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Making the rules and breaking the rules: the political origins of corporate corruption in the new economy

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Abstract Recent scandals at companies like Enron and WorldCom have pointed to the systemic origins of many corporate frauds. This paper advances the argument that behind those scandals were strategic political actions that changed the regulatory and legal environment in which those firms operated and created *criminogenic institutional frameworks* that facilitated acts of corporate corruption. Three case studies involving (1) the California energy crisis of the late 1990's, (2) the regulation of energy derivatives, and (3) accounting treatments of stock options, are presented to illustrate how markets and the rules that govern them are the products of political processes and how they can create motivations and opportunities for corporate fraud. The implications these case studies have for the study of corporate crime and corruption are discussed.

Individual instances of white-collar crime—corporate executives who fix prices, bankers who embezzle, and investment bankers who trade on insider information—are routine features of modern life, ones that most of us accept as the price of living in complex market societies. In recent years, however, we have witnessed several periods in which fraud and corruption have swept through a number of industries, leaving thousands of victims with massive financial losses, hundreds of indictments and calls for new legislation in their wake. The savings and loan crisis of the late 1980's and the more recent corporate accounting scandals involving high-flying firms like WorldCom and Enron exemplify this pattern. These events suggest something at work that goes beyond the individual offender who has given into temptation and raise the possibility that large-scale institutional failures lie behind these epidemics of white-collar and corporate crime. A number of criminologists have come to realize that to understand these phenomena it is not enough to focus on individual white-collar employees or corporate executives, applying to them well-worn criminological theories that have been used to explain street crimes, but instead one must look at how the larger institutional environments in which they operate

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facilitate their crimes and how those environments were created. It is this last issue of the origins of criminogenic white-collar environments on which this paper focuses.

White-collar crime researchers have for some time advocated a focus on criminogenic markets and criminogenic industries as a means for understanding the distribution of motives and opportunities for white-collar crime. Yet, with some notable exceptions [44, 8, 45] they have left largely unexplored questions concerning how those markets were created. A key insight is provided by economic sociologists who, in contrast to mainstream economists, argue that "markets are *made*; they do not spontaneously arise from some instinctive imperative to truck, barter and exchange" [33: 136]. This means that markets are created by actors operating in political institutions [5, 18]. Economic sociologists, however, have been criticized for generally failing to follow up on the implications of this point to pursue the role that politics and power play in the creation of specific economic markets [33, 23]. Building on these conceptual insights, Tillman and Indergaard [46, 48] have argued that analysts should focus on the creation of rules—both formal and informal— that govern markets, how those rules are the products of political projects and how those rules create opportunities for white-collar crime and corporate corruption.

This paper attempts to flesh out some of the implications of this argument with three examples: the California electricity market of the late 1990's, accounting rules regarding the treatment of stock options in corporate financial statements, and the regulation of energy derivatives. Each of these areas was closely associated with industries that were part of what came to be known as the New Economy, where fraud and corruption were most prevalent. These three case studies are used to illustrate the importance of rules and markets in the creation of motivations and opportunities for corporate corruption.

Corporate corruption in the new economy

The empirical focus in the paper is on corruption and fraud in New Economy industries in the U.S. during the late 1990's. Here I use the term "corporate corruption" rather than "corporate crime" because many of the acts of fraud and deception discussed herein do not in and of themselves violate criminal statutes. I would note, however, that, consistent with the arguments of Sutherland [43], Michalowski and Kramer [29], Reed and Yeager [39] and others, in corporate contexts the line between criminal and civil wrongs may be arbitrary and misleading; simply because an act does not meet certain standards delineated by laws does not make it any less harmful [21: 266].

The term "New Economy" emerged during the nineties and was originally used to refer to firms in the dot-com industry, particularly those in Silicon Valley, but later came to be used to describe firms and industries that were thought to embrace the core aspects of the dot-coms, including: new organizational forms (teams and networks vs. hierarchical structures), an emphasis on knowledge vs. material assets, business models based on swapping and trading services and products rather than cash transactions and, significantly, operations that were claimed to require little oversight by government regulatory agencies [46]. The three industries where these characteristics and ideas were adopted with the most vigor were the dot-com industry, the energy trading industry (led by Enron), and the telecommunications industry (exemplified by WorldCom). It was also in these industries where corporate scandals, particularly those involving high-level accounting fraud, were the most common. A study by Tillman and Indergaard [47] of 374 firms accused of securities fraud during the late nineties and early years of the next decade found that 38% were in one of the three industries.

The scope and consequences of corporate fraud during the era were dramatic. A study by the General Accounting Office study of financial restatements found that between 1997 and mid-2002, nearly 10% of all firms listed on the three major American stock exchanges were forced to "restate" their financial statements [50]. Tillman and Indergard [47] found that 45% of the firms in the GAO sample were accused of securities fraud. In its analysis, the GAO estimated that shareholders in those firms lost between $100 billion and $200 billion, as the companies' stock price typically plunged following the restatement announcements [50]. The human consequences were equally as severe. Kedia and Phillips estimated that at a subset of the firms in the original GAO data set—those that announced restatements in 2000 and 2001— between 250,00 and 600,000 jobs were lost between 2000 and 2002 [22: 4].

From criminogenic markets to criminogenic institutional frameworks

Researchers in several fields have long observed that crime and corruption tend to be more common in certain industries, leading to an interest in the types of industry traits that are associated with corporate fraud [13, 56, 3] In sociology this observation led to the development of the *criminogenic markets* concept in which white-collar crime is seen as the outgrowth of the structure and organization of industries rather than the result of the individual characteristics of those involved; white-collar crime is thus ultimately a *systemic* problem. Researchers used the concept to understand the sources and dynamics of crime and corporate corruption in the American auto industry [25, 17], the liquor industry [14] and the securities industry [30].

As insightful as these analyses were, they tended to treat market characteristics as given, as a set of pre-existing conditions that market actors confronted and exploited, but did not actively participate in creating or modifying. Several studies conducted in the 1980's and 1990's, however, began to investigate the roles played by market actors in the political processes that led to changes in the rules governing specific criminogenic markets. For example, in their study of the S&L industry, Calavita and colleagues examined how industry representatives succeeded in changing regulations to allow thrifts to exceed the traditional 5% limit on brokered deposits—large deposits placed by money managers—thereby unleashing a flood of money into S&L's and also opening "the system up to pervasive and systemic fraud" [8: 14]. Similarly, in his analysis of organized crime in the waste disposal industry Szasz [44] discovered that corporate generators of waste (led by chemical and oil companies) were instrumental in creating a "criminogenic regulatory structure" that facilitated the involvement of organized crime groups in the illegal disposal of waste. Tillman's [45] analysis of fraud among small business health insurers found that laws created to expand health insurance coverage created criminogenic conditions that opened the door to white-collar criminals who sold bogus insurance policy to desperate consumers and that attempts to change the laws were blocked by powerful corporate and labor organizations.

More recently, Tillman and Indergaard have sought to modify the criminogenic markets concept to adjust for two key changes that have altered the corporate landscape, particularly in the New Economy, in the last two decades. First, "large corporations reduced the range of activities they exercised directly control over..," [46: 483] with control, instead, being spread over networks of firms that often included financial services companies. Thus, participants in corporate frauds may not be located in a single industry but instead are often drawn from several industries. Second, the New Economy scandals, like earlier scandals in the S&L industry, often involved altering the rules of corporate governance. Powerful companies like Enron did not just *break* the rules, they *made* the rules [46: 75–96]. These rules are of three different types: (1) regulatory, as found in formal, legally-defined rules that are backed by the coercive power of the state; (2) normative, e.g., traditional standards of behavior regarding the relationship of outside auditors with their clients; and (3) cognitive, the rules regarding appropriate behavior that are defined and interpreted within specific organizations. In the New Economy of the 1990's there was a marked shift away from formal regulatory rules and towards a reliance on normative and cognitive rules [46: 20–21] as part of a broad trend towards the deregulation of economic activities. In this environment Enron was spectacularly successful because the firm's leaders were able to "build an elaborate network of interlocking connections to politicians, regulators, bankers, accountants, public relations experts and media heads" [46: 76].

Frauds of this scope require an expansion of the criminogenic markets concept and Tillman and Indergaard [48] propose what they call *criminogenic institutional frameworks* in which numerous institutions and organizational actors would be considered as relevant in the construction of crime-facilitative environments. In situations like these, altering the rules is not just a matter of "getting to" a well-placed political figure but involves organizing an array of key actors—media pundits, politicians, lawyers, accountants, academics—to assist in promoting a particular ideological vision of the world. In this view, market change during the 1990's took on the characteristics of a public relations campaign.

> Executives conducted a decade-long march through the institutions, waving banners of a free market and singing psalms in praise of investors, when, in fact, they were waging aggressive lobbying campaigns (with their investors' money) to change the rules in ways that would buffer them from scrutiny. [46: 26–27]

The next section presents examples of how these campaigns were organized and their criminogenic consequences.

Changing the rules that mattered: three cases

The corporate scandals of the late 1990's were wide-ranging, with large numbers of companies involved in a variety of deceptive schemes. But underlying many of these frauds were fundamental changes in markets and the rules that govern them. Here I analyze three of these changes and explore how they created conditions that encouraged and facilitated fraud and corruption. With this “small-N analysis” I hope to retain the detail and context of case studies while increasing generalizability by using multiple cases [1: 58–59]. Empirical materials for the cases are taken from a variety of sources including: government reports, congressional hearings, court filings and online data bases.

The California electricity market in the late 1990's

On January 17, 2001, the electrical power went off for much of the San Francisco Bay Area. People were stuck in elevators and buildings, bank customers could not access their money as ATM machines failed to operate, and drivers had to negotiate intersections where traffic lights went dark. The crisis was not the result of a natural disaster but instead the result of an intentional decision by power officials to institute a “rolling black out”—shutting off power to selected communities for temporary periods as a cost-saving measure necessitated by a market in which the local utility was spending far more for its electricity than consumers were paying. While the soon-to-be-inaugurated George W. Bush blamed the situation on environmental policies that restricted energy supplies, it soon became apparent that something else was at fault: an electricity market that had spun out of control as a result of sweeping changes implemented 2 years earlier. From the consumer's point of view the new market was a massive failure, but from the perspective of corporate players in the energy market it was a smashing success. In a three-day period around the January 2001 blackouts, the biggest player in that market, the Enron Corporation, reaped a whopping $300 million in profits in California [2].

The roots of the crisis can be traced to the early 1990's when California consumers were paying 30–50% more for electricity than residents of other states. Critics, mostly conservative Republicans, argued that the source of this disparity was the overly bureaucratic system by which power was generated and distributed, a system that for decades had been controlled by public utilities, who had few incentives to be efficient since they faced no competition. What was needed, they argued, was to inject competition into the system by opening it up as a free market that operated largely unhindered by government regulation and would encourage market players to introduce the techniques developed in financial markets to efficiently allocate resources and ultimately lower prices to consumers. The critics' campaign to create a deregulated market for electrical energy was ultimately successful, culminating in the enactment of legislation in 1996 that was meant to radically alter the way that electricity was generated and distributed to consumers.

The result was a complex new market for electricity that combined state agencies, which were ultimately responsible for maintaining power lines and for ensuring that adequate levels of electricity reached consumers, with private energy companies (like Enron) which largely controlled energy generation and which bought and sold energy contracts in newly-created auctions on which the wholesale price of electricity could vary wildly. It soon became clear that the new market created enormous opportunities for legalized theft. California authorities would later claim that Californians had been bilked by more than $8.9 billion by unscrupulous energy companies that "...engaged in conduct that would be shocking in a fully deregulated market—and that is almost incomprehensible in a market for the sale of a product essential to health and safety" [40: 3]. This conduct included: (1) deliberately withholding energy from the market in order to drive up prices by creating false shortages; (2) submitting false bids in the energy auctions in order to drive up prices; (3) engaging in "megawatt laundering" by moving energy out of and then back into California (or pretending to do so) in order to trigger higher payments from the state under provisions of the new law that were designed to help meet emergency energy shortages; (4) creating "false congestion" on power lines, and thereby reaping payments from the state to reduce energy loads, by swapping electricity contracts with other energy companies which gave the impression of energy overloads when, in fact, they never intended for the electricity to reach consumers. [40: 3–8] Energy traders were caught on tape discussing various ways to steal from the state and consumers utilizing strategies that were so common they had been given colorful names like "Get Shorty," "Death Star," and "Fat Boy."

The larger question is how California's electrical energy market was transformed from a highly regulated, staid industry operated by conservative public utilities into a corrupt casino run by large energy companies. While Kenneth Lay, the former CEO of Enron, would describe the movement towards the deregulation of energy markets as part of the "retreat of socialism and the advance of free markets" [16: 2], the reality is that the energy companies themselves were instrumental in this process. The legislative groundwork for California's new model was laid in 1992 when the U. S. Congress passed the Energy Policy Act which effectively broke the "natural monopoly" long-held by utilities on energy production and distribution and allowed independent power producers to sell directly to the public. When he signed the Act into law, President George H.W. Bush declared that it would create jobs by "unleashing the genius of the private sector" [6: 2093].

The 1992 federal law opened the door to deregulation advocates in California. Led by its Republican members, in 1993 the state's Public Utilities Commission began a series of hearings on proposals to deregulate the state's electrical energy market. At those hearings energy companies, notably Enron, appeared frequently and argued vociferously in favor of deregulation. In a 1994 hearing, Enron's second in command, Jeffrey Skilling (who 13 years later would be sentenced to prison for 24 years), testified that the state would save $8.9 billion if deregulation was adopted (ironically, the same amount that the state was estimated to have lost after the deregulation went into effect). With those savings, he argued: "You could triple the number of police officers in Los Angeles, San Francisco, Oakland, and San Diego and you could double the state of California construction budget for hospitals." [55]

In addition to rhetoric Enron brought hard cash to California politics. By 1998, the firm had given over $100,000 to California politicians. In that same year the Houston- based firm paid half a million dollars to lobbyists who persuaded California politicians to devise a system to their liking [55]. What they got for their money was a system that they, and other energy companies, could manipulate for billions of dollars in excess profits. As one state senator put it, "Enron's sophisticated lobbying effort helped to create the very market it would later exploit." [15]

But it wasn't just Enron that exploited the system it helped to create. After the new energy auctions were created, Perot Systems, an information technology company headed by former presidential candidate H. Ross Perot, was given a contract to devise the computer systems that became the system's backbone. Investigators would later discover that representatives from Perot Systems had been giving Power Point presentations to energy companies on how to profit from the loopholes in that same system; loopholes they had helped to create. [9]

In the aftermath of the California energy crisis, numerous investigations conducted by state and federal authorities turned up "smoking gun" evidence that showed that numerous energy companies, not just Enron, had engaged in a variety of strategies to game the system. Yet, only a handful of mid-level energy company executives ever faced criminal charges. No top energy company executives were ever charged for their roles in these schemes. In an analysis of the political influences on the governmental response to the crisis, the consumer advocacy group Public Citizen concluded: "All of this influence helps explain why the convictions few and fines inadequate: the industry's $146 million in campaign contributions since the 2000 election - with 75% of that money going to Republicans - has bought the CEOs and companies a certain amount of immunity from prosecution and scrutiny." [36]

Energy derivatives

Another reason why so few individuals were ever charged for participating in energy trading schemes is that it is unclear what specific criminal statutes their actions may have violated [31: 329]. This points to another issue: the failure to regulate energy derivatives, the transactions that were at the heart of the energy trading business, created criminogenic incentives for a variety of fraudulent-but-not-illegal trading practices. During the late nineties energy trading firms routinely collaborated in bogus transactions that were clearly intended to artificially inflate their revenues thereby enhancing their financial statements and keeping their stock prices high. Yet, with a few exceptions, no energy executives ever faced criminal charges related to these transactions. How this came to be is my second case study of politics and corporate corruption.

The early 1990's saw the emergence of the energy trading industry, or Power Merchants as they were sometimes referred to, consisting of firms that did not necessarily produce energy but traded in energy contracts in futures markets. The Enron Corporation quickly established dominance in this market. By 2000, nearly 90% of the firm's revenues came from trading in energy derivatives [46: 80]. Unlike most other futures and options contracts which were traded in markets regulated by federal agencies, energy derivatives were traded in the Over-the-Counter market which was not subject to regulatory oversight. This lack of external review allowed Enron and other energy traders to operate in near secrecy and to engage in transactions that would not be allowed in other financial markets. Investigations conducted in the wake of Enron's collapse revealed that all of the major energy trading firms had engaged in bogus transactions in these markets, leading *Fortune* magazine to ask, "Is Energy Trading a Big Scam?"[42].

Energy trading firms grew rapidly during the 1990's as reported revenues soared. A significant proportion of these revenues turned out to be phony, based on "round trip" transactions in which two firms would buy and sell electricity to each other in mirror trades whose only purpose was to inflate their reported sales. One such transaction took place between two of the largest energy trading companies, Dynegy and CMS, on November 15, 2001.

> At 10:08 A.M. CST, Dynegy bought a month's worth of electric capacity at $25.50 per megawatt hour. At exactly the same time, Dynegy sold CMS the same amount at the same price. 20 min later, at 10:28 A.M. CST, Dynegy conducted another trade to simultaneously buy and sell a year's worth of electric capacity from CMS, at a price of $34 per megawatt hour. [4]

The Securities and Exchange Commission would later charge that in the first quarter of 2002 Dynegy reported $236 million in revenues from round-trip trades. [52] Similar transactions in the securities industry, where they are referred to as "wash trades," have been illegal for some time, but were not so defined in the energy industry. [51]

Beginning in the early 1990's and continuing throughout the decade there was pressure to extend federal oversight to all derivatives including energy. The argument against these proposals was that these financial instruments represented transactions between large, sophisticated investors and regulation was therefore unnecessary. Keeping energy derivatives unregulated was a major goal of the energy trading industry and Enron, the most politically-connected of the firms, led the quiet campaign against regulation. The key connection was to a Texas power couple: one a regulator and the other a senator.

The regulator was Wendy Gramm, who in 1992 was the head of the Commodities Futures Trading Commission (CFTC). The senator was her husband, Phil Gramm, a former economics professor and a Republican from Texas. In the fall of 1992 the CFTC was considering a proposal to extend its regulatory authority over a number of over-the-counter derivatives. Enron joined eight other firms in urging the commission to exempt energy derivatives from the proposed change. In January 1993, Gramm, realizing that she would soon be replaced by an appointee from the in-coming Clinton administration, rushed a proposal, which included the energy derivative exemption, to a vote before the commission, which at that point had only three members, all Republicans appointed by George H.W. Bush. Not surprisingly, the proposal passed and energy derivatives maintained their exemption. Six days after the vote Gramm resigned as head of the commission. Five weeks later she was appointed to Enron's board of directors, where, between 1993 and 2001, she was paid between $915,000 and $1.8 million (depending on the value of the shares in the company she was awarded). [37: 9–15]

Gramm's husband, Phil, was equally useful to Enron. Between 1989 and 2000 Senator Gramm received $97,350 in campaign contributions from the Enron Corporation—more than all but one other member of Congress. [37: 14] Enron's investment paid off handsomely. In 1999, the President's Working Group on Financial Markets, whose members included Alan Greenspan and SEC Commissioner Arthur Levitt, unanimously recommended that energy derivatives fall under federal regulatory authority. The next year Congress passed the Commodities Futures Modernization Act which rejected the Working Group's recommendation and exempted energy derivatives. One senator who worked on the legislation later remarked, "[W]e tried to craft a bill that met the recommendations of the President's

Working Group; somehow, somewhere in the process somebody slipped in this mysterious exemption for energy and metals trading" [53: 9]. That "somebody" was Senator Phil Gramm.

Two years later, as the full dimensions of the Enron debacle were being made public, particularly its role in the California energy crisis, California senator Diane Feinstein proposed legislation that would have repealed the energy exemption from derivatives regulation, arguing that the Commodities Futures Modernization Act, "created a big loophole....there is no record kept, there is no transparency there, there is no anti-fraud and no anti-manipulation oversight" [53: 5]. The bill never made it to a vote, in large part due to the efforts of Senator Gramm who represented a coalition of energy companies. [26] Six months later Gramm announced that he would be leaving the Senate to take a position with the Swiss investment bank, UBS Warburg, which earlier that year had purchased Enron's online energy trading unit. [27] Just after UBS Warburg acquired the trading unit it paid a Washington lobbying firm $80,000 to lobby Congress on, among other things, the "regulation of energy derivative contracts" [35]. Gramm denied any *quid pro quo* but the payback quality of the arrangement seemed, to many, obvious.

Stock options

During the 1990's, the value of stock options granted to CEOs increased from an average of $800,000 in 1992 to an average of $7.2 million in 2000 [20: 51]. As the value of executives' stock options increased so did their incentives to artificially inflate the value of their firms' stock. At Enron, between 1998 and 2000 (the year before the firm declared bankruptcy) the top two hundred employees received over $1.3 billion in stock options [49: 659]. At the same time, expenditures on this order could seriously affect a company's balance sheet. If they were recorded as liabilities then earnings could be significantly reduced. An analysis of firms in the S&P 500 conducted by Merrill Lynch estimated that in 2001 if those companies had treated stock options as expenses, their earnings would have been 21% lower than reported; at information technology firms, earnings would have dropped by 39% [24]. A separate analysis of eBay estimated that had the firm expensed stock options, its 1998–2003 earnings would have plummeted from $840 billion to $13 billion [28].

Accounting standards and tax laws throughout the decade created a "heads-I-win-tails-you-lose" situation for corporations by not requiring them to charge stock options against earnings, while at the same time allowing them to deduct them from their tax liabilities. The result was an enormous loophole that allowed corporations to both deceive investors by artificially inflating their earnings, which also boosted executives' compensation, while at the same time reducing the companies' tax bills. Not surprisingly, Enron was a master at this game. By not expensing stock options and using other tax loopholes, between 1996 and 2000, Enron received tax *rebates* (i.e., tax credits) totaling $381 million, despite reporting profits of nearly $1.8 billion [11]. This extremely favorable situation gave corporations powerful incentives to maintain the existing regulations.

Rules regarding things like how corporations should record stock options on their financial statements are set by an independent, but federally-funded organization, the Financial Accounting Standards Board (FASB). In 1994, FASB proposed requiring companies to deduct stock options from their earnings arguing that stock options were costly to companies and should be treated as an expense just like other forms of compensation. The proposal ran into a wall of opposition from corporations, much of it coming from high-tech firms that used stock options extensively. As the proposal was being debated in Congress, protest rallies were organized by Silicon Valley firms at which employees chanted slogans like “Keep our stock options alive.”

In Washington key members of Congress moved quickly to block FASB's proposal. Leading the charge was Connecticut senator Joseph Lieberman who introduced a resolution that condemned the proposal. Speaking on the Senate floor, he cast the issue in grandiose terms: “What's on the line here is really the future of jobs in this country” [34]. Lieberman had strong connections to two industry sectors that strongly opposed the FASB proposal; in the 1995–1996 election cycle he received campaign donations totaling $143,400 from the electronics/communications industry and over $1 million from financial/insurance/real estate sector. [10] The Senate passed the resolution by a vote of 88-9. Lieberman was a central political figure in the debate over stock options but there were a lot of people and organizations behind him. As Arthur Levitt, the chairman of the SEC at the time, later remarked: “There was no question in my mind that campaign contributions played the determinative role in that Senate activity. Corporate America waged the most aggressive lobbying campaign I think that they had ever put together on behalf of this issue. And the Congress was responsive to that” [34]. But the resolution was not in itself enough to get FASB to change its position; the Senate could not legislate policy at the independent agency. So, congressional leaders took a more direct approach: they threatened to cut off FASB's funding if the organization did not drop its stock options proposal. In short order, FASB complied. [34]

It would later become clear that stock options were major factors in the accounting scandals that rocked the United States in the early 2000's. As Partnoy points out, “the increase in the use of stock options coincided with a massive increase in accounting fraud by corporate executives, who benefited from short-term increases in their stock prices” [31: 159]. Responding to the evidence of the corrupting influence of stock options, in 2002 Senators Carl Levin and John McCain introduced a bill that would have required firms that deduct stock options on their taxes to record them as expenses on their financial statements. Once again, big business organized strong opposition to the bill even persuading President Bush to speak against it publicly [41]. The bill never came to a vote in the Republican-controlled Senate. It was not until 2004 that FASB was finally able to successfully change its standards to require corporations to record stock options as expenses.

Discussion

In this paper I have presented three case studies that illustrate how changes in the rules that governed markets created widespread opportunities for fraud and corruption in the 1990's and which demonstrate how extensively market players were involved in the political processes that led to those changes. In each of these cases, extensive lobbying by corporations and their agents as well as various forms of "soft corruption" coordinated with well-orchestrated publicity campaigns that trumpeted the wonders of deregulated markets led to policies that were extremely beneficial to corporations and their top executives but extremely harmful to consumers and investors. The economic landscapes that emerged in each of these three cases were certainly criminogenic, but might better be described as *criminogenic institutional frameworks* in which not just the markets but the regulatory and legal environments surrounding these markets was conducive to systemic forms of fraud. Significant components of these crime facilitative environments were legal definitions of specific transactions that exempted them from criminal sanctions, treating them, at most, as violations of regulatory law. Most of the blatantly fraudulent strategies employed by energy traders in California, the majority of the "round trip" transactions between energy companies, and many of the intentionally misleading statements by corporations about their profitability were not deemed to be criminal because of gaps in the law, omissions that were not unintentional oversights but instead were the products of hard work on the part of specific corporate entities and their allies (for a discussion of related issues see Passas [32]). This fact reinforces the point made by critical criminologists, notably Richard Quinney [38], that criminal law is the outcome of political processes. The cases studies also raise several other points.

First, defenders of corporate criminals frequently assert that the putative wrongdoers are simply taking advantage of imperfections in markets and that in doing so they are being good capitalists, maximizing profits for themselves and their investors. During the 1980's supporters of corrupt S&L operators took this position, arguing that regulators were more to blame for the crisis than unscrupulous thrift owners (see, e.g., Crovitz [12]). More recently, similar arguments have been made in defense of corporations caught up in scandals. Law professor Frank Partnoy, for example, has defended Enron's actions in California by claiming:"California officials ...disparaged Enron's 'greedy' traders. But being greedy was what traders were paid to do, and the opportunities for trading profits were created by legal rules in place in California..." [31: 329]. What these arguments ignore is that these white-collar malefactors did not simply react to imperfect markets, but were part of the political process that created those markets. In the wake of the new economy scandals, many neo-liberal economists and conservative pundits talked of the perverse incentives for fraud created by regulators and politicians—typically characterized as bumbling bureaucrats who did not understand the dynamics of free markets— but failed to discuss the fact that those politicians were simply doing what corporate leaders asked of them.

Second, the cases discussed did not involve blatant forms of political corruption—politicians receiving envelopes stuffed with cash or backroom deals to guarantee their reelection. Rather, it is likely that the policy-makers who orchestrated the rule changes sincerely believed the deregulatory, free-market rhetoric that corporate backers of the proposals espoused. In other words, there was also an ideological, rather than a solely monetary, motive in their actions. Wendy Gramm, for example, explained her decision to exempt energy derivatives from regulation in an op-ed piece in the *Wall Street Journal*: "[G]overnment may well pose the greatest risk to this market...Markets can be over-regulated, which imposes costs on users. The danger of over-regulation is that overseas competition is just a phone call away." [19] It could be argued that her statement was simply a rationalization of what, in essence, amounted to acceptance of a bribe, but it seems more likely, given the ideologically-laden world that she inhabited, that her self-interest dovetailed with her commitment to free-market principles. Thus, criminologists should recognize the significant role played by ideology in the creation of criminogenic institutional frameworks.

Third, these cases reveal the increasingly prominent role that corporations and their agents play in the setting of financial policy. Arcane decisions about, for example, how stock options should be reported that were once left to accountants and went largely unnoticed can now trigger “one of the most impressive lobbying efforts on earth” [34]. This increased effort to influence policy is suggested by data on campaign contributions. In 1990, the money contributed to federal politics from the finance, insurance and real estate sector totaled $60 million. By 2006, that figure had increased over four-fold to $258 million. [10] The nineties also saw the burgeoning dot-com and telecom industries become major contributors. In 1990, donations from the communications/electronics sector amounted to only $17 million. Ten years later that figure had increased to $134 million. [10] In addition to campaign contributions, industry influence is dispensed by well-paid and well-organized lobbyists. Government records show that between 1998 and 2007, the five industries that spent the most on lobbyists were: the finance /insurance/real estate sector, $2.7 billion; communications/electronics, $2.2 billion; and energy and natural resources, $1.8 billion. [10] In the last year it was in business, 2001, the Enron Corporation spent $5.1 million on outside lobbyists, in addition to the $32.5 million it budgeted for its internal Governmental Affairs Office. [10, 54: 8]

Finally, the implications of the analysis presented here run counter to a common view that the corporate corruption of the late 1990's was the outgrowth of general cultural shifts—in one version, the rise of a “cheating culture” in the larger society. In this view, recent acts of corporate fraud and deceit are “explained by the moral climate of corporate America, a place where the troubling value shifts in our society have played out with notable intensity” [7: 126]. The cultural explanation is belied by the fact that the “corporate crime wave” of the late 1990's occurred at the very time that that levels of street crime were showing unprecedented declines. By contrast, as Tillman and Indergaard have argued these acts: “were not committed by the lower-class individuals who dominated crime statistics reported by the police, but by corporate elites and their agents who had not only the opportunities to carry out these acts but also the power to shape the rules that created those opportunities” [46: 279]. Analyses of future epidemics of corporate corruption (which are sure to come) should therefore pay close attention to who holds this power to shape rules and how they use it.

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