Bernard L. Madoff Investment Securities LLC harks back to an earlier era in the financial world. The owner's name is on the door. Clients know that Bernard Madoff has a personal interest in maintaining the unblemished record of value, fair-dealing, and high ethical standards that has always been the firm's hallmark.[12]

Though obviously not in the quaint sense suggested here, Madoff's practice was indeed reminiscent of an earlier era. Cheating people in the manner he did was far more in keeping with centuries-old traditions in the confidence ruse, than with the kinds of market disruptions that happened to be going on at the same time Madoff was caught. Indeed, the 2008 crisis was very much connected to "faceless organizations owned by other equally faceless organizations." Madoff had evidently sought to exploit the common alienation from huge and impersonal corporations—in this case, most likely banks and market exchanges. In this sense he was a throwback even pre-dating 1920's Ponzi. Madoff in his "personal" approach recalled the well-dressed gentleman who greeted someone in a nineteenth century city street, which was crowded with strangers, claiming to be an old friend in order to borrow (permanently, as it turned out) his

[10] Andrew Gamble, *The Spectre at the Feast: Capitalist Crisis and the Politics of Recession* (New York: Palgrave Macmillan, 2009), 100-01.

[11] Madrick, "They Didn't Regulate Enough," 57.

[12] "Madoff Securities: Quality Executions and Service Through Innovative Technology," "The Owner's Name is On The Door," http://www.webcitation.org/5d4ZNZhKv. Accessed 18 January 2010.

watch or wallet.[13] In distancing himself from the current experience of anonymity, corporate "facelessness," again Madoff was right in how he described his service, though for the wrong reasons.

Madoff's scam was arguably far less important a priority for financial regulators and even, perhaps, the Justice Department, than were the mortgage and credit disasters that seemed to be worsening every day around this time. Yet his investigation and prosecution edged out these broader crises in terms of both manpower and headlines. His case was infinitely simpler, his narrative infinitely more accessible. In context of a crisis that was hopelessly complex and involved an unmanageable number of industries, transactions, and people, Madoff was a perfect swindler in profile, complete with a pun-ready surname. Like Ken Lay and Jeff Skilling, Bernie Madoff was prosecuted with great show, in part, to reaffirm the power of the federal government over business and the financial markets at a time when such authority was subject to heightened questioning. His punishment was, politically speaking, an attempt to solve a much larger problem.

It is widely accepted that markets expand and contract in a cyclical pattern. Any kind of crisis or crash can be interpreted as a mechanism of economic self-correction—an adjustment (if drastic and painful) of valuations in, for example, the most popular securities of the moment, which brings their prices back in line with actual worth in terms of real productivity. Particularly in good times, yea-sayers tend to describe current market conditions and workings as unprecedented, and to declare that new technologies or methods have overcome whatever inefficiencies and instabilities that led to failures in the past.[14] Such analyses simultaneously explain prices and yields that only ever seem to go up, and also assure investors that they need not fear any significant change in the other direction. The housing-driven boom of the mid-2000s was no exception. In 2002 then-Federal Reserve Chairman Alan Greenspan, known to prioritize liquidity in financial markets especially through low interest rates, was knighted by Queen

[13] John F. Kasson, *Rudeness and Civility: Manners in Nineteenth-Century Urban America* (New York: Hill and Wang, 1990), 103-05.

[14] Grossberg, "Modernity and Commensuration," 23.

Elizabeth II for ensuring global "economic stability."[15] In 2004 and even again in 2006—with housing speculation and financial leverage staggering higher than ever before—Ben Bernanke (Bush's chief economic advisor turned Federal Reserve Chairman) announced there had been a "great moderation." The economy had achieved unprecedented stability, which could continue as long as inflation was contained.[16]

Thus far, such triumphal announcements of a new economic order have been wrong every time: some kind of downturn is always possible, even inevitable. Indeed, whenever someone makes a statement along those lines, he is participating in exactly the mentality that brought on the last bust, which he claims cannot happen again. Near-mythical stories of bubbles and busts date virtually as far back as formalized investment, beginning with the South Sea joint-stock disaster of 1720. It would be tempting to surmise that, rather than defying all precedent, markets and economies are doomed to play out precisely the same pattern of peaking and crashing over and over again. Amid crises like 2008's, many commentators have indeed arrived at this conclusion.

Some people proposed, as remedies, policies and regulations that actually had been on the books previously. Such suggestions only deepened the sense that history was repeating itself. For example, some suggested re-implementing the Glass-Steagall Act of 1933, which had separated commercial and investment banking activities. (Glass-Steagall was repealed in 1999). Others claimed that short-selling in stocks was at least in part to blame, and indeed this practice was temporarily banned in the United States and in some foreign countries during 2008, as applied to the stocks of certain large financial companies. The first major American controversy in short-selling had occurred in 1866, and, after the stock market crash in 1929, the practice was prohibited during "downtick" conditions—until 2007, when that rule was abandoned.

Yet it is too easy to pretend that financial markets and the global economy are the same as they have been since the eighteenth century. The perennial axiom, in economic analysis, that nothing has changed, is just as deceptively appealing in its simplicity as the obverse: the conceit

[15] Gamble, *Spectre at the Feast,* 2.

[16] Madrick, "They Didn't Regulate Enough," 56.

that everything has changed. A narrative of utter stasis is just as facile as a narrative of linear progress. Even to attempt to understand recent events, some kind of reconciliation between continuity and transformation is imperative, if difficult.

Charles Morris argues that systems of finance in the nineteenth century United States were no less complex than the ones most common today, emphasizing that railroad financing was both highly abstract and daringly speculative.[17] He also contends that Jay Gould, "master of the leveraged buy-out," anticipated the finance schemes behind the wave of corporate restructuring in the 1980s.[18] Most philosophically, Morris suggests that even the concept of money as a means of storing value, facilitating exchanges by proxy, was "but a step away from the notion of money as capital;" anticipating finance and all its elaborations.[19] Derivatives, for example, being financial instruments whose value is "derived" from other securities or contracts, might represent a far removal of actual value from that which represents it.[20] But by this reasoning perhaps derivatives are less remarkable than we might presume—with money itself having laid the necessary conceptual groundwork many centuries ago.

Still, Morris asserts that the financial cycle, which in his terms proceeds from "innovation," to "crisis," to "consolidation," now moves "breathtakingly faster" than ever before.[21] We might attribute this acceleration both to the mechanisms of trading themselves, whereby contemporary technology can facilitate in real time nearly any transaction worldwide. One degree removed from the markets, however, digital media—both in broadcast and interactive capacities—may be equally important. Insofar as any crisis manifests a shift in collective psychology, communication in the dispensing of information and analysis (however hurried or informal) is crucial. Both of these conditions, which could make any meltdown faster and more disastrous, were at play in Enron's bankruptcy as well as in the 2008 financial crisis.

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[17] Charles R. Morris, *Money, Greed, and Risk: Why Financial Crises and Crashes Happen* (New York: Random House, 1999), 4.

[18] *Ibid.,* 35, 105.

[19] *Ibid.,* 5-6.

[20] Grossberg, "Modernity and Commensuration," 16.

[21] Morris, *Money, Greed, and Risk,* 8.

Thus many narratives were imbued with perceptions of the past—whether that past was familiar, foreign, or even a repository of prudent rules and safeguards which had been unwisely scrapped. At the same time, narratives of the 2008 crisis also frequently invoked the future. Some American news commentators expressed a fear that this downturn would unseat the United States as global economic hegemon—or, if that process had already begun on other fronts, that it would hasten a descent in the world's political hierarchy. Less invested in the answer, British political scientist Andrew Gamble similarly wondered in print whether the crisis will in retrospect appear to mark "the beginning of the end" of US dominance of global markets.[22] Some progressive academics, meanwhile, welcomed it as the death knell of neoliberalism.[23] Even here, narratives that everything had changed—or would change—were at work, apparently without self-consciousness, even among the most erudite. On one hand lay the assertion that absolutely nothing new or newsworthy had occurred, and on the other hand, a variety of narratives about change: from speculation that financial markets were fundamentally different than ever before—if only because they were more volatile—to the proposition that entire paradigms of hegemony and ideology might be on the verge of upset.

Publicized recollections of past economic failures, as well as constant comparisons to the Great Depression, highlighted the challenges that recession poses for the grand narratives of capitalism and even democracy, in their treatments of the past and the future. Both capitalism and democracy rely on "optimism and progress, the sense that things can get better, and will get better."[24] If time now appeared to have doubled back on itself, it may have been because the equation of passing years with progress had been freshly exposed as imaginary. Instead of the bright destiny that had been promised, generations of innovation and renewal had brought about a crisis for which the best apparent options for meaning-making lay either in dismal comparison with the 1930s, or in frantic pronouncement that current conditions were worse than ever—or soon might be.

[22] Gamble, *Spectre at the Feast,* 139.

[23] Grossberg, "Modernity and Commensuration," 27.

[24] Gamble, *Spectre at the Feast,* 37.

The 2008 Crisis in Imagery

Unlike Enron, the financial crisis seemed not to have any single image to serve, by mass consensus, as its symbol. Some people did conjure "collapse" and "re-building,"[25] though without specific reference to the World Trade Center. The construction and demolition of buildings, indeed, has always made a convenient and accessible metaphor for establishments and failures in business. But a wide array of alternative images was also on offer, showing little uniformity in how people "saw" the blighted economy. Some favorite terms appeared to trade merely on alliteration, such as "credit crunch" and "mortgage meltdown." Temperature also held appeal, along with some promise of springtime in finance: credit markets were said to be "frozen" and then hopefully "thawing" thanks to official efforts to "heat up" the economy. Meanwhile imagery of water flowed everywhere, its meaning constantly changing shape. "Bubbles" and "flooded" conditions were bad, and might even necessitate a "bailout," which when not applied to a person thrown in jail, applies to a sinking boat. At the same time, "liquidity" was good—the desirable product of a thaw—and "TARP" (the acronymic shorthand for the 2008 Troubled Asset Relief program) might offer shelter from an economic torrent.

Imagery of natural disasters also proliferated, recalling earlier generations that seemed to consider business and markets beyond human control—and thus subject to "storms" or "earthquakes."[26] James Cayne, former CEO of Bear Stearns, said his company "ran into a hurricane." Even if he was not specifically invoking Katrina, Cayne here mimicked claims, common to many executives in his unenviable position, that they were victims of an "act of God," a "hundred-year flood," or some other cataclysm that fell arbitrarily from the sky.[27] More gravely, business columnist and commentator Daniel Gross offered a comparison with death and grief, writing in 2009 that "dozens of institutions, thousands of careers, millions of dreams, and billions

[25] *Ibid.,* 123.

[26] *Ibid.,* 43, Kindleberger, *Manias, Panics, and Crashes,* 81.

[27] Barry Ritholtz and Aaron Task, *Bailout Nation: How Greed and Easy Money Corrupted Wall Street and Shook the World Economy* (Hoboken: John Wiley & Sons, 2009), 189; Gross, *Dumb Money,* 100-01.

in value" had "died," leaving the American public to begin five discernible "stages of grief"—beginning with denial and then anger.[28]

Evocations of suicide made an even more grim, if unsurprising, analogy. At the individual level, mythologies of businessmen jumping to their deaths from Wall Street skyscrapers were resurrected, recalling a long legacy of failed entrepreneurs and other economic upstarts—and perhaps Enron's Cliff Baxter and even Ken Lay—who decided that life was not worth living humiliated, with dashed hopes and finances.[29] The concept of suicide applied also to companies, as if they were people weighing the advantages of death. While taking a "poison pill" has long denoted a company's self-destructive action to ward off hostile buyers, a firm "holding a gun to its head" appeared to have been newly coined in the late 2000s (if it is still uncommon). This was a metaphor for a huge company, probably a bank or investment functionary of some kind, persisting in financial gambles that were more and more obviously going to lead it to bankruptcy. Due to its inestimable interdependence with other financial institutions, and its significance in overall market health, such a threat of suicide was cause for widespread concern. Appearing prepared to pull the trigger on itself, the company could then manipulatively demand an emergency infusion of capital—if the government wanted it to live another day.[30]

In late 2008, the mainstream media apparently began a conscious effort to moderate its language on the financial crisis. The *Wall Street Journal* stopped using terms such as "crash" and "pandemonium," and Ali Velshi, CNN's chief business correspondent, told the *New York Times*, "We're very careful not to throw words around like 'meltdown' and 'free fall.'"[31] Such backpedaling may have been, in part, the news media's effort to mitigate its embarrassment for failing to forecast the crisis. But a cynical observer might infer it was the ultimate sign that "pandemonium" or a "free fall" definitely now applied—one knows disaster must have struck when sensationalists

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[28] Gross, *Dumb Money,* 100-01.

[29] Scott A. Sandage, *Born Losers: A History of Failure in America* (Cambridge: Harvard University Press, 2006).

[30] Lehman Brothers was said to have held the gun to its head—but in that case, the ploy failed, and the suicide accidentally went through.

[31] Gross, *Dumb Money,* 90.

start hesitating to say so. And indeed if, for example, the *Wall Street Journal* had decided that using evocative language to describe the crisis might actually contribute to the problem—perhaps by affecting investor decisions or even behavior among finance professionals—that was hardly reassuring as to the integrity or stability of the markets or the economy as a whole.

Yet as Communication Studies scholar Lawrence Grossberg has pointed out, dramatic imagery for the 2008 crisis could be useful, politically, even for opposing constituencies. Anti-capitalists could use extreme metaphors to portray the marketplace as uncontrollable and inhumane. At the same time, capitalists—especially the most gluttonous ones—might conjure an unprecedented emergency as an excuse to channel more money, including public funds, toward corporations.[32] It seems both strategies were employed, although critics on the left were more willing to emphasize human actions and motives over the hurricanes, floods, and so on, to which business apologists frequently alluded.

As in the case of Enron, people launched numerous attacks on the characters of executives—in 2008, usually bankers. But more noticeable than the usual allegations of "evil," "greed," and "corruption," were references to benign human failings. Insofar as *people* were to blame for this financial crisis, it was more likely because they were "stupid," "crazy," or "delusional." Such derogations applied both to the world of business and to the journalists who covered it. Daniel Gross, for example, boldly titled his book on the subject *Dumb Money*. His attribution of "dumb"-ness countered the era, just ended, of Greenspan's "cheap money," but more obviously the business network CNBC's program "Mad Money," where host Jim Cramer plugged all manner of mad investments, typically with flailing arms and strained throat.

As to the bankers, Barry Ritholtz offered the explanation of "dot-com penis envy." He claimed that old, East Coast bank executives had witnessed the instantaneous wealth and renown of young, California internet-based startups in the 1990s and become jealous. According to Ritholtz, aging men out to prove that they could still perform devised the convoluted instruments of finance that gained most traction during the 2000s: metaphorical "Viagra."[33] This

[32] Grossberg, "Modernity and Commensuration," 4-5.

[33] Ritholtz and Task, *Bailout Nation,* 196-97.

analogy is elaborate enough to become tiresome, but, sexual imagery aside, it may hold some merit. Ritholtz's choice to embarrass bankers in such a way, when he did not have to, speaks to the popular view of those businessmen responsible for the 2008 crisis as bumbling rather than inherently bad.

Of course, to describe the financial crisis as a byproduct of a contest in manhood is also to make much of gender, even without admitting it. Ritholtz's theory of "dot-com penis envy" is only one recent example in a long line of narratives about brash machismo in business failures, with Enron being no exception. Such notions not only erase the culpability of certain women; also, as we have seen, they can serve to place absurd expectations on women—sometimes even the same ones—as ad hoc moral authorities in a culture from which they are traditionally considered outsiders. The 2008 crisis did not bring with it any prominent female whistleblowers, nor, for that matter, any infamous female finance executives. Thus for the most part, unlike with Enron, the gendered language establishing credit—and more commonly, blame—was specific only to men, remaining abstract as to the other (implicitly absent) sex.

Ready or Not: The Role of the Feds

Also subject to blame and derision for the 2008 financial crisis were regulators and the federal government. Recessions almost always imperil the seats of incumbent officeholders,[34] signifying a belief that those in charge could and should have prevented an economic downturn—or at least a generalized irritation with the status quo. Such frustration and backlash are not necessarily unjustified. As in the case of the Enron bankruptcy, regulatory agencies, Congress, and even the President did deserve scrutiny as to how their actions and inactions may have facilitated or exacerbated the financial crisis. Here we will begin with the crisis' possible regulatory antecedents, less visible and less interesting to lay Americans because they occurred behind the (media) scenes during generally good economic times. Next we will examine the government response to the "meltdown" of 2008, which if anything was all too compelling to its public audience.

[34] Gamble, *Spectre at the Feast,* 102.

Through certain identifiable actions, the government and some regulators appear in retrospect to have courted disaster in the name of continued economic growth—or at least an appearance thereof. Historically low interest rates from 2001-2004 made borrowing cheaper than ever, enabling more and more people considered "subprime" borrowers (based on their lower likelihood of fully repaying) to secure loans anyway, including mortgages. Then-Federal Reserve Chairman Alan Greenspan has been blamed for keeping interest rates so low during this time, with allegations sometimes to the effect that he did so to win a popularity contest.[35] (If so, his ploy largely worked). Meanwhile the SEC moved in 2004 to allow major investment banks to leverage at heightened degrees of risk.[36] In a related action—done on request and problematic for similar reasons—it also waived rules for these banks' holding reserves, meaning they were no longer required to keep as much cash on hand.[37] Overall, banks may have been allowed to grow too large, too complex, and too involved in too many different activities to be effectively managed.[38]

At least as important as such activities, which might be considered foolhardy if not malicious, were arguable sins of omission.[39] The Federal Reserve had the authority to scrutinize various forms of mortgage risk, but declined, even after one of its governors urged that it do so during the early 2000s. Likewise the SEC could have researched securities firms' investments—investments of unprecedented levels of borrowed money—and yet did not do so.[40] As with the embarrassing mismanagement of warnings about Bernie Madoff, here the problem might not be incompetence, laziness, or corruption at the SEC, so much as its chronic understaffing and lack of money. (Pay and prestige at federal regulatory agencies overall have been eroding since the 1980s, though the root problem here—chronic under-funding—is probably not an accident.) Finally, calls to regulate derivatives trading, beginning in the late 1990s, fell on deaf ears. The classically free-market justification for such permissiveness, notably propounded by then-deputy

[35] E.g. see Ritholtz and Task, *Bailout Nation,* 58-60, 67.

[36] Madrick, "They Didn't Regulate Enough," 55.

[37] Gross, *Dumb Money,* 44-45.

[38] Ritholtz and Task, *Bailout Nation,* 135-36.

[39] *Ibid.,* 102.

[40] Madrick, "They Didn't Regulate Enough," 55.

Treasury Secretary Lawrence Summers, was that derivatives reduced risk within markets and that regulating them would limit investors' strategic options.[41]

In yet another illustration of the ambiguous relationship between economic past and present, the accounting system known as "mark-to-market" has made a series of ironic appearances in the financial dramas of the last several decades. It is like a character in some epic soap opera, which might first appear peripheral to the plot, and then once established as significant shows up in some episodes to intervene for the good, and in other episodes to provoke unexpected conflicts. Enron and the financial crisis of 2008 provide the best contrast along these lines.

The feature of mark-to-market most salient in the Enron bankruptcy was that it allows the projected revenues from a given contract to be reported immediately upon its signing, even when no money has yet come in the door. Having received permission from the SEC to use mark-to-market in more and more of its lines of business, Enron grossly abused the system by booking unrealistically high "predicted" profits, and even by altering those predictions—always in the upward direction—whenever the company needed to report higher earnings in a pinch. After the Enron bankruptcy, many observers outside the finance and regulatory communities concluded that mark-to-market was a key enabler of the company's fraud, and that the SEC should be much stricter about this practice, if not ban it entirely.

Yet the other most important component of mark-to-market, which Enron invoked to justify using the system but then abrogated in practice, is that it requires a company or bank to update the valuation of its assets daily according to their "market" values. The advantage here—not necessarily to the company's balance sheets, but for the transparency of its financial statements and thereby the reliability of its own market valuation—is that marked-to-market books should more accurately reflect assets' actual worth. Those figures fluctuate, sometimes widely. Therefore the more information available to everyone outside the company, as to how such fluctuations affect its financial position, the better. "Everyone," here, includes investors, lenders, and the government.

[41] *Ibid.*

Mark-to-market might well have mitigated or even pre-empted the Savings and Loan crisis. Because the S&Ls were not required to report the market values of the mortgages that they owned, they were able to hide their insolvency (tens of billions of dollars in debt) for many years, during which the problem only worsened.[42] None other than Jeff Skilling lauded this wisdom in the system, citing the S&Ls. These firms were collapsing right and left at exactly the time he called mark-to-market accounting at Enron a "lay-my-body-across-the-tracks" priority.[43] Indeed he was probably right that if used honestly and correctly, mark-to-market would also have been prudent for Enron—in revealing its dire financial straits much earlier, that is, and thereby keeping its stock price down.

Likewise it appears that mark-to-market accounting, more diligently and more consistently applied, might have helped to avoid such a drastic financial crisis in 2008. Because so many banks find ways around marking their assets to market, including moving more and more of their transactions off balance sheets, they can pretend—or even believe—that their finances are much sturdier than they are.[44] Not surprisingly, this can include assets like collateralized debt obligations and other forms of derivatives. All of this is to say that even an obscure (to the general public) regulatory parameter, such as a method of accounting, can instantiate the zigzagging and doubling back of "progress" in capitalism.

Charles Morris has pointed out that governments and regulators usually respond to a financial crisis only after it peaks, and compares such efforts to "sweeping up broken glass."[45] This observation neither accounts for, nor rules out, the possibility that regulatory reaction—even if belated and imperfect—might actually help to define the crisis' worst point. That is to say, perhaps intervention seems always to have come at the most desperate possible time precisely because that very intervention helped ensure the situation would not decline even further. Even if this premise is impossible to prove, *perceptions* of what is, or was, the peak of a crisis, are crucial

[42] Morris, *Money, Greed, and Risk,* 86.

[43] Bethany McLean and Peter Elkind, *The Smartest Guys in the Room: The Amazing Rise and Scandalous Fall of Enron* (New York: Portfolio, 2003), 39.

[44] Kindleberger, *Manias, Panics, and Crashes,* 193-94.

[45] Morris, *Money, Greed, and Risk,* 256-58.

and can be self-realizing. If the state tends to intervene when collective panic compels it to, then by consensus the “worst time” has thereby been designated. For historical purposes it may not even matter much whether this consensus was right.

But even assuming that regulatory intervention does occur only at the most desperate eleventh hour, and furthermore that public officials deserve blame for this bad habit, it is far from clear what good options they have in addressing economic crisis and recession. As finance historians observe, whenever self-appointed canaries sing warnings during times of market euphoria, they are ignored. Numerous examples of such failed admonitions begin in eighteenth century England and continue through the statement of a Federal Reserve founder in February 1929 that US stock prices were inflated, and then Greenspan’s testimony to “irrational exuberance” in the securities market in 1996.[46] Meanwhile there are no readily apparent instances in which warnings against speculation or inflated values have actually worked. Some economists did raise concerns about mortgage finance and derivatives in the mid-2000s. But in this case, as in those that came before, people who were making staggering sums at great speed simply did not want to hear of any “bubble”—not even the minority who got off of it early and quietly, signifying they may have anticipated what was to come.

When it did come, in 2008, government and regulators became much more visible, though not necessarily in a way that either would have wished. Suddenly, and even more pronouncedly than after the Enron bankruptcy, business and finance rules and laws were in mainstream news reports, whether in stories about what had gone wrong, or in proposals as to what should be done next. Likewise once the crisis had hit, state intervention, for better or worse, necessarily shifted from a proactive to a reactive pattern. The most prominent and most controversial element in this reaction was the multi-faceted effort to relieve markets by way of government-granted liquidity. In other words, in many instances and in various forms, the public sector gave money—in great amounts—to the private sector.

Bailouts of all kinds were intensely unpopular with the public in 2008, as they almost always are. The concept of bailing out stands in square opposition to the prized American myth of

[46] Kindleberger, *Manias, Panics, and Crashes,* 78-80.

pure meritocracy. In a culture so steeped in the ethic that one earns success and its spoils through hard work, arbitrary relief for people or companies who have made bad decisions and failed is predictably anathema. “None of *us*,” the rationale goes, “can expect to be rescued from the consequences of our own mistakes—so why should they?”[47] Yet this sentiment does not necessarily rely on any generalized disdain for the coddled executive. Many Americans who themselves worked in finance were also offended by the government’s gifts of “relief.” The classic Wall Street adage, “eat what you kill,” exemplifies the pride that most of these people take in their brutal competition in intelligence and initiative. That contest alone is supposed to govern who among them rises and who falls.

The government itself also appears tarnished after bailing out a floundering bank or corporation. To begin with, politicians who like to position themselves against greedy businessmen find it hard to justify giving those people money. Moreover, official decisions as to who receives government capital, and how much, are often suspect, and indeed some legislators had business connections that made their support of 2008 bailout measures questionable in motive. This is not even to mention the staggering cost, to the public, of granting such aid. Bailouts from the 2008 crisis, by February of the following year, had cost over $14 trillion, making this the largest single federal expenditure in United States history. [48]

In September 2008 House Speaker Nancy Pelosi attempted to re-christen the “Wall Street bailout” as a “buy-in.” Apparently she hoped that cheerier phrasing could gloss over the glaring fact that taxpayers had by no means consented to what they were buying in *to*. Here Pelosi’s equivocation echoed previous generations’ justification for corporate bailouts. Though “subsidy” has long represented a primary component of state intervention in business, it has proven more palatable than “giveaway.” The latter “denotes a fundamentally passive role;”[49]

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[47] The notion that the United States’ “ownership society” was being undermined reflected, on its face, the insistence that some of its most privileged members did not have to own their actions—while on a more subtle level it also suggested, especially amid the massive wave of foreclosed houses, that ownership even in its most material sense was no longer straightforward.

[48] Some of these funds would eventually be returned, but that point was easily lost on the bailouts’ critics. Ritholtz and Task, *Bailout Nation,* 2-3; Bernstein, “Contemporary American Banking Crisis,” 1388.

[49] David Vogel, “Why Businessmen Distrust Their State: The Political Consciousness of Corporate Executives,” *British Journal of Political Science* 8, No. 1 (January 1978): 45-78. 57.

despised probably for the same reasons as any form of government dole, including citizens' welfare programs. "Bailout" may be an even more perturbing term because it is not passive, but unflatteringly active. In this image the government takes immediate and drastic measures to keep afloat a corporate ship which, if left to the pitiless seas of the market, probably would have gone under.

President George W. Bush's awkward attempts to defend TARP led him to one faltering explanation of the mortgage crisis: "All this—everybody got kind of *interwoven*" (emphasis mine).[50] Particularly in the market of unbridled competition that Bush and his political forbears typically advocated, self-interested participants are supposed to gain or lose based solely on the merits of their own individual decisions. Bush here not only admitted how "interwoven" financial firms were with mortgage markets, but even more dubiously, he tried to use that to justify interweaving taxpayers ever more tightly with these companies—at a time when they were less attractive partners than ever. In this sense, it is ironic whenever bailouts happen under free market proponents like Bush.

But attributing such instances, which are actually quite common,[51] to emergency necessity, or some kind of "groupthink," ignores the longstanding amity and mutual support between politicians—especially Republicans—and business. It should come as no surprise that just as a large corporate donor might bail out a legislator in danger of losing his seat, so federal leaders appear inclined to help out their partners in the business world when they risk being dealt out of a lucrative market. It is by this reasoning that Enron requested and may even have expected a federal bailout in 2001. There was no widespread economic "meltdown" in progress at that time, nor did the company's bankruptcy bring on or even likely contribute to much of a recession. Thus Enron could not assume that any "groupthink" or serious concern of widespread economic havoc would work in its favor. The company's leaders did argue that Enron was so financially interconnected with other firms and larger markets than allowing it to go bankrupt

[50] President, Address. "Remarks on the National Economy and a Question-and-Answer Session in Chantilly, Virginia," *Weekly Compilation of Presidential Documents* (GPO Access: frwais.access.gpo.gov) (week ending 10 October 2008) 7 October 2008.

[51] Ritholtz and Task, *Bailout Nation,* 176.

would be foolish—this is more or less the same "too big to fail" rationale that proved so crucial in 2008. But it is more likely, if and when Enron executives were honest with themselves, that they believed the government, headed by their longtime friend Bush, might bail them out simply because in political terms the company deserved it. Cynically speaking, they were probably right. By the time they asked the Bush administration for aid, however, it was already too dangerous in terms of public perception for the government to be seen helping Enron.

American business history has witnessed numerous corporate bailouts, including some fairly large ones, that happened relatively quietly and without much public objection (or public notice) although the funds came from taxpayers. This includes much of the Savings and Loan industry, and major financial institutions such as Continental Illinois bank in 1984. There was also a long pattern of financial assistance from the Federal Reserve to the banking sector during the early 1990s, which helped the latter recover from losses in real estate markets, and debt from foreign loans and leveraged buyouts.[52] In *Bailout Nation* (2009), Barry Ritholtz pronounced with resignation that "the present system has lost its auto-correcting mechanism," insisting that heretofore (the turning point is unspecified) companies were left to reap the harvests of their own stupidity.[53] Yet even if financial markets have no ability to self-correct today, it is difficult to say with certainty that they ever did in the past. The problem is that this hypothetical experiment—measuring what happens when the government intervenes in a financial crisis, as opposed to letting it either "auto-correct," or not—has no control group. That is to say, crises have almost never been allowed to take their natural course. Panic and public outcry have in nearly every instance moved public officials to action, whether their efforts ultimately proved helpful or not.[54]

At any rate, some bankruptcies and market failures really are more damaging than others, even to the point where the costs of bailout are outweighed, at least in economic terms, by the benefits.[55] When Lehman Brothers—unlike Fannie Mae, Freddie Mac, and Bear Stearns—

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[52] Morris, *Money, Greed, and Risk,* 233.

[53] Ritholtz and Task, *Bailout Nation,* 4-5, 21-22.

[54] Kindleberger, *Manias, Panics, and Crashes,* 181; Ritholtz and Task, *Bailout Nation,* 40.

[55] Morris, *Money, Greed, and Risk,* 244.

was denied government aid and allowed to fail, the consequences were not trivial. Although the company evidently was not too big to fail, it was too big to fail without extensive collateral impact. The stock market took a nosedive the following day, and credit markets came to a near total halt. Lenders worldwide who had made loans to Lehman were unable to recover those funds, or even to ascertain they would ever be repaid. Mortgage-backed assets no longer qualified as good collateral for lending. Money markets stopped loaning to investment banks. Financial journalist Jeff Madrick called it a "modern bank run."[56]

Why didn't Lehman Brothers receive a bailout? The technical explanation was that private investors had by this time adequately protected themselves from the worst possible outcome of a Lehman bankruptcy.[57] The political explanation, however, was "bailout fatigue"—that the American public simply would not tolerate another huge infusion of taxpayer money to a company that appeared to have erred. Here we revisit the reason that government aid to corporations was so distasteful in a society that prized self-reliance and personal ownership. More generally speaking, however, the vehement resistance to bailouts—not only among the public but also evident in the discomfort of politicians—reveals a dissonance not only in culture but also in narrative.

In a satisfying story, characters act in certain ways and then experience logical consequences for those actions. Effects are coherently related to causes. Events are organized in patterns of progression that make sense. Sudden interference from above is certainly not unheard of in the canon of familiar narratives—and it may be comforting when a deity, fairy godmother, or long-lost rich uncle appears out of nowhere to rescue a hapless and deserving protagonist. Here a moral is still possible, to the effect that virtue is rewarded. But suppose the story begins with a generally unsympathetic character or ensemble (in 2008, the financial industry) making a series of foolish decisions in the name of greed and bravado. Imagine the rescuer as another unpopular, if familiar, entity (the federal government), who saves the day not out of pure benevolence, but partly out of calculated self-interest. Here the narrative loses its

[56] Madrick, "They Didn't Regulate Enough," 55-56.

[57] *Ibid.,* 55.

symmetry. The magical intervention is unjustified, and no moral applies. Back in the concrete world of policymaking, the most common practical argument against bailouts is in fact called “moral hazard”—the risk that people and companies will take excessive risk if they have reason to believe the government will protect them. This term simultaneously seems to refer to market imbalance and to narrative injustice.

Even the narratives coming directly from parties involved in a bailout are compromised at best. First, the recipients of aid hardly want to acknowledge how desperate a plight they have brought upon themselves—hence the “act of God” analogy so often invoked when executives face bankruptcy. Bailers-out are equally reluctant to emphasize the dire situation that compelled them to act—although paradoxically, to defend their intervention they have to do exactly that. Here they find themselves expounding upon the stupidity or negligence of the very people they decided to help.

Even a narrative of redemption rings hollow in context of a bailout, no matter how familiar and how popular the notion of betterment through adversity. Some politicians attempted to take this line, but it was especially popular with bailout beneficiaries. General Motors most notably pushed the claim that after receiving federal assistance the company would emerge stronger than ever. Yet it seems incongruous that a person or corporation would learn much of anything, to its own improvement, by receiving a sudden and arbitrary boon. Here was the era’s most thorough bastardization of the American “bootstraps” narrative: a corporation promising to remake itself, with great discipline and inspiration, through receiving entirely unearned money from the federal government. Even if the lesson supposedly learned was “how not to end up a candidate for bailout again,” that was hardly flattering to the company as character.

Bailout narratives’ awkward portrayal of personal actions and their consequences often pivoted on the issue of executive compensation. If liberty and independence go hand in hand in the grandest American narratives, so too did they seem inextricable in political logics of how corporations should proceed after taking government money. Having proven their dependency, it seemed, the companies had forfeited their liberty—the most tangible case in point being the salaries of those same people whose leadership necessitated bailout in the first place. Americans have consistently expressed some distaste, if not disgust, at the dazzling incomes of many in the business world, with scandals like Enron's typically making complaints even louder. In the 2008 crisis, irate taxpayers saw generous pay within bailed out firms—especially retention bonuses as in the most infamous case of AIG—as especially egregious. They seemed to be rewards for a job ill done. But even the companies themselves appeared to recognize that taking bailout funds meant sacrificing some of their autonomy. Most recipients of TARP money and other government aid began paying it back as soon as (perhaps even sooner than) they were able, partly in order to regain absolute authority over compensation policies.

Legislators and both Presidents Bush and Obama demonstrated with enthusiasm that they agreed: bailed out corporations should not be able to maintain lavish pay packages. Yet even as they promised not to funnel public money into the personal accounts of "failed executives" (this was always the favorite term, perhaps because it showed disapproval without being too accusatory), officials waffled when it came to actually mandating salary caps. Predictably, the major argument against such limits was that they would interfere with market competition—in this case, between firms over financial talent. Yet as much as bailouts had undermined businessmen's image as strong, savvy, and independent, the reticence to cap executive compensation, at the rescued firms, may have curbed that damage. To allow generous salaries to flow unabated was to begin resuscitating an important fiction: that the people who move money around American markets are an extraordinary elite, living and working in their own insulated, mystical world.

To Grasp the Crisis

Once again, the challenge of understanding the problem at hand was paramount, in narrative and in politics. Even more than in the case of Enron, the layers of complexity seemed only to multiply the further one investigated the 2008 crisis, with deciphering highly convoluted systems of finance and trading bring only the first of many challenges. The market euphoria leading in to 2007 may actually have required a sort of collective reverence for that which defied straightforward explanation. Part of the wonder of the bubble was that most people did not understand how money was being made and exchanged.[58] As we have seen in many cases, including Enron's, the business people involved rarely mind this dynamic until called upon by skeptics to do the explaining themselves.

Yet because finance is so complex, "simplicity…amounts to concealment."[59] In other words, to give a pat rundown of how financial trading worked by the mid-2000s would almost necessarily have been evasive, if not deliberately dishonest. Yet the opposite approach—the so-called "data dump" in which those in the know simply deposit on the public unmanageable amounts of raw information—is equally vague even in all its precision. When people demand "just the facts" or "all the facts" they don't actually want either option: that is, neither the reductive platitude nor the technical, comprehensive report. What they really seek is a narrative.[60] That narrative must balance accessibility with whatever level of specificity its audience will find convincing, but not overwhelming. All of these standards are variable according to whom the narrative is for. Particularly in an event like the financial crisis of 2008 the task of meaning-making, for the purpose of understanding, was as difficult as it was urgent.

Several key features of the "before" scenario—that is, the landscape of the market prior to crisis—posed special challenges in politicized arcana and opacity. Some accounts of how the bubble had come to be effectively blamed the same public who couldn't understand the crisis now, for not understanding its antecedents before. Laypeople's "financial illiteracy" was sometimes cited to explain why so many had committed to mortgages that, as now seemed obvious, they would never be able to pay.[61] The Savings and Loan crisis had previously been analyzed along similar lines:[62] essentially, uninformed consumers had gotten in over their heads and, implicitly, should have known better. Yet this explanation largely glossed over the responsibility of lenders—in 2008, mortgage brokers were the group most relevant—despite

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[58] Gamble, *Spectre at the Feast,* 2.

[59] Morris, *Money, Greed, and Risk,* 249.

[60] For some broadly applied iterations of this idea, see Arthur C. Danto, *Narration and Knowledge* (New York: Columbia University Press, 2007).

[61] Ritholtz and Task, *Bailout Nation,* 287.

[62] Kindleberger, *Manias, Panics, and Crashes,* 149.

abundant evidence that they had consciously lowered their standards for borrowers (even courting particularly vulnerable ones), structured payback schedules with deliberate obfuscation, and generally misled people into signing who clearly should not have. Most likely the mortgage crisis arose out of both borrowers' ignorance and lenders' unscrupulousness.

Hovering over both sides of these ill-advised deals, however, was a larger broken promise. American business people and consumers perennially re-tell this promise, and even seem to believe it: that in the land of opportunity, an honest worker and his or her family can own their home. It need not be lavish or located anywhere glamorous, but the stability, autonomy and pride associated with homeownership has become part of even a modest conception of an adult's social entitlement. This does not necessarily seem unreasonable—particularly in light of the government's consistent promotion of home-buying, including initiatives to make it financially easier, which date back to the New Deal era. Indeed the very term "subprime," as used to describe borrowers who likely could not pay back their loans, may have continued this campaign via euphemism. It was an "egalitarian and inclusive" label that welcomed a new population into mortgaging; one that very much wanted in.

For the financial industry, the term "subprime" was a means of perpetuating the housing boom.[63] Thereafter it appeared careless mortgage lenders had knowingly peddled a fantasy to those who could least afford it—and it mattered little what these people were called as more and more lost their homes to foreclosure. The genuine sadness of the mortgage crisis was that it exposed the traditional dream (or, the common goal) of homeownership, as categorically out of reach for many Americans. When crisis gave way to recession, analogous promises of opportunity and security for many more people—including most notably the promise of work—likewise fell into the realm of vain hopes. The realm of guarantees, meanwhile, looked sparser than ever. Overall, any lack of understanding in the "mortgage meltdown" and its consequences might be blamed at least as much on trends in business and policy that had encouraged false expectations, as on the inexpert public that had all too readily adopted them.

[63] Gamble, *Spectre at the Feast,* 20-21.

Meanwhile the financial markets had securitized debts and begun trading derivatives from these mortgages and other consumer transactions. And beyond the sheer complexity of contemporary financial instruments were the mechanisms of decision-making among those who dealt with them. Today most securities are owned and traded not directly by lay individuals, but instead by institutional investors, including mutual, hedge, and pension funds; money markets; and of course financial firms. This means "ordinary people" never do or even see most calculations underlying the buying and selling of, for example, stocks; professionals primarily now make such decisions. Yet the professionals appeared, in 2008, to have had no specialized knowledge (or at least, not enough) to protect the rest of us from the market's worst.[64] If finance experts evidently did not know what they were doing, then who *could* assure the public they understood market functions—let alone knew how to guard against risk? As the Fix-It Guy demonstrated, the same questioning applied at this time to economists and pundits. It was a crisis in the concept of expertise.

Any proposed solution, during this financial tumult, would have to make sense to everyone lest it prove a political nonstarter—not to mention a logistical nightmare.[65] Though a certain degree of opacity is often desirable for leaders in business and government, the financial emergency of 2008, at least for purposes of securing relief, was not one of those times. Yet if the problem had boggled the popular mind, so, it seemed, did the solution. Occurring under both Bush and Obama, government relief initiatives and corporate bailouts occasioned by the 2008 crisis, as represented in numbers, seemed unfathomable and therefore alienating. The Federal Reserve spent $5.255 trillion; the Federal Deposit Insurance Corporation (FDIC), $1.788 trillion; the Treasury Department, $1.15 trillion; and the Federal Housing Administration (FHA), $300 billion.[66] Viewed from the receiving end—to name just a few prominent beneficiaries—Citigroup got over $300 billion; AIG, at least $173 billion; and the nation's nine largest banks received $125

[64] Morris, *Money, Greed, and Risk,* 138, 140.

[65] Ritholtz and Task, *Bailout Nation,* 296.

[66] *Ibid.,* 181-82.

billion as a group. A set of smaller banks shared the same amount in government funds.[67] Like the incomprehensible vastness of the corporation—highlighted during the Enron scandal as an obstacle to accountability—the sums of money that major American companies processed, and now supposedly required to stay afloat, lay beyond most people's ability to meaningfully conceive. The only straightforward interpretation of these dollar amounts was that they were large.

Some people—from lay commentators to pundits—wondered aloud whether the total figure for the Troubled Asset Relief Program ($700 billion) had been chosen arbitrarily, or at least, determined by a rather non-technical calculation: what was the greatest sum possible that would not provoke voters' rage to an unmanageable level? Essentially, what was a huge number that did not sound too huge? Speculations like this one, as to how financial policy was formulated at this time, indicate very little faith either in the specialized knowledge of politicians and regulators, or in the integrity of their motives. Furthermore, they accused leaders of condescending to the public by assuming Americans were innumerate. The accusation was probably well-founded—but so too was the assumption that most voters do not cognitively process figures in the billions and trillions; that more likely they react to such numbers intuitively. Still, this mutual mistrust further illustrates the complex dynamics of understanding as power, and how they shaped the political fallout of the 2008 crisis.

As Lawrence Grossberg has put it, the problem with most existing accounts of the financial crisis is not that they are untrue, but rather that they are "not true enough."[68] Here the hallowed but slippery concept of truth, which proved so pivotal in narratives of the Enron bankruptcy, returns. And once again it offers more questions than answers as to how technicalities should be weighed against comprehensibility, and even against moral values, when the job of politicized storytelling reaches its practical purpose: convincing a particular audience to support a particular course of action. Yet even this kind of re-composition of "truth" appears not to be working thus far.

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[67] *Ibid.,* 178, 280.

[68] Grossberg, "Modernity and Commensuration," 8.

If 2008's financial turmoil truly deserves the title of "crisis," then perhaps it warrants a departure from the familiar parameters of narrative competition, particularly as applied to business and economics. Rather than continue to struggle over who does or does not "know" or "understand" the "facts" or the "truth," it might not only be more honest, but also more productive, for expert meaning-makers to admit to their own incomprehension. Grossberg seems to suggest that "we" (presumably not finance professionals, regulators, or federal officials) should confess that we do not understand the crisis,[69] but I would take the proposal further to include these groups—indeed, ideally, to begin with them. Such a mass act of self-humbling is inconceivable. If nothing else, however, it would certainly settle the question of whether the financial crisis of 2008 included any unprecedented, unforeseeable, or paradigmatically transformative events.

To Make Fun of the Crisis

Even amid the worst of the crisis, most finance executives, regulatory officials, and government leaders would remain unwilling or unable to acknowledge their confusions and shortcomings. Not surprisingly, satire emerged almost immediately to begin making these acknowledgments for them. Mockery and joking about the financial meltdown of 2008 followed the strong American tradition of criticizing business and business policy by way of humanizing its most important actors and laughing at their faults, mistakes, and dissimulations. Also, as it did after the Enron bankruptcy, satire in its many forms offered humor as an alternative to—or at least a temporary reprieve from—anxiety, anger, or despair. All of these sentiments, which can be quite depleting, were more acute and more widespread amid the 2008 crisis as compared with the Enron scandal. As urgently as people now needed narratives, then, they also needed some of them to be funny.

The terrifying magnitude of the crisis was perhaps the most important component of which people tried to make light. A cartoon showed a businessman with a briefcase who stood on a sidewalk (marked "Wall Street") that overlooked a ninety degree cliff. The sign warning him of the drop-off read "DIP," perhaps referring to the stuffy understatements many people feared were

[69] *Ibid.,* 3.

belying the crisis' severity.[70] Finance workers themselves also made fun of the industry's plight, if perhaps from a different angle. One joke popular across Wall Street trading desks: "I went to a Citibank ATM this morning, and it said 'insufficient funds.' I left wondering if it was them or me." Both personal and corporate bankruptcy, apparently, were possible and amusing. One trader's anonymous email—which went on to circulate widely—read "This has been even worse than my first divorce. I've lost half my net worth but I still have my wife."[71] Without knowing how many subsequent divorces this trader had gone through (or perhaps anticipated?) this seems a fairly standard joke formulation: money as asset, woman as liability. However, for the writer of this e-mail and for his colleagues, who forwarded it so freely, it was actually a rare, if tongue-in-cheek, admission. These professionals were suffering along with everyone else from market disturbances that they were supposed to know how to sidestep, or even how to exploit.

The recession that followed was even more sobering—and so came the dark humor about living through an economic downturn. For example, one cartoon showed a manager handing his employee a layoff notice. "I'm sorry I have to let you go," he tells the unfortunate, "but since this is a global economy, you may rotate back here someday."[72] A caption like this sarcastically exposes erstwhile catch phrases such as "global economy," suggesting that they hardly deserved any technocratic mystique. Perhaps they had been meaningless all along. In any event, the problems that they purported to solve were now as severe as ever, at least as they affected ordinary people's daily lives.

The people to blame for the 2008 crisis, jokes suggested, were at best careless and irresponsible. Many quips about Wall Street and the finance industry made telling comparisons to casinos, suggesting that the "players" involved were amusing themselves by risking (and, lately, losing) huge sums of the rest of the nation's money. American International Group, widely vilified for its bonus payments after taking bailout funds, was nicknamed by more than one satirist "The Notorious A.I.G." This was a reference to the late rapper Biggie Smalls, who had been known as

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[70] http://www.cartoonstock.com/directory/f/financial_crisis.asp. Accessed 23 January 2010.

[71] Ritholtz and Task, *Bailout Nation,* 216, 169.

[72] http://www.cartoonstock.com/directory/f/financial_crisis.asp. Accessed 23 January 2010.

The Notorious B.I.G., and was one of many comparisons between high-flying executives and mogul rappers. The Notorious B.I.G. perhaps made a particularly apt analogy for this insurance firm, however, due to his immense girth and his signature understated, almost lazy cadence. AIG, the “notorious” epithet implied, was a lavishly wealthy, bloated, and sluggish company that showed nothing but pride where it should have shown shame. Like Biggie Smalls, who had successfully marketed his own notoriety, AIG was exploiting a record of wrongdoing: taking bailout money and continuing to pay fat bonuses. Similarly, some of the Billionaires for Bush became “Billionaires for the Bailout,” highlighting the luxury that executives seemed still to enjoy even during the worst times of the crisis.[73]

Resentment and anger at the lush finance industry, and those government coddlers who were willing to bail it out, often lay at the core of such satire. Yet “populist rage” itself also proved a fair target. Late night news humorist Stephen Colbert mocked the bandwagon by pretending to jump on, furiously exhorting his audience to reach for their pitchforks and initiate mob violence against AIG bonus recipients (as well as any babies they might have).[74] Colbert’s colleague Jon Stewart declared “our streets are boiling over in anger” about these same bonus payments—and dispatched reporter John Oliver to cover what was clearly the New York City Saint Patrick’s Day street celebration, teeming with drunken youth wearing green. Oliver stood among the masses, whom he called protestors, and shouted frantically about their fierce determination to make their objections heard.

The correspondent also prompted revelers, with his questions, to make comments about the banking crisis that were utterly unintelligible. One particularly inebriated man in a leprechaun-style hat jumped before the camera and bellowed *“too big to fail!”*—presumably in reference to himself. “In the hour and a half that I’ve been here, Jon,” Oliver summarized, “I have seen people passing out in anger! Throwing up in anger! Pissing up against the sides of buildings in anger!”[75]

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[73] “Billionaires for Wealthcare” also emerged in 2009 to oppose health care reform and defend the interests of large insurance companies and stingy corporate employers.

[74] For an example in video footage, see http://www.huffingtonpost.com/2009/03/17/colbert-will-hunt-down-ai_n_175679.html. Accessed 23 January 2010.

[75] “Rage in the Streets: March 17, 2009,” http://www.thedailyshow.com/watch/tue-march-17-2009/rage-in-the-streets. Accessed 23 January 2010.

The comment of such humor was that “populist rage” is easily overstated, and that the public as a whole is not necessarily as involved or even as aware as minor uproars like the AIG bonus backlash might suggest. Yet lay Americans—even as represented by these St. Patrick’s Day partiers—were not necessarily the butt of this joke. It affirmed, essentially, that everyone was fine and that life, including raucous festivities, would go on. If anything, then, “ordinary people” had more reason to take comfort than did disgraced executives.

Yet the party was not continuing quite so smoothly for most people, and some forms of crisis satire mounted much more serious complaints about the national economy and the government’s response. Warren Buffet in 2003 had called derivatives “financial Weapons of Mass Destruction”—likening them to the “WMDs” that, according to President Bush’s rationale for launching a war in Iraq that same year, Saddam Hussein was developing. Where Buffet had used the analogy in an attempt to warn, however, Daniel Gross used it to make a bitter gibe at not one, but two dubious legacies of the Bush administration. Writing about derivatives in 2009, Gross quipped, “No, American soldiers did not find any of those in Iraq either, just cash.”[76]

Referring to the war in past tense, during the 2008 crisis, may have represented wishful thinking—even for all Gross’ sarcasm. The nation’s military commitments in both Iraq and Afghanistan often took lower priority, in the news, than the most dramatic events in the financial markets. But the nagging reality that those commitments were ongoing, even (perhaps in Afghanistan) deepening, pointed out another cause for confusion and complaint in terms of the American economy and how citizens think about its constituent parts. Many respectable observers still maintain that the US recovered from the Great Depression primarily thanks to World War II. Yet from even before that time, war has generally been associated, both empirically and mentally, with economic growth and prosperity. Furthermore, in wartime Americans usually tend to hold more favorable opinions toward large corporations, and to trust that in collaboration with the federal government, these companies are allies on the home front, deserving less than their usual level of suspicion.

[76] Gross, *Dumb Money,* 21.

Amid the 2008 financial crisis, however, people in a variety of roles and of a variety of political persuasions started talking about war as a *drag* on the national economy. The mounting federal expenses of the Iraq and Afghanistan conflicts were invoked again and again, with people who advocated military scaling-back arguing that the nation could not afford them. “Afford,” here, took on its most concrete meaning: the government had many domestic bills to pay, toward the goal of economic recovery, and the huge budget item of foreign war should be slashed in order to compensate. An analysis of the economic effects of contemporary warfare is beyond the scope of this study, but it is worth noting that nobody on the other side of these debates attempted an economic argument. More likely, statements in favor of heightened military efforts made geopolitical or moral issues their focus. Many even acknowledged the great cost of the wars, and that those funds could be put to use elsewhere. They simply insisted that these foreign missions were worth it.

As for the rule that wartime brings large corporations into the public’s good graces, it already had at least one glaring exception: Vietnam. Indeed in that case, opposition to the war often went hand in hand with opposition to business’ involvement in military mobilization and defense supplies. One might modify the rule, then, by concluding that as long as the public generally *approves* of a war effort, then it tends to approve of large companies that contribute. Yet the crisis of 2008 poses a challenge to this proposition as well. Despite widespread opposition, at this time, to two wars that seemed to be going on and on, almost none of the “populist” complaints about greedy executives, “fat cat” bankers, or bumbling financial companies made any conceptual connections to these unpopular military operations.

Of course, one ready explanation is simply that no such connections existed. Yet even if this were true (which seems unlikely), that would not nullify the potential rhetorical power of associating hated companies with hated wars—especially since the government seemed committed to supporting both. In fact, in early 2003, when the Bush administration was preparing to begin bombing Iraq and anti-war protest was at its height, many dissenters did condemn defense contractors as immoral, arguing that the government would wage “war for profit” or sacrifice “blood for oil.” In turn, heated controversy arose over the reconstruction of areas decimated by American bombs, with no-bid contracts allegedly awarded to corporate favorites. Perhaps these kinds of arguments had largely quieted, by the time of the 2008 crisis, simply because people were too overwhelmed by the domestic effects of irresponsible business. President Bush's lame duck status and subsequent exit also may have quelled the fury of his most committed critics. These Americans were the ones most willing to equate his administration with business pandering and war-mongering—though not all necessarily expected his Democratic successor to be a great improvement.

During the 2008 crisis, Bush was widely perceived to have abdicated his responsibilities. Instead of setting about to solve the multiplying economic problems at hand, he seemed at best to be attempting damage control—with the "damage" he cared about most, perhaps, being to his reputation and presidential legacy rather than the markets' or citizens' well-being. After his election in November 2008, President-elect Barack Obama immediately began getting urgent questions about how he would deal with the financial crisis. His responses often included the caveat, "we only have one president at a time"—by which he tactfully deferred to Bush's continued authority. Yet back in the project of grim, agitated humor, Rep. Barney Frank (D-MA), chair of the House Committee on Financial Services, improbably entered the ring. On *60 Minutes* during the period between election and inauguration, Frank said of Obama's mantra, "That overstates the number of presidents that we have at this time."[77]

Frank's dry delivery, along with his distinctive husky voice, enhanced what was simultaneously a joke and an indictment. Yet his choice of words here did more than opt for humor over polemic. Indeed this quip concisely fused the crisis' parameters of delinquent leaders, missing information, and failed expertise. Frank was suggesting obliquely that the United States had zero presidents—or perhaps some portion of a president that might be expressed as a decimal. Maybe there was even a negative amount of presidents, such that having none at all would have been preferable. In effect, he was equivocating with numbers. He was willing to commit to a statement on record that one was too high a figure. At least "at this time," however,

[77] "Barney Frank on Bailouts, Welfare," 60 Minutes, CBS, 14 December 2008, www.cbsnews.com/stories/2008/12/11/60minutes/main4663945.shtml. Accessed 23 January 2010.

Frank declined to specify the actual sum even though it held grave import for his audience. Such detachment and evasive technicality were all too familiar in pronouncements about the economic and political state of the nation, coming from suits in both business and government. Frank, at least, did not expect to be taken seriously.

All The Presidents' Narratives

Whether George W. Bush was president, null entity, or some indeterminate fraction, he remained in office throughout the worst year of the financial crisis. For many Americans who felt he was not wholly doing his job, the ascendant Barack Obama offered a promise of something better. During the time leading up to his inauguration, when Obama was not being compared to Abraham Lincoln or Martin Luther King, Jr.—both analogies gesturing more to racial politics—he was associated with Franklin Delano Roosevelt in a statement of faith about economic recovery. Like FDR, Obama was to sweep into office with noble determination and a decisive popular mandate. He would transform economic policy, as only he knew how, and reverse the nation's downward spiral. Such "hope" for "change"—two of the Obama campaign's most common buzzwords—may have been born more out of desperation than actual expectation, at least as applied to economic issues.

At the opening of his term in office, however, the overwhelming faith in and approval of Obama included a firm belief that he was not a friend to big business. In sharp contrast to Bush, and Republicans in general, the new president was perceived ready to whip the financial industry into shape, performing no favors and heeding no pleas. This image actually held currency in the form of a fear as well: some conservatives suspected that Obama (sometimes called a "socialist") would use the financial crisis to undermine American capitalism. He might exploit the political temper of the moment, they worried, to implement scores of onerous regulations that would hurt competition, innovation, and duly earned profits. The phrase "reverse Reagan" referred to Obama as an economic statist who might roll back decades' worth of privatization and *de*regulation—opposite to the "revolution" launched in 1980.

Obama's staunchest supporters, in broader political terms, might have hoped for a "reverse Bush." If the outgoing president had used the emergency and disaster of the September

11 attacks to implement policies that might otherwise never have passed, many progressives now argued, pragmatically, that Obama had a mandate to do the same thing. Here, however, the threat at issue was not terrorism, but volatile markets and irresponsible executives. Some of the more radical elements on the political left embraced the very same prospect conservatives feared in Obama, hoping he would drastically overhaul how business was done in the United States. They freely admitted that, like Bush and his fellow neoconservatives, these were changes they had wanted all along, simply waiting for a moment of political opportunity. In its extreme form, this was the "real-life" application of academic speculations, seen earlier, that the financial crisis signaled the end of neoliberalism. It seemed a moment of great potential as well for various strains of anti-capitalism.[78] Encouraging both progressive hopes and free-marketer fears, in November 2008 Obama's chief of staff Rahm Emmanuel said, "You never want to let a serious crisis go to waste." Lest his point be unclear, he continued, "What I mean by that—it's an opportunity to do things you think you could not do before."[79]

While campaigning, Obama had emphasized repeatedly that he took no contributions from corporations or from Political Action Committees (PACs). Instead, he had played up his grassroots network of support and the role of small contributions from people of modest means. He would assume the presidency, he promised, without any debts to big business—only gratitude and humility toward the ordinary people who had helped him to victory. In addition to his personal background as the son of a single woman, raised by his grandmother; a scholarship student; and an African-American; Obama presented as a stark exception to the norm of privileged politicians. Despite his unfailingly professional veneer and scholarly diction, he seemed—in who he was and in what he was doing—to be no more familiar with big money than the great majority of voters.

Obama's campaign and victory have been called "historic" for numerous reasons, and rightly so. However, in addition to overcoming formidable hurdles, beginning with race and

[78] Gamble, *Spectre at the Feast,* 160.

[79] Emmanuel was being interviewed on the *Wall Street Journal* Digital Network. He went on to say that this philosophy applied to numerous domestic issues, including energy and health care, but his list included business regulation. Given that finance was the area currently recognized as in "crisis," this remark, understandably, was taken mainly to refer to Obama's plans for business and economic policy. "Rahm Emmanuel: You never want a serious crisis to go to waste," http://www.youtube.com/watch?v=1yeA_kHHLow. Accessed 24 January 2010.

socioeconomic status, the Illinois senator also made another kind of history when he won the nation's highest office—and this claim to fame brings less honor. Setting aside (temporarily) the matter of where Obama's campaign funding came from, the fact was that his presidential candidacy was the most expensive in US history. By the end of October 2008 he had raised almost twice as much money as his general election opponent, John McCain, and out-spent him on television advertising by a ratio of four to one.[80] Even without any suggestion that Obama "bought" the oval office—that is to say, that he deserved to lose, or would have, given less money—there was nothing particularly inspiring in the acknowledgment that Obama ran a fabulously well-funded campaign, and won. Yet this is no less true, and certainly no less important, than any of the more celebrated stories about this man and how he became president.

For most spectators, campaign funding was hardly the most compelling feature of the 2008 presidential contest. It had to compete with race, gender, generational dynamics, interpersonal harmonies and clashes, family back-stories, rumored skeletons in various closets, and occasionally—when all these subjects were exhausted—policy debates. Yet the amounts of money, and even more significantly, the *kinds* of money involved, made for a little drama of their own; one that resumed from prior episodes in 2002 and 2004, and even included some of the same characters. Most obviously, John McCain, namesake of the Bipartisan Campaign Reform Act, won the Republican nomination. He had made a somewhat surprising comeback from a primary campaign "grave" of obscurity—and from the scant funding that is both its cause and its effect. That he, rather than someone else, was the Republican to run against Obama made for a much more complex dialogue—both between and within the two parties—about how campaigns should be paid for.

After securing the Democratic nomination, Obama announced in June 2008 he would opt out of the public campaign finance program for his run in the general election. This meant passing up the public money to which, as a major party candidate, he was entitled—but also that he was free to raise and to spend unlimited amounts of private money. Obama was the first presidential bidder ever to forego public funding in a general election since the system was implemented after

[80] "Obama's Money Blowout," *The Wall Street Journal (Eastern Edition)* 22 October 2008, A16.

Watergate.[81] The only reason, practically speaking, why any candidate would make this decision, is that he can raise more money from private donors than the public funding rules would allow had he opted in. In other words, Obama recognized the wild success of his campaign fundraising up to that point, and sought to take full advantage. During the Democratic primary campaign he had committed to participating in the public funding system, but evidently he was pleasantly surprised by the $265 million he raised against Hillary Clinton.[82]

Given Obama's self-positioning against money's influence in Washington—and his endorsement of the public finance program while a primary candidate—the choice to fund his general campaign exclusively with private money required some explanation. The GOP camp immediately criticized it, reminding voters that McCain bore the righteous mantle of the public finance system, and stating that Obama had revealed himself as "just another typical politician who will do and say whatever is most expedient."[83] Many liberals as well were disappointed by what they saw as a hypocritical decision. In his rebuttal, Obama attempted to reconcile his anti-big money stance with what was, in effect, an admission that he now had big money. He reiterated his support for the public campaign funding program, but said it was best not to participate because of all its "loopholes," including the largely unregulated 527 organizations. Not only was the system "broken," he stated, he had "opponents" who were "masters at gaming" it.

This rationale appeared a stretch: Obama was opting out of a public system that he himself had praised as a bulwark against privately bankrolled elections, because it was somehow (suddenly?) corrupt. The candidate was probably lucky that relatively few voters were paying close attention to this sub-plot in the campaign storyline. As the general contest went on, the Obama campaign would go on sidestepping regulations intended to keep elections clean. Fundraising training workshops offered specific instructions for soliciting contributions from

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[81] Observers anticipate, however, that declining public funds will become more and more common in future elections.

[82] "Obama's Money Blowout."

[83] "The Afternoon Report: Cash Clash," *The Wall Street Journal (Eastern Edition),* Online Edition, 19 June 2008.

“business colleagues” without running afoul of campaign finance law,[84] and despite his constant promises of transparency Obama’s donor lists were the least clear or accessible in a generation of presidential contests.[85]

Given his widely publicized decision not to take contributions from corporations or PACs, how could Obama afford to decline public funding? It was certainly no lie that he made an impressive haul in individual donations—but not all came from middle-class Americans moved to give what little they could spare, as the Obama campaign liked to suggest. Many more of these gifts came, as in any campaign, from affluent people corralled by professional fundraisers or courted at glamorous private campaign events, who gave the maximum amount legally allowed under BCRA: $2,300. Typically their spouses would do the same, with the second sum officially coming from another “individual” though perhaps taken out of the same bank account. One couple who gave in this manner—also, in this campaign like most others—was the candidate and his wife.

Even so, however, these kinds of contributions to Obama’s campaign would never have been able to compensate for the vast private sector donations that he said he would forego. As it turns out, perhaps not surprisingly, the simple statement that Obama took no funding from corporations was not entirely true. First, because all individual contributions over $200 are tallied according to donor’s occupation and employer, strong patterns often emerge linking industries and even specific companies, to particular candidates. This is not to suggest that firms direct their employees to make campaign contributions, or to whom—indeed, such mandates are illegal. Nonetheless, it requires no great leap in logic to surmise that corporate employees—particularly higher-ranked ones, who probably have both more money and more of a sense of their company’s stake in politics—might make common and predictable choices in contributing to campaigns. That is to say, corporate executives appear to give in discrete groups, and for reasons that are not impossible to guess.

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[84] Robert Frank and Mark Maremont, “Money Maven; Billionaire Penny Pritzker Raises Record Amounts of Cash For Obama,” *The Wall Street Journal (Eastern Edition)* 15 March 2008, A1.

[85] “Obama’s Money Blowout.”

The top six contributors to Obama's primary campaign hailed from Goldman Sachs, UBS, Lehman Brothers, J.P. Morgan Chase, and Citigroup.[86] In the general election two of Obama's five largest donor groups were associated with Goldman Sachs and Microsoft.[87] Most of these companies also gave, if in smaller amounts, to Obama's opponents. Some of their counterparts within the same industry contributed to other candidates even more. And there is no evidence that Obama made any special quid pro quo with these firms. However, this overview of contributions does establish that large corporations did not necessarily see an adversary in Obama—nor, practically speaking, did Obama find any united front of opposition among them.

Second, Obama did receive help from trade associations, advocacy groups, and 527 organizations. These entities can, and sometimes do, fill their coffers partially or even entirely with corporate money. Thus to accept a gift, or benefit from advertising, paid for by any such group, is to accept funds from private companies—only with an intermediary and perhaps some anonymity to gloss over the money's real origin. Favoring Obama were numerous single-issue interest groups, as well as professional organizations in the fields of education, law, real estate, insurance, and securities.

One group worth mentioning in particular that managed to contribute richly, though indirectly, to Obama's campaign, was hedge funds.[88] Such a generous flow through the loophole is amusing given the candidate's purported stance against big money, for hedge funds have been, since the time of Enron, among the most suspicious shadows on the economic scene. They rely on high-risk finance tactics, they command vast sums of money from incredibly wealthy investors, and they face the most lenient regulations of any trading firms. Yet even people who know none of this can parrot the argument of some experts that hedge funds are dangerous to financial markets,[89] and it is not out of the question, given how much capital they control and how much influence their transactions exert, that hedge funds helped precipitate the 2008 crisis. They

[86] "Who's Funding the Clinton and Obama Campaigns?" *Human Events* 64, Iss. 6, 11 February 2008.

[87] Data from opensecrets.org, http://www.opensecrets.org/pres08/sectorallc.php?cycle=2008. Accessed 13 December 2009.

[88] Gross, *Dumb Money,* 95-96.

[89] *Ibid.*

are neither illegal nor even necessarily problematic in any inherent way. The irony here is simply that the hedge fund sector, which so thoroughly epitomized the era's business bogeymen, helped bring into office the very man who many hoped would tame this wild world.

It is hardly surprising that Obama never volunteered a more frank and thorough account of how, or even just how well, his campaign was funded. Not only would such an announcement have marred the "hope" and "change" tableau of November 2008; it also would have posed a major challenge to his image as antagonist to big business and antidote to Bush. This omission only presaged further inconstancy from Obama on matters of business regulation, for as his supporters averred—sometimes with disappointment—being the president required even defter maneuvering than being a candidate.

In the statements he made directly to business leaders at the outset of his term, Obama's philosophy on government's role in the markets sounded very similar to those of recent predecessors Bill Clinton and George W. Bush. The context of financial crisis, if anything, enhanced rather than impeded Obama's courting of corporate executives. In a speech to the Business Council in February 2009 he said, "I'm here to enlist your help," and praised the group's history of benevolent "corporate citizens" who had helped the national economy through its worst times theretofore.[90] Likewise he told the Business Roundtable that during past crises and recessions, "Government has stepped in not to supplant private enterprise, but to catalyze it."[91]

To address the possibility that business leaders might actually carry blame for the financial crisis, Obama expressed solidarity with those under fire—by comforting the executives and speaking somewhat patronizingly of "ordinary" Americans.

> We live in such a rapid-fire, information-rich environment that people's attention spans go like this. *[Note: presumably some gesture here indicating brevity.]* And that makes for volatility in confidence. A smidgen of good news and suddenly everything is doing great. A little bit of bad news, oh, we're down in the dumps. And I am obviously an object of this constantly varying assessment. *[Laughter.]* I'm the object-in-chief of this varying assessment. *[Laughter.]*[92]

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[90] President, Address, "Remarks to the Business Council," 13 February 2009. *Weekly Compilation of Presidential Documents* (GPO Access: frwais.access.gpo.gov).

[91] President, Address, "Remarks and a Discussion with the Business Roundtable," 12 March 2009. *Weekly Compilation of Presidential Documents* (GPO Access: frwais.access.gpo.gov).

[92] *Ibid.*

By comparing his own position to theirs—and getting a laugh in doing so—Obama was affirming that he and the Business Roundtable were in it together. Indeed they were. Rightly or not, the public's "assessment" of anyone even associated with the financial markets had by this time "varied" quite far in the negative direction. But Obama here suggested that volatility in confidence—which is always crucial in beginning and ending economic crises—played both to his and his audience's advantage as often, or perhaps even more often, than not. This statement, probably more than the President intended, also illuminates the similarities between the political and financial spheres. In both, fortunes can rise and fall almost instantaneously, and favorable or unfavorable "assessments" may carry great impact even when they lack solid reasoning. Obama himself, both in his meteoric rise before this statement and his sagging approval ratings since, is a strong case in point. Not only, of course, is he a politician; he is one of the politicians who have been most strongly associated with the 2008 financial crisis—sometimes as part of the solution and sometimes as part of the problem.

The sense of a shared perspective would also apply to Obama's actual work of making policy. During a question and answer session, Harold McGraw III, chairman of the Roundtable and CEO of McGraw-Hill, rejected the popular notion that Obama's administration and the business community would be "like, well, oil and vinegar." "We have the same common goals right now," McGraw told the President, speaking for his group, and he then asked Obama "to set up a regular schedule such that the expertise of the chief executives here could work with whoever you designate to be a sounding board, pushing back and helping to form those kinds of opinions." Obama replied, "Absolutely. Well, look, that's exactly the kind of partnership that we seek…there are actually a lot of people in this room who our team has consulted with on a regular basis, and we hope to do more of that in the future."[93]

The Obama supporters who had dreamed of some new, take-no-prisoners approach to business regulation would have seethed to hear this exchange. Here McGraw, speaking on behalf of the nation's most prominent CEOs, explicitly requested an ongoing forum for special

[93] *Ibid.*

input on the President's policies. Obama, for his part, obsequiously assured him they already had his ear. The style, as well as the content, of this dialogue, would also have irked those wary of business and its apparent dominance not only in politics, but even in everyday life. From "sounding board" and "pushing back" to "partnership" and "our team," McGraw and Obama were sharing office-speak so clichéd that they might have been standing by a water cooler in a sit-com. Granted, any representative of any trade or interest group would probably make a request like McGraw's. Likewise, any wise politician would publicly welcome input from a constituent group; and the friendlier the terms, the better. And of course, our nation's leaders are notorious for adopting the local vernacular wherever they go. In this instance, however, exceptional money and influence are difficult factors to ignore. In other words, notwithstanding Obama's background in community organizing on Chicago's South Side, he knew who he was dealing with now. Both President and CEO understood: the stakes were higher, here, than in just any agreement to "touch base" or "circle back".

To someone familiar with business-government collaborations, there is nothing particularly startling about these kinds of statements from Obama. They do clearly demonstrate, however, that he was no less welcoming than his presidential predecessors to the priorities of large corporations—and also no less comfortable, or collegial, with their executives. And indeed, Obama's continuation of TARP, his economic stimulus initiative of February 2009, and his approval of the auto industry bailout aroused more suspicion that he was all too willing to cater to business leaders—even by giving them taxpayer money outright. Early in his term complaints also began that his economic advisors, including Treasury Secretary Timothy Geithner and National Economic Council Director Larry Summers, were too cozy with bank executives and even beholden to Wall Street; liable to confuse the interests of the public with the interests of their friends.

An awkward anecdote from a past press conference is strangely apropos:

> Q: Sir, what about the hedge funds and banks that are overexposed on the subprime market? That's a bigger problem. Have you got a plan?

THE PRESIDENT: Thank you. *(End session).*[94]

This response—which was none at all—might have come from a presidential impersonator on Saturday Night Live's "Weekend Update," simply walking away from the podium rather than even acknowledging this most serious question, which was on many people's minds. In fact, however, this was the real president: Obama's predecessor, speaking (or rather, ceasing to speak) in August 2007.

At this time, as the unnamed reporter suggested, upheaval on the mortgage markets was beginning to portend worse things to come, and Bush's audience sought much more from him than this polite dismissal. The mention of hedge funds would have made this question unpleasant for leaders of either major political party, due to connections demonstrated in the 2008 campaign and before. As for the banks "overexposed to the subprime market," they would become Bush's problem soon enough—and then, in turn, Obama's. Aside from being both funny and darkly foreboding, however, this dialogue also serves as exceptionally raw testimony to that which did not change when Obama replaced Bush in the White House. At the time of this writing—more than a year into Obama's term—few Americans would say that the request for a "plan" has satisfactorily been answered. Last-minute, ad hoc, vehemently resented emergency bailouts do not qualify.

Each of the "crisis presidents"—if Bush and Obama can be so-called—were both subjects in, and creators of, important narratives. First, there were narratives about the men themselves. From the first time Obama gained wide national recognition, addressing the Democratic National Convention in 2004, he began telling his own story, emphasizing his humble beginnings as testimony to the American promises of equality and opportunity. His purported alienation from the affluent elite, special interests, and big business, followed logically in this narrative. When the origins of most of his campaign funding posed a challenge to the story, he chose to play that down.

[94] President, Address, "Remarks on Homeownership Financing and an Exchange With Reporters," *Weekly Compilation of Presidential Documents* (GPO Access: frwais.access.gpo.gov) (week ending 31 August 2007), 31 August 2007.

Part of the risk, there, was related to narratives about Bush—that this fortunate son, coddled from birth, had essentially inherited the presidency despite ample evidence he was not up to the job. Infamously backed by the “haves” and the “have mores”—and Enron, for good measure—Bush embodied the corporate-political alliance that Obama railed against, and he made a particularly handy whipping boy toward the end of his term, with his approval ratings lower than ever. While Bush had also been adept in his down-home personal profile and his folksy manner of speaking, and while his own narrative of humility and salvation had won him much affection, most of his political goodwill had dried up by 2008.

Then came the narratives that each of these presidents used to turn the financial crisis into a story. Like it or not, such meaning-making is part of the job—and Bush, for one, had little luxury of preparation for his executive summary. From the beginnings of the “mortgage meltdown” in 2007, Bush reminded Americans over and over again of the resilience of their economy and society, and reprised the promise of redemption and betterment familiar from September 11 (and awkwardly applied to Enron as well). He also maintained that the federal government remained firmly committed to free markets, and that “democratic capitalism” was unquestionably the best system of political economy in the world. These are the kinds of statements that, from an American president, do not bear repeating under normal circumstances.[95]

Struggling to justify TARP and the 2008 bailouts, Bush insisted that allowing financial firms and, for example, the Big Three automakers, to fail, would have seriously harmed the families and small businesses of “Main Street.”[96] Here was an uncomfortable, though counterfactual narrative, again conjuring the “interwoven-ness” that was hard to reconcile with Bush’s ethic of independence, ownership, and personal responsibility. He was suggesting that ordinary Americans were so bound up with the fates of large corporations that they should consent to taxpayer bailouts (though not to the pockets of “failed executives) because in the end, it was for their own good.

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[95] President, Addresses and News Conferences, *Weekly Compilation of Presidential Documents* (GPO Access: frwais.access.gpo.gov) August 2007 – November 2008.

[96] *Ibid.*

In one brave attempt to maintain distance between the perpetrators of the crisis on one hand, and himself and his country brethren on the other, Bush said:

> I mean, I had a lot of people—when I went out to Midland [Texas] that time—say, "What the heck are you doing, boy? Those people up East caused the problem." I said, "I know, but if we hadn't worked to fix the problem, your situation would be worse."[97]

This mini-narrative is notable for its positioning both in time and place. First, Bush insinuated that his "work" (already completed) to "fix the problem," had pre-empted something "worse." In fact the only thing definitely coming to an end by mid-January 2009, when he made this remark, was Bush's presidential term. In that sense alone was the "work" finished. Furthermore, the denigration of "those people up East,"—which Bush attributed to some fellow Texan, but which he also accepted—stood out as a return to the traditional scorn of New York City after a fairly long hiatus in the wake of September 11. Earlier in his term Bush had praised the city and its denizens, and vouched for their exemplary American-ness. But now they had brought a crisis upon themselves and also all their innocent countrymen.

In his farewell address Bush launched immediately into recollections of September 11 and reviewed his administration's efforts against terrorism. Though it was not a short speech, and though it reviewed numerous events of the preceding eight years, it made absolutely no reference to any business developments or to economic issues of any kind.[98] For a presidential term book-ended by Enron at the outset and the financial crisis at its close, this was obviously a deliberate omission. Insofar as Bush was attempting, here, an early and laudatory narrative of his own presidency, he apparently wanted no corporations or markets to appear. He could, and on other occasions did, find ways to portray his own time in office as one of business growth and economic progress. But evidently by January 2009, Bush (or at least his speechwriters) did not have the stomach to force that story.

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[97] President, News Conference, *Weekly Compilation of Presidential Documents* (GPO Access: frwais.access.gpo.gov) (week ending 16 January 2009), 12 January 2009.

[98] President, Address, "Farewell Address to the Nation," *Weekly Compilation of Presidential Documents* (GPO Access: frwais.access.gpo.gov) (week ending 16 January 2009), 15 January 2009.

The problem of narrative, for the 2008 financial crisis, persisted. In what was probably a backhanded compliment, Bush had called Obama "a better speechmaker than me,"[99] and indeed whether people liked or resented the President-Elect, most agreed that he had a way with words. Here was another reason why so many of Obama's supporters had faith that the crisis would abate when he came to the rescue. It seemed Obama could clarify concepts and appeal to skeptics on a variety of policy issues. As the financial crisis had worsened, during 2008, and neither the current president nor the Republican presidential candidate had offered a coherent response, the professorial Obama inherited progressives' hopes that somebody could explain the disaster and then lead the way out of it. A crucial part of the hope for change hinged on a new narrative.

Evidently, in this regard Obama was convincing enough as a candidate, and he enjoyed high popularity and confidence when he was inaugurated in January 2009. By the end of his first year in office, however, he had already received much criticism relating to his job as the nation's highest-ranked explainer. Naturally, many Republicans and conservatives simply objected to his policies, including his strategies in addressing the financial crisis. Within his own party, however, complaints often focused instead on the challenge of accessibility and understanding. Nobody questioned Obama's intelligence; indeed during his campaign some supporters had worried that he might appear "too smart" to gain the public trust. Rather, on bailouts and financial policies—as well as others, particularly health care reform—the Democratic camp was beginning to argue that though Obama had the right ideas, he was not adequately *explaining* them. The President was hemorrhaging much-needed political capital by failing to make himself clear.[100] Many commentators even said that what he needed was a coherent "narrative."

Polling data did reflect widespread incomprehension, particularly on financial developments of that time. Large percentages of voters—in about the same proportions across the political spectrum—admitted they understood the crisis on Wall Street "somewhat well," "not

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[99] President, News Conference, *Weekly Compilation of Presidential Documents* (GPO Access: frwais.access.gpo.gov) (week ending 16 January 2009), 12 January 2009.

[100] Madrick, "They Didn't Regulate Enough."

too well" or "not well at all."[101] Meanwhile, the most accessible images and the simplest narrative concepts that Obama did use were strikingly similar to those of Bush. Obama promised that the nation would emerge from the financial crisis "stronger and more prosperous" than before, and that intervention (particularly bailout) was justified lest the havoc spread "from Wall Street to Main Street."[102] Such assurances may not have worked any better for Obama than they had for his predecessor, but apparently he had no better ideas.

Conclusion: "And Then…"

The story—insofar as there was one—was far from over by the end of Obama's first year as president. Debate raged as to whether the recession had definitively ended; and if so, whether it was permanently over, or bound to return, perhaps even worse, as the second low point in a linear chart line that might look like the letter *W*. The impact of the financial crisis on markets or even on regulation, in the long term, remained unclear. And just as Bush had claimed that the seeds of the crisis had been sown before his term,[103] so Obama had said he "inherited" the crisis from Bush. (As his term progressed, that premise convinced fewer and fewer people that Obama held no blame.) Industries, companies, and a few well-known individuals all still held concerns, and rightly so, about how they might feature in historical accounts of the 2008 financial crisis.

The story of Enron, as it turned out, was not over either—largely because a few of its obdurate characters did not want it to be. Though to far less media coverage, the scandal and the questions it raised continued to echo in three Supreme Court cases entered in 2009. One challenged the constitutionality of the Sarbanes-Oxley Act, on grounds that the Public Company Accounting Oversight Board that it had created violated the separation of government powers. Another, recalling Mitch McConnell's lawsuit of 2002, contested the McCain-Feingold Act as an abrogation of companies' and unions' first amendment rights—and a 2010 decision in favor of the

[101] Fox News/ Opinion Dynamics Poll, Fox Broadcasting Company, 2 April 2009, Field Date 31 March – 1 April 2009; Pew Hispanic Center Poll, Pew Hispanic Center, 8 January 2009, Field Date 11-30 November 2008.

[102] President, Address, "Weekly Address," *Weekly Compilation of Presidential Documents* (GPO Access: frwais.access.gpo.gov), 24 January 2009; President, News Conference, *Weekly Compilation of Presidential Documents* (GPO Access: frwais.access.gpo.gov), 9 February 2009.

[103] President, News Conference, *Weekly Compilation of Presidential Documents* (GPO Access: frwais.access.gpo.gov) (week ending 16 January 2009), 12 January 2009.

plaintiffs did strike down BCRA's limitations on the funding of campaign ads. Finally, fulfilling his vow, Jeff Skilling appealed his criminal sentence to the highest court in the land. Three years in to his prison term, he argued—again through lawyer Dan Petrocelli—that his trial had been unfair, based in part on location (a complaint Judge Lake had dismissed), and in part on the legal standard of "honest services," which the jury had found Skilling did not provide. The verdict, still to come at the time of this writing, depending on its scope may bear broad implications for white collar prosecutions and sentencing, including those related to other accounting scandals that occurred in the early 2000s.

As 2009 came to a close, pundits and the news media reflected on the foregoing decade. Just as they lacked consensus as to what to call it, in pop parlance—the oughts? the '00s?—there seemed an uncomfortable ambivalence in their attempts to summarize its events. Particularly on matters of business and economics, the decade's narrative might have been much more encouraging had it been cut off a few years early. Instead, commentators had to confront a ten-year stretch that began with the dotcom bust and Enron, WorldCom and their counterparts; proceeded through what in retrospect was clearly just another bubble, even in brick and mortar; and then concluded with a much broader and deeper crisis, spreading from mortgage to credit and then seemingly everything else.

More sobering still, not only had 2000-2009 witnessed its own economic fits and starts; it seemed that much of the decade's bad news, in business and finance, really represented delayed damages from what had appeared to be positive developments in the past. Where the 1990s had been the best calendar decade for stock performances, with an average annual gain of 17.6 percent, the 2000s had followed as the worst. Such a drop-off strongly suggested that the '90s had been an economic aberration rather than any real burst of growth, and that that decade's bustle in trading and entrepreneurship left securities dangerously overvalued. Since the end of 1999 stocks had lost an average .5 percent per year—a lower performance than any calendar decade in recorded stock market history. Here was one grim indicator to which the qualifier "since the Great Depression" did not apply, for the previous record of .2 percent annual average losses—set in the 1930s—had been broken.[104] Yet even all of this aside, a similar narrative, stripped of statistics, resonated with people who did not read the *Wall Street Journal*. It was hard for anyone to characterize 2000-2009 as an era of economic growth given that effects of both the market downturn and the recession were still undeniably with us at the end.

In the December 20, 2009 issue of the *New York Times,* columnist Frank Rich offered a blunt assessment of the 2000s that blended business, the media, and popular culture. Though Ben Bernanke had been named *Time* Magazine "Person of the Year," Rich called him a "schnook," like everybody else in the world of finance, and said Bernanke hardly deserved such an honor for "putting his finger in the dike" far too late. In Bernanke's place the columnist wryly anointed golf star Tiger Woods. Woods had been a worldwide brand name with an impeccable public profile until late that year, when news broke that he had strayed from his marriage. The scandal began with one mistress coming forward, but it turned out that Wood's indiscretions spanned many years and at least two continents. Although ultimately busted, Rich concluded, Woods had pulled off quite the "con,"—less on his wife than on his global fan base and on the numerous companies with whom he had promotional contracts. "What's striking," Rich wrote, "is the exceptional, Enron-sized gap between this golfer's public image as a paragon of businesslike discipline and focus[,] and the maniacally reckless life we now know he led…. People wanted to believe what they wanted to believe."

Accordingly, the womanizing golfer well represented not just 2009, but indeed the whole preceding decade. Rich characterized the 2000s as an era of massive-scale deception, with Enron as opening act and the subprime mortgage crisis as finale. Other "successful ruses" during the intervening years included the rationale for the Iraq war. According to the columnist, it was all part of the same collective delusion that the September 11 attacks, rather than the Enron bankruptcy, had provided a compass in 2001 showing Americans where they stood in the world,

[104] Tom Lauricella, "Investors Hope the '10s Beat the '00s—Since End of 1999, U.S. Stocks' Performance Has Been the All-Time Clunker; Even the 1930s Beat It," *The Wall Street Journal (Eastern Edition)* 21 December 2009, C1. Skeptics quibble with the arbitrary designation of economic "decades" based on how calendar years happen to be numbered. However, if one had to choose any period of ten years to represent the Great Depression, it would likely be 1930-1939. Therefore the finding that stocks of the 2000s under-performed stocks in the 1930s is meaningful even notwithstanding the calendar decade distinction. The preferable recent "decade" with which to compare the Great Depression, if one could choose any, would probably have to be 1995-2005, give or take one year.

and what direction pointed to safety and progress.[105] Terrorism was a real threat, of course—but the nation's legions of domestic "hucksters" were in a sense more dangerous because they were so subtle and so adept in their dissembling. Indeed, "schnooks" like Bernanke were among the people who were supposed to make expert judgments on the nation's behalf—and yet they were at best oblivious to, and at worst complicit in, the largest and most ominous cons.

Rich probably could not be blamed for taking such a sarcastic tone given the context of this writing. His narrative of the 2000s was part satire, in that it embraced the feel-good designation "Person of the Year" (Sherron Watkins, emeritus) but re-purposed it as a badge of infamy, or at least ambiguity. Conflating heroes with villains, Rich essentially argued that the United States' most prominent personages should be those who truly represent its cultural climate, with money always at the fore. For this era, he judged that a multimillionaire-golden boy-adulterer was about right.

Yet if anything, Rich's narrative of the 2000s was too bounded in its events, its characters, and its cause-and-effect pairings. Like any storyteller, the columnist had to choose somewhere to start, and for his purposes Enron was as good a point as any—especially because so many people had already forgotten about it. But Rich's depiction of this particular decade as the era of the con ignored an American history of deception and false promises at every turn. Thus this story also, gloomy as it was, actually took too optimistic a view of what had preceded the 2000s and, implicitly, of what will come next. To assume that this decade will be remembered for its business blunders and its financial collapses is to suggest that nothing similar, let alone worse, has happened before or will happen in the future. Finally, we see here once again how even those narratives that seem most irreverent often adhere to traditional principles of the form. Rich inadvertently endorsed two popular axioms: that his story was unprecedented, and also that it would ultimately have a happy ending.

The only thing certain about the future of American business and finance is that humor must remain in abundant supply. Luckily, there is no evidence of its drying up. Even people who

[105] Frank Rich, "Tiger Woods, Person of the Year," *The New York Times* 20 December 2009, http://www.nytimes.com/2009/12/20/opinion/20rich.html?_r=1&th&emc=th. Accessed 20 December 2009.

make no claim to understand economic news have shown themselves willing and able to make fun of it, and they continued in this yeoman's task even through the darkest days of 2008. In this regard, however—just as on issues of business regulation and state intervention in financial markets—that year's presidential election raised questions as to what kind of "change" Obama might bring. Just as some supporters, during his campaign, had worried that he might be "too smart" or even "too cool" to be widely relatable, some commentators suggested for similar reasons that Obama as president might make a difficult target for satire. Perhaps the shift that he represented—from cynicism to "hope"—would have a downside.

And yet, as all should have known, jokes would find a way. "Saturday Night Live" came up with an impersonator as soon as Obama achieved prominence on the political scene. In his debut as "Fauxbama," Fred Armison warmly but firmly assured armies of swooning (female) journalists that it was "okay" that all of their questions to him were easy, and all of their reports on him adoring. Already an impressive study in majestic head motions and sonorous baritone, Armison's technique sharpened over the course of the 2008 campaign at about the same rate as Obama's. Likewise print caricatures came easily, exaggerating the President's angular facial features and his lanky build until he appeared a very narrow pillar of (somewhat less) dignity. Especially as his term and the recession continued, Obama began speaking from both corners of his mouth, in cartoons, just like any of his presidential predecessors.

One editorial cartoon published early in Obama's term shows the President as a doctor—complete with clipboard, lab coat and stethoscope—standing by the bed of a deathly ill man designated "ECONOMY." The patient is hooked up to six monitored support systems, each of them bearing the dollar sign, and yet still appears to be gasping for breath. "I'll feel better about his chances for recovery," Doctor Obama says to some Everyman hospital visitor, who is standing with him bedside, "after he's able to be taken off life support."[106] Such a scene highlights all the most salient themes in narratives about business and government, both amid the Enron scandal and through the financial crisis. The numerous high-tech IVs and monitors on which the economy depends are indecipherable to the reader. Moreover, the "$," all presumably coming

[106] http://www.cartoonstock.com/directory/O/Obama.asp. Accessed 26 January 2010.

from the government, though administered with haste and in great quantity appear not to be working—or if they are, then just barely. Finally, the "presiding" expert doctor seems no better a judge of the situation than anyone else. His expert prognosis manages simultaneously to be both contingent and completely obvious. At the end of the 2000s, even as the economic patient's vital signs appeared somewhat more encouraging, his fate and the role of politics in it was still anyone's story to tell.

BIBLIOGRAPHY

I. THE HISTORY OF BUSINESS, GOVERNMENT, AND PUBLIC PERCEPTION

Adelstein, Richard P. "'The Nation As An Economic Unit:' Keynes, Roosevelt, and the Managerial Ideal." *The Journal of American History* 78, no. 1 (June 1991): 160-87.

Beatty, Jack. *Colossus: How the Corporation Changed America.* New York: Broadway Books, 2001.

Blicksilver, Jack. *Defenders and Defense of Big Business in the United States, 1880-1900.* American Economic History: A Garland Series, ed. Stuart Bruchey. New York: Garland, 1985.

Congressional Quarterly, *Congressional Campaign Finances: History, Facts, and Controversy.* Washington, D.C.: Congressional Quarterly, 1992.

Cross, Gary. *An All-Consuming Century: Why Commercialism Won in America.* New York: Columbia University Press, 2000.

Destler, Chester McArthur. "The Opposition of American Businessmen to Social Control in the Gilded Age." *The Mississippi Valley Historical Review* 39, no. 4 (March 1953): 641-72.

Gage, Beverly. *The Day Wall Street Exploded: A Story of America in its First Age of Terror*. New York: Oxford University Press, 2009.

Galambos, Louis. *The Public Image of Big Business in America, 1880-1940: A Quantitative Study in Social Change.* Baltimore: Johns Hopkins University Press, 1975.

Lewis-Beck, Michael S. et al., *The American Voter Revisited*. Ann Arbor: University of Michigan Press, 2008.

Maier, Pauline. "The Revolutionary Origins of the American Corporation." *The William and Mary Quarterly*, Third Series, 50, no. 1, Law and Society in Early America (January 1993): 51-84.

Marchand, Roland. *Creating the Corporate Soul: The Rise of Public Relations and Corporate Imagery in American Big Business.* Berkeley: The University of California Press, 1998.

Michelman, Irving S. *Business At Bay: Critics and Heretics of American Business*. New York: A. M. Kelley, 1969.

Miller, Perry. "The Shaping of the American Character." *The New England Quarterly* 28, no. 4 (December 1955): 435-54.

Sitkoff, Robert H. "Corporate Political Speech, Political Extortion, and the Competition for Corporate Charters." *The University of Chicago Law Review* 69, no. 3 (summer 2002): 1103-116.

Vogel, David. "Why Businessmen Distrust Their State: The Political Consciousness of Corporate Executives." *British Journal of Political Science* 8, No. 1 (January 1978): 45-78.

Whyte, William H. *The Organization Man.* New York: Simon & Schuster, 1956; Philadelphia: University of Pennsylvania Press, 2002.

Zelizer, Julian. “Seeds of Cynicism: The Struggle Over Campaign Finance, 1956-1974.” *The Journal of Policy History* 14, no. 1 (2002): 73-111.

II. THE HISTORY OF FINANCIAL CRISES, BUSINESS FRAUD, AND SCANDAL

Adut, Ari. On Scandal: Moral Disturbances in Society, Politics and Art. New York: Cambridge University Press, 2008.

Bernstein, Michael A. “The Contemporary American Banking Crisis in Historical Perspective.” *The Journal of American History* 80, No. 4 (March 1994): 1382-96.

Cudahy, Richard D. and William D. Henderson, “From Insull to Enron: Corporate (Re)Regulation After The Rise and Fall of Two Energy Icons.” *Energy Law Journal of the Federal Energy Bar Association* (2005): 36-110.

Green, Fletcher M. “Origins of the Credit Mobilier of America.” *The Mississippi Valley Historical Review* 46, no. 2 (September 1959): 238-51.

Kasson, John F. *Rudeness and Civility: Manners in Nineteenth-Century Urban America.* New York: Hill and Wang, 1990.

Kindleberger, Charles P. *Manias, Panics and Crashes: A History of Financial Crises.* Hoboken: John Wiley & Sons, 2005.

Mihm, Stephen. *A Nation of Counterfeiters: Capitalism, Con Men, and the Making of the United States.* Cambridge: Harvard University Press, 2007.

Morris, Charles R. *Money, Greed, and Risk: Why Financial Crises and Crashes Happen.* New York: Random House, 1999.

Sandage, Scott A. *Born Losers: A History of Failure in America.* Cambridge: Harvard University Press, 2006.

Schudson, Michael. *Watergate in American Memory: How We Remember, Forget, and Reconstruct the Past.* New York: Basic Books, 1992.

Thomas, Alexa H. ed. *Corporate Scandals: Reverberations and Long-Term Meaning*. New York: Nova Science, 2006.

III. ENRON

Berkowitz, Arthur L. *Enron: A Professional’s Guide to the Events, Ethical Issues, and Proposed Reforms.* Chicago: CCH, 2002.

Bryce, Robert. *Pipe Dreams: Greed, Ego and the Death of Enron.* New York: Public Affairs, 2002.

Cruver, Bryan. *Anatomy of Greed: The Unshredded Truth from an Enron Insider.* New York: Carroll and Graf, 2002.

Eichenwald, Kurt. *Conspiracy of Fools: A True Story.* New York: Broadway, 2005.

Fox, Loren. *Enron: The Rise and Fall*. Hoboken: John Wiley & Sons, 2003.

Fusaro, Peter C. and Ross M. Miller, *What Went Wrong at Enron: Everyone’s Guide to the Largest Bankruptcy in U.S. History.* Hoboken: John Wiley & Sons, 2002.

Gladwell, Malcom. “Open Secrets: Enron, Intelligence, and the Perils of Too Much Information.” *The New Yorker* 82 (8 January 2007): 44-53.

McLean, Bethany and Peter Elkind, *The Smartest Guys in the Room: The Amazing Rise and Scandalous Fall of Enron.* New York: Portfolio, 2003.

Swartz, Mimi with Sherron Watkins. *Power Failure: The Inside Story of the Collapse of Enron*. New York: Doubleday, 2003.

IV. NARRATIVE AND LITERARY THEORY

Baudrillard, Jean. *Simulacra and Simulation.* Ann Arbor: The University of Michigan Press, 1994.

Blair, John G. The Confidence Man in Modern Fiction: A Rogue’s Gallery with Six Portraits. London: Vision, 1979.

Currie, Mark. *Postmodern Narrative Theory.* New York: St. Martin’s Press, 1998.

Danto, Arthur C. *Narration and Knowledge.* New York: Columbia University Press, 2007.

Fitz Gerald, Gregory. *Modern Satiric Stories: The Impropriety Principle.* Glenview, IL: Scott, Foresman, 1971.

Fulford, Robert. *The Triumph of Narrative: Storytelling in the Age of Mass Culture.* Toronto: Anansi, 1999.

Grimsted, David. *Melodrama Unveiled: American Theater and Culture, 1800-1850.* Chicago: The University of Chicago Press, 1968.

Hedley, Leslie Woolf. *Contemporary American Satire II.* Sonoma, CA: Exile Press, 1992.

Kearney, Richard. *On Stories.* New York: Routledge, 2002.

Kernan, Alvin B., ed. *Modern Satire*. New York: Harcourt, Brace & World, 1962.

Mason, Jeffrey D. *Melodrama and the Myth of America*. Bloomington: Indiana University Press, 1993.

Michel, Laurence and Richard B. Sewall, ed. *Tragedy: Modern Essays in Criticism.* Westport: Greenwood Press, 1963.

Sontag, Susan. *Illness as Metaphor*. New York: Farrar, Straus and Giroux, 1988.

Tilly, Charles. *Why?.* Princeton: Princeton University Press, 2006.

White, Hayden. *The Content of the Form: Narrative Discourse and Historical Representation.* Baltimore: The Johns Hopkins University Press, 1987.

V. POLITICAL AND CULTURAL RESPONSES TO SEPTEMBER 11, 2001

Chermak, Steven, Frankie Y. Bailey, and Michelle Brown, ed. *Media Representations of September 11*. Westport, CT: Praeger, 2003.

Conley, Richard S., ed. *Transforming the American Polity: The Presidency of George W. Bush and the War on Terrorism.* Upper Saddle River, NJ: Pearson Prentice Hall, 2005.

Dudziak, Mary L., ed. *September 11 in History: A Watershed Moment?.* Durham, NC: Duke University Press, 2003.

Rockmore, Tom, ed. *The Philosophical Challenge of September 11*. Malden, MA: Blackwell, 2003.

Rozario, Kevin. *The Culture of Calamity: Disaster and the Making of Modern America.* Chicago: University of Chicago Press, 2007.

Silberstein, Sandra. *War of Words: Language, Politics, and 9/11.* London: Routledge, 2002.

Vale, Lawrence J. and Thomas J. Campanella, ed. *The Resilient City: How Modern Cities Recover from Disaster.* New York: Oxford University Press, 2005.

VI. CAMPAIGN FINANCE AND THE BIPARTISAN CAMPAIGN REFORM ACT

Abrams, Floyd. *Speaking Freely: Trials of the First Amendment*. New York: Penguin, 2005.

Briffault, Richard. "Reforming Campaign Finance Reform: A Review of Voting with Dollars." *California Law Review* 91, no. 3 (May, 2003): 643-84.

Drew, Elizabeth. *Citizen McCain.* New York: Simon & Schuster, 2002.

Farrar-Myers, Victoria A. and Diana Dwyre. *Limits and Loopholes: The Quest for Money, Free Speech and Fair Elections.* Washington, DC: CQ Press, 2008.

Grant, J. Tobin and Thomas J. Rudolph. *Expression vs. Equality: The Politics of Campaign Finance Reform.* Columbus: Ohio State University Press, 2004.

Hohenstein, Kurt. *Coining Corruption: The Making of the American Campaign Finance System.* DeKalb, Ill.: Northern Illinois University Press, 2007.

Malbin, Michael J., ed. *The Election After Reform: Money, Politics, and the Bipartisan Campaign Reform Act.* Lanham, MD: Rowman and Littlefield, 2006.

Samples, John. *The Fallacy of Campaign Finance Reform.* Chicago, University of Chicago Press, 2006.

VII. CORPORATE GOVERNANCE, ACCOUNTING, AND THE SARBANES-OXLEY ACT

Barnard, Jayne W. "Historical Quirks, Political Opportunism, and the Anti-Loan Provision of the Sarbanes-Oxley Act." Symposium article, *The Twenty-Eighth Annual Law Review Symposium in the Wake of the Sarbanes-Oxley Act*.

Chiara, John B. and Michael D. Orenstein. "Whistler's Nocturne in Black and Gold—The Falling Rocket: Why the Sarbanes-Oxley Whistleblower Provision Falls Short of the Mark." *Hofstra Labor and Employment Law Journal* 23 (Fall 2005): 235-67.

Craig, R. J. and J. H. Amernic. "Enron Discourse: The Rhetoric of a Resilient Capitalism." *Critical Perspectives on Accounting* 15 (2004): 813-51.

Cullinan, Charlie. "Enron as a Symptom of Audit Process Breakdown: Can the Sarbanes-Oxley Act Cure the Disease?" *Critical Perspectives in Accounting* 15 (2004): 853-864.

Falk, Jonathan. "Substituting Outrage for Thought: The Enron 'Smoking Gun' Memos." *The Electricity Journal* (August/September 2002): 20-21.

Huffman, Tosha. “Section 404 of the Sarbanes-Oxley Act: Where the Knee-Jerk Bruises Shareholders and Lifts the External Auditor.” *Brandeis Law Journal* 43 (2004/2005): 239-258.

Ribstein, Larry E. “Sarbanes-Oxley After Three Years.” *New Zealand Law Review* 3 (2005): 365-381.

Skeel, David. *Icarus in the Boardroom: The Fundamental Flaws in Corporate America and Where They Came From.* New York: Oxford University Press, 2005.

VIII. MEMORY

Irwin-Zarecka, Iwona. *Frames of Remembrance: The Dynamics of Collective Memory.* New Brunswick, U.S.A.: Transaction Publishers, 1994.

Kansteiner, Wulf. “Finding Meaning in Memory: A Methodological Critique of Collective Memory Studies.” *History and Theory* 41 (May 2002): 179-97.

Langer, Lawrence. *Holocaust Testimonies: The Ruins of Memory.* New Haven: Yale University Press, 1991.

Megill, Allan. “History, Memory, Identity.” *History of the Human Sciences* 11, No. 3 (1998): 37-62.

Minow, Martha. *Between Vengeance and Forgiveness: Facing History After Genocide and Mass Violence.* Boston: Beacon Press, 1998.

Nerone, John. “Professional History and Social Memory.” *Communication* 11 (1989): 89-104.

Schacter, Daniel. ed. *Memory Distortion: How Minds, Brains and Societies Reconstruct the Past.* Cambridge, MA: Harvard University Press, 1995.

Sturken, Marita. *Tangled Memories: The Vietnam War, the AIDS Epidemic, and the Politics of Remembering.* Berkeley: University of California Press, 1997.

----------. *Tourists of History: Memory, Kitsch, and Consumerism from Oklahoma City to Ground Zero.* Durham, N.C.: Duke University Press, 2007.

Winter, Jay. “The Memory Boom in Contemporary Historical Studies.” *Raritan* 21: 52-66.

Zelizer, Barbie. *Covering the Body: The Kennedy Assassination, The Media, and the Shaping of Collective Memory.* Chicago, University of Chicago Press, 1992.

----------. “Reading the Past Against the Grain: The Shape of Memory Studies.” *Critical Studies in Mass Communication* 12, No. 2 (June 1995): 214-39.

Zerubavel, Eviatar. “Social Memories: Steps to a Sociology of the Past.” *Qualitative Sociology* 19, No. 3 (1996): 283-99.

IX. WHITE COLLAR CRIME, TRIALS, AND LITIGATION

Ferguson, Robert. *The Trial in American Life*. Chicago: University of Chicago Press, 2007.

Hasnas, John. *Trapped: When Acting Ethically is Against the Law*. Washington, D.C.: The Cato Institute, 2006.

Larson, Edward J. *Summer for the Gods: The Scopes Trial and America’s Continuing Debate Over Science and Religion*. New York: Basic Books, 1997.

Mushlin, Michael B. “Bound and Gagged: The Peculiar Predicament of Professional Jurors.” *Yale Law & Policy Review* 25, No. 239 (Spring 2007). 240-287.

Shaw, Beth Z. “Judging Juries: Evaluating Renewed Proposals for Specialized Juries from a Public Choice Perspective.” *UCLA Journal of Law and Technology* (Nov. 2006): 1-37.

Solove, Daniel. “Should We Have Professional Juries?” 20 March 2009, http://www.concurringopinions.com/archives/2009/03/should_we_have.html. Accessed 21 July 2009.

X. THE FINANCIAL CRISIS OF 2008

Gamble, Andrew. *The Spectre at the Feast: Capitalist Crisis and the Politics of Recession*. New York: Palgrave Macmillan, 2009.

Gross, Daniel. *Dumb Money: How Our Greatest Financial Minds Bankrupted the Nation.* New York: Free Press, 2009.

Grossberg, Lawrence. “Modernity and Commensuration: A Reading of a Contemporary (Economic) Crisis.” Department of Communication Studies, University of North Carolina, Chapel Hill, electronic. 1-56.

Madrick, Jeff. “They Didn’t Regulate Enough and Still Don’t.” *The New York Review of Books* 5 November 2009: 54-57.

Ritholtz, Barry with Aaron Task, *Bailout Nation: How Greed and Easy Money Corrupted Wall Street and Shook the World Economy.* Hoboken: John Wiley & Sons, 2009.

XI. GOVERNMENT DOCUMENTS, IN CHRONOLOGICAL ORDER

President. Address. "Freedom at War with Fear: Address to a Joint Session of Congress and the American People." *Weekly Compilation of Presidential Documents* (GPO Access: frwais.access.gpo.gov). 20 September 2001.

Senate Commerce, Science and Transportation Committee. *An Overview of the Enron Collapse: Hearing before the Commerce, Science and Transportation Committee*. 107th Cong., 1st sess. 18 December 2001.

President. Address, “Remarks Welcoming General Tommy R. Franks and an Exchange with Reporters in Crawford, Texas.” *Weekly Compilation of Presidential Documents* (GPO Access: frwais.access.gpo.gov). Week ending 28 December 2001.

President. Address. “State of the Union Message.” *Weekly Compilation of Presidential Documents* (GPO Access: frwais.access.gpo.gov). 29 January 2002.

House Education and the Workforce Committee. *Enron/Retirement Part I: Hearing Before the House Education and the Workforce Committee.* 107th Cong., 2nd sess. 6 February 2002.

Oversight and Investigations Subcommittee of the House Energy and Commerce Committee. *Finding of Enron’s Special Investigative Committee: Hearing before the Oversight and Investigations Subcommittee of the House Energy and Commerce Committee.* 107th Cong., 2nd sess. 7 February 2002.

Oversight and Investigations Subcommittee of the House Energy and Commerce Committee. *Financial Collapse of Enron: Hearing before the Oversight and Investigations*

Subcommittee of the House Energy and Commerce Committee. 107th Cong., 2nd sess. 14 February 2002.

Senate Commerce, Science and Transportation Committee. Financial Collapse of Enron: Hearing before the Senate Commerce, Science and Transportation Committee. 107th Cong., 2nd sess. 26 February 2002.

US Senate. *Campaign Finance Reform: Hearing before the Senate*. 107th Cong., 2nd sess. 20 March 2002. Congressional Record (2002).

House Committee on House Administration. Campaign Finance Reform: Hearing before the House Committee on House Administration. 107th Cong., 2nd sess. 1 May 2002.

Cantor, Joseph E. and L. Paige Whitaker. "Bipartisan Campaign Reform Act of 2002: Summary and Comparison With Existing Law." Congressional Research Service Report for Congress. 3 May 2002.

Federal News Service White House Briefing. Stakeout Media Availability with Sen. Paul Sarbanes (D-MD), Chairman of the Senate Banking, Housing and Urban Affairs Committee, Following the Signing of the Corporate Accountability Bill. 30 July 2002.

President. Addresses and News Conferences. *Weekly Compilation of Presidential Documents* (GPO Access: frwais.access.gpo.gov). August 2007 – November 2008.

President. Address. "Remarks on Homeownership Financing and an Exchange With Reporters." *Weekly Compilation of Presidential Documents* (GPO Access: frwais.access.gpo.gov). (Week ending 31 August 2007). 31 August 2007.

President. Address. "Remarks on the National Economy and a Question-and-Answer Session in Chantilly, Virginia." *Weekly Compilation of Presidential Documents* (GPO Access: frwais.access.gpo.gov). (Week ending 10 October 2008). 7 October 2008.

President. News Conference. *Weekly Compilation of Presidential Documents* (GPO Access: frwais.access.gpo.gov). (Week ending 16 January 2009). 12 January 2009.

President, Address. "Farewell Address to the Nation." *Weekly Compilation of Presidential Documents* (GPO Access: frwais.access.gpo.gov). (Week ending 16 January 2009). 15 January 2009.

President. Address. "Weekly Address." *Weekly Compilation of Presidential Documents* (GPO Access: frwais.access.gpo.gov). 24 January 2009.

President. News Conference. *Weekly Compilation of Presidential Documents* (GPO Access: frwais.access.gpo.gov). 9 February 2009.

President. Address. "Remarks to the Business Council." *Weekly Compilation of Presidential Documents* (GPO Access: frwais.access.gpo.gov). 13 February 2009.

President. Address. "Remarks and a Discussion with the Business Roundtable." *Weekly Compilation of Presidential Documents* (GPO Access: frwais.access.gpo.gov). 12 March 2009.

XII. SELECTED NEWS SOURCES

Fortune, 1 February 1994 – 10 July 2006.

The Houston Chronicle, 1 December 2001 - 10 July 2006.

Knight Ridder Business News, 1 January – 30 May 2006.

Newsweek, 1 December 2001 - 10 July 2006.

The New York Times, 1 December 2001 – 30 December 2009.

The Philadelphia Inquirer, 1 January – 30 May 2006.

Platts Global Power Report, 1 January – 30 May 2006.

The Wall Street Journal, 1 December 2001 – 30 December 2009.

The Washington Post, 1 December 2001 – 30 December 2009.

XIII. FILMS AND TELEVISION OR AUDIO SEGMENTS, ALPHABETIZED BY TITLE

"Barney Frank on Bailouts, Welfare." 60 Minutes, CBS. 14 December 2008. www.cbsnews.com/stories/2008/12/11/60minutes/main4663945.shtml. Accessed 23 January 2010.

The Daily Show. "Bad Company." http://www.thedailyshow.com/watch/wed-december-5-2001/bad-company. Accessed 4 January 2010.

The Daily Show. "Bethany McLean." http://www.thedailyshow.com/watch/wed-february-20-2002/bethany-mclean. Accessed 4 January 2010.

The Daily Show. "Rage in the Streets: March 17, 2009." http://www.thedailyshow.com/watch/tue-march-17-2009/rage-in-the-streets. Accessed 23 January 2010.

Enron: The Smartest Guys in the Room. Prod. Mark Cuban, Todd Wagner, and Joana Vicente. Dir. Alex Gibney. 110 min., Magnolia Home Entertainment, 2005. DVD.

"The Enron Voice Mail System." http://politicalhumor.about.com/library/blenronvoicemail.htm. Accessed 5 March, 2010.

"FIX IT." http://www.youtube.com/watch?v=yo3uxqwTxk0. Accessed 15 January 2010.

Fun with Dick and Jane. Prod. Jim Carrey and Brian Grazer. Dir. Dean Parisot. 90 min., Sony Pictures Home Entertainment, 2006. DVD.

Memron. Dir. Nancy Hower. 79 min., Magnolia Home Entertainment, 2009. DVD.

"Rahm Emmanuel: You never want a serious crisis to go to waste." http://www.youtube.com/watch?v=1yeA_kHHLow. Accessed 24 January 2010.

Melissa Block. "Whistleblower, Enron Employees Hear Verdict," Interview with Sherron Watkins. *National Public Radio* "All Things Considered." http://www.npr.org/templates/story/story.php?storyId=5431226. Accessed 6 March 2010.

XIV. SELECTED COMMERCIAL WEBSITES, ALPHABETIZED BY TITLE

"1400 Smith Street." http://www.brookfieldproperties.com/building/detail.cfm?BID=264. Accessed 3 February 2010.

"Enron Collectibles." http://www.tlknet.com/enron.htm. Accessed 1 February 2010

Madoff Securities: Quality Executions and Service Through Innovative Technology;" "The Owner's Name is On The Door." http://www.webcitation.org/5d4ZNZhKv. Accessed 18 January 2010.

XV. SELECTED PRINT SATIRE, ALPHABETIZED BY TITLE

"Billionaires For Bush Do-It-Yourself Manual, Version 2.000.000.000." http://billionairesforbush.com/diy_v2_contents.php. Accessed 5 March 2010.

Scam, Busta. (Brian Durbin). *The Kingdom of Norne*. James A. Rock, 2006.

Grayson, Michael. "The Lessons of Enron." *Critical Perspectives in Accounting* 15 (2004): 1003-4.

Barry, Tim. *The Totally Unauthorized Enron Joke Book* (Vancouver: IT Press, 2002),

"Ax, Felonius" [Clifford J. Tasner]. "We're Enron." http://billionairesforbush.com/cds.php#enron. Accessed 5 March 2010.

Borowitz, Andy. *Who Moved My Soap?: The CEO's Guide to Surviving in Prison.* New York: Simon & Schuster, 2003.