2

"This Time We Really Mean It!"

Cracking Down on Stock Market Fraud

Laureen Snider

Canada's First Mining Scandal?
Between 1576–78, Martin Frobisher made 3 extended trips to Canada, convinced that he had found gold on Baffin Island. However, recent analyses reveal that the gold-containing assays were fraudulently "salted" by crooked chemists in London.
(Globe & Mail, July 6, 2004: A1)

"For more than 20 years, the [American] federal government has given companies fairly free rein, allowing them to operate with less and less regulation. . . . Suddenly, . . . the race to regulate is on."
(The New York Times, February 10, 2002, Section 3, Page 1)

On February 12, 2004, the federal government in Canada passed Bill C-13, amending the *Criminal Code* to increase penalties for insider trading, augment the investigative resources of the Crown, and strengthen whistleblower protection.[1] In December, 2003, a high-level report told the federal government it must create a new national regulatory body and a single regulatory code, thereby ending 100 years of decentralized provincially-based stock market regulation.[2] Both initiatives were responses to high-profile corporate scandals, particularly Worldcom and Enron in the United States, which followed the 1999 collapse of the technology stock market bubble. The new measures exemplify what media and officialdom trumpet as the state's crackdown on corporate crime. Two decades of government-sponsored deregulation and downsizing, of denying the ubiquity and severity of corporate crime, and forgetting the lessons of the past have now ended. Laissez-faire "see-no-evil, speak-no-evil" attitudes to business, and the deregulatory policies they inspired, are no more. Governments today are expanding corporate criminal liability, extending it to CEOs and Boards of Directors.[3] In the Unites States voices bemoaning "overregulation" are strong: Chambers of Commerce suggest governments are on "witch hunts that imperil the American dream"; conservative politicians decry draconian new regulations that will destroy the New York Stock Exchange (*The New York Times,* February 10, 2002: 3–1, *Globe & Mail,* June 1, 2002: F8).

The history of business regulation should make us cautious of such claims. More than 200 years of struggle, with many more defeats than victories, were necessary to force capitalist states, first, to recognize that corporations must be held responsible for corporate acts that cause death, injury, and financial damage to millions of people; second, to pass laws with teeth; and third to actually resource and enforce these laws.[4] State reluctance to hold capital to account in the past has produced a series of regulatory cycles, each beginning with a high-profile event—a major bridge collapse or ferry accident, a series of frauds, massive corporate bankruptcies. Such an event typically is followed by volumes of lofty rhetoric from politicians and officials, and eventually by draft legislation. After a series of revisions, new laws are passed. They usually are much weaker than originally promised, and in some cases totally unenforceable, as was the case with Canada's first anti-combine laws.[5] If the laws are useable, and the issue is still politically salient, a flurry of well-publicized charges will follow, then plea bargains, convictions, fines, and appeals. Once the media spotlight has moved away, the regulatory body reverts to status quo ante and normal regulatory patterns, characterized as "benign neglect" or "capture," reappear. In the 1980s a new wrinkle in this pattern surfaced, first in the United States and Britain, now globally. Under the sway of neoliberal doctrines, the economic and political power of business dramatically increased. Instead of reverting to status quo ante, governments began aggressive campaigns against regulation (euphemistically called regulatory reform). In the United Kingdom, this took the form of wholesale privatization of publicly owned enterprises.[6] In the United States and eventually Canada, public relations campaigns attacked regulators as inefficient, empire-building bureaucrats, regulatory agency budgets were slashed, and self-regulation replaced public bodies.[7]

Stock market fraud is a type of financial crime which is itself a category of corporate crime. Corporate crime refers to "illegal acts committed by legitimate formal organizations aimed at furthering the interests of the organization and the individuals involved."[8] Two kinds may be identified: financial and social.[9] Financial crimes such as insider trading, restraint of trade, and fraudulent business practices victimize investors, consumers, business competitors, and government (the latter as investor and, in many cases, as loan guarantor of last resort). Social crimes, both environmental (air and water pollution), and health and safety crimes (unsafe workplaces, dangerous working conditions), victimize different, less powerful groups—workers, employees, and citizens as a whole. This basic fact of political economy means that rigorous enforcement benefits very different interests. Regulations requiring ventilators in factories, scrubbers in smokestacks and minimum pay (social corporate crime) threaten profit levels by increasing the cost of production. Financial regulations also add costs, but they create a level playing field and facilitate investor confidence, both factors essential to business prosperity. A state which monitors and sanctions those who loot company coffers or sell fraudulent stocks and trade on inside knowledge performs a vital function for capitalism by acting in the long term best interests of investors and corporations, of the capitalist system as a whole. Where cowboy capitalism runs wild, where regulatory and legal systems are known to be ineffective or absent, investors may flee. In today's wired world, this loss of confidence quickly escalates from local to global levels, possibly producing runs on the national currency and economic collapse.[10] If the *collective* financial interests of capital were the dominant forces behind strict enforcement, if maintaining "investor confidence" was the only goal of regulation, if pure reason dominated decision-making in complex organizations, installing and maintaining effective regulatory systems would be straightforward, though not easy. Like traditional policing aimed at deterring relatively powerless individuals, the primary constraints would be insufficient resources and technological limitations. That this has not happened signals that the relations of power at play are considerably more complex.

This paper examines the latest crackdown on insider trading and stock market fraud in Canada. First, it traces stock market regulation by state and non-state bodies from their origins to the present day; second, recent criminal (Bill C-13) and non-criminal measures to hold corporate actors accountable are outlined; third, it looks at factors which change the regulatory equation, particularly new technologies and social movements, versus those that reinforce existing relations of power. In theoretical terms, the paper uses Foucauldian arguments to show how meaning is constructed, negotiated, and defined, how resistance and power play into knowledge claims, and the discourses that construct the "good" corporate citizen and the "socially responsible corporation" today. In policy terms, the paper explores inequality. It seeks to understand the massive gulf in attitudes and policy between upper- and lower-world crime. The conclusion discusses the complexity of corporate crime and the difficulties of generalizing about its causes, remedies, and future.

History of Securities Regulation in Canada

The establishment of regulatory agencies to oversee stock exchanges in Canada originated in two "nation-building" priorities: first, the need to raise capital to promote the development of natural resources, particularly the mining industry; second, the need to control the industry's lamentable susceptibility to fraud. Mining has long been identified as central to the Canadian economy—resource development still accounts for more than 10 percent of Canada's GDP (Report on Business Magazine, June 2004, from Statistics Canada data). After the fur trade disappeared, and the easily exploitable timber resources were cut in Eastern Canada, before 1900, attention turned to wealth in the ground. Raising capital to allow private entrepreneurs to develop natural resources was an important duty of the Canadian capitalist class. It was also a major objective of the Canadian state. Stock exchanges were established in regional centres such as Toronto, Montreal, and Vancouver to give new mining companies a place to raise seed capital (as it was then called) to finance exploration and development. Given the nature of the terrain (wilderness), and of exploration (a low-tech, individualistic, labor-intensive process), finding, extracting, and processing wealth in the ground was a high-risk venture. Prospectors competed to survey and claim every likely looking chunk of muskeg and moose pasture. Rudimentary geology, rudimentary technologies, and basic (often nonexistent) systems of communication meant that, for much of the 20th century, anyone with an elementary knowledge of science could "salt" a likely section of land, (that is, plant valuable minerals on or in it), raise a fortune by selling dreams of riches to gullible investors, and disappear. In the first half of the 20th century, this happened frequently enough that key corporate and political actors became fearful. If too many scams became known, investment capital would disappear, and what would happen to the nation then? Worse, what would happen to their careers as stock promoters and bankers? At this juncture, provincial and territorial governments were forced to create regulatory bodies, designing each one to meet the capital-raising needs of resource industries in its particular region.

The history of regulation in Ontario, the economic engine of Canada and home of the largest and most influential stock exchange, illustrates the essential features of regulation as it developed. The granddaddy of Canada's regulatory agencies is the Ontario Securities Commission, established in 1945. This followed a recommendation of the 1944 Royal Commission on Mining aimed at repairing the Securities Act then in existence, which could only intervene once fraud was discovered. The OSC, in contrast, would be empowered to prevent as well as sanction fraud. Registration and disclosure were the vehicles through which public interest would be protected. Only companies meeting certain standards, standards which would ensure "the integrity of the applicant," would only be allowed to sell stocks in Ontario,[11] and applicants would have to file a prospectus disclosing "all material facts." The new rules would be backed with "more rigorous prosecution," and miscreants could face cancellation of registration in extreme cases.[12] However, because promoting the mining industry was the primary purpose of regulation, sanctions were not the regulatory strategy of choice. Facilitating the industry, seen as central to Canada's growth and prosperity, was where public interest lay. As regulatory goals, catching crooks and promoting ethical behavior hardly appeared in the debates. OSC listings illustrate the significance and centrality of resource industries at this time: in 1951, a total of 227 of 327 shares listed on the Toronto Stock Exchange were mining and oil stocks; in 1961 this fell slightly to 101 mining and oil stocks, 81 industrials, and 19 unclassified others.[13] Indeed, the Toronto Stock Exchange was the largest dealer in mining stocks in the world throughout the 1950s and 1960s.

The bulk of day-to-day regulation, however, was then and is today delegated to the industry itself, through the self-regulatory organization or SRO. The most important SRO was the Toronto Stock Exchange (TSE, now TSX). To government actors at the time, who were closely connected to key financial actors, it was "obvious" that members of the TSE were most knowledgeable and therefore best equipped to regulate and discipline members. The early OSC decision to allow mining companies registered on the TSE exemption from OSC disclosure requirements indicates both the centrality of the TSE and state reluctance to impede the mining industry's pursuit of capital in any way. That self-regulation necessarily involves serious conflicts of interest between the TSE as promoter and its obligations as policing agent, was not deemed problematic.

A second self-regulatory organization, the Broker-Dealers Association (now the Investment Dealers Association), was established in 1947. According to the OSC Chair at the time, the BDA was set up because the OSC felt that such an organization was necessary to limit OSC powers and territorial ambitions.[14] That a government regulatory agency would be so careful to limit its own powers explains the subsequent history of the OSC quite well. The BDA was also charged with promoting the industry. It would become the regulator of last resort, covering those who would otherwise escape regulation, such as prospectors and entrepreneurs who did not belong to professions. Membership in the BDA, originally not obligatory, became mandatory when the OSC refused to register non-BDA members. Since Ontario was Canada's richest province, being excluded from its stock exchange had serious financial consequences.[15]

In the 1960s, two highly visible public scandals occurred. In 1964 the Windfall mining company collapsed and its CEO was accused of selling worthless shares.[16] In 1965, the Atlantic Acceptance Finance Company went bankrupt due to illegal and unethical financial practices by senior executives. Following three Royal Commissions and a provincial inquiry, a new Securities Act was produced in 1966. It was shaped by struggles over the meaning of mandatory disclosure. The OSC argued that the goal of mandatory disclosure was greater investor protection, while the TSE and business in general argued that investors should be free to choose high-risk stocks if they wished. The TSE, labelled "a private gaming club" by one of the Royal Commissions, was not in a strong bargaining position until it repackaged its arguments. Business was represented as 100 percent in favor of investor protection, but the kind of mandatory disclosure sought by the OSC would prevent entrepreneurs from raising capital. Impeding resource exploitation was something both sides abhorred, and the OSC lost that battle.

In the 1970s, broker commission rates and merger mania took center stage. When the United States deregulated broker commission rates in 1975, many in the TSE were keen to copy, arguing that markets are the only guarantee of efficiency or of free and fair competition. The OSC argued the public had a right to rates that were "fair" and "reasonable." While the OSC won that battle in 1978, it reversed itself less than a decade later.[17] Merger issues revived struggles over mandatory disclosure. At what stage should investors be informed that a takeover bid or merger was under negotiation? How much were they entitled to know? OSC arguments for earlier, more comprehensive disclosure were unsuccessful. As Condon put it: "The attempt to require more detailed and contextual information to investors at the time of distribution of new securities largely failed".[18] However the struggles, compromises and negotiations which produced the revised Securities Act of 1978 altered the meaning of disclosure in a somewhat more investor-friendly way.

Developments Since 1980

In the 1980s and 1990s, monumental changes took place after the electoral victories of Ronald Reagan (USA) and Margaret Thatcher (UK). Neo-liberal doctrines celebrated capital as the engine of growth and guarantor of efficiency, and vilified government in general and regulation in particular. Regulation and government were no longer necessary evils, but impediments.[19] Two decades of privatization, deregulation, and decriminalization began. In the United States and Britain, regulatory agencies in all fields were attacked—often by appointing the business executive most critical of an agency as its new head (as with OSHA, the US Occupational Safety and Health Act.[20]

Although Canada was a late convert to neo-liberalism in many areas,[21] changes in competition policy began as early as 1986 with the replacement of the century old Combines Investigation Act (covering conspiracy, bid-rigging, predatory and discriminatory pricing, misleading advertising, and marketing practices such as pyramid sales), with the passage of the "flexible," business-oriented Competition Act.[22] Then on June 30, 1987, restrictions on banking, insurance, trust companies, and securities, laws meant to ensure that no single financial sector became too powerful, were removed. With restrictions gone, new players entered and competition to sell shares and financial advice increased. By the 1990s share-selling competition had gone global. Though wealth was not redistributed in a more egalitarian direction,[23] the number of share-owners in Canada increased dramatically.[24] While 23 percent of all Canadian adults owned publicly listed securities in 1990, this increased to 46 percent by 2003, accounting for 20 percent of total household assets per family.[25] This increased involvement, though mostly indirect, (in pension and mutual funds controlled by professional fund managers not individual "owners"), means greater public interest in and dependence on market integrity.

In the last decade, globalized capital and new communications technologies have destabilized regulation in all nation-states. With capital virtually unrestrained, money crosses borders and changes hands at log on speed. Businesses once dependent on local banks and exchanges now list on exchanges throughout the world. Multinational security firms trade on a 24/7 basis. Market volumes have increased: "between 1980 and 2000, private capital flows... increased more than six-fold to nearly US $4 trillion annually worldwide."[26] Stock exchanges have become more international—cross-border alliances are now common—but also more specialized. In Canada, the Toronto Stock Exchange handles senior equities, TSX Venture handles junior equities,[27] the *Bourse de Montreal* is the national derivatives exchange, while the Winnipeg Commodity Exchange specializes in commodity futures and option exchange.[28]

Capital markets have also become increasingly important suppliers of growth capital: in 2002, a total of 88 percent of long-term financing for Canadian firms came from markets, up from 73 percent in 1990. With the rise of the speculative economy and futures markets, investment requires no commitment to a particular nation-state, sector, or business. Buying and selling, getting in and out quickly, scoring maximum short-term profit, is all that counts. And while there are more ways to invest, waves of takeovers and mergers throughout the 1980s and 90s produced greater corporate concentration. In Canada today, 777 companies, worth more than $75M, account for 98 percent of all market capitalization; the largest 60 companies alone make up 51.6 percent of the total.

Numerous new disciplines and specialist roles have developed. As securities regulation became more complex, securities law became a new legal subfield. Securities lawyers now broker deals, negotiate takeovers, provide advice to business and to regulatory commissions, *and* compose a distinct new interest group. Within exchanges, more businesses and increased competition among them has weakened crucially important networks of informal social control. In a city such as Toronto, for example, key players were once geographically fixed, similar in class, ethnicity, religion, and gender.[29] The elites who ran the Toronto Stock Exchange typically attended the same set of private schools and summer camps, and belonged to the same social clubs, and economic and political organizations as adults. (Female elite members were wives, not competitors). Top regulators and politicians often shared similar backgrounds. Now this exclusive WASP gentleman's club is no longer the only game in town, and the common values and codes of behaviour these men promoted and enforced have been weakened. Whatever the flaws of old-boy networks (sexism, racism, ethnocentrism, classism, and more), a seldom understood consequence was that the rules of the game were understood and broadly respected by major players, if only because the consequences of deviation, both personal and professional, were so high.

Finally, three potentially important counter-hegemonic developments must be noted. First is the establishment and growing strength of oppositional stockholder rights groups. With the bursting of the technology-inspired market bubble of the 1990s, such groups have become increasingly aggressive, sometimes defying senior management by resisting takeovers, disputing key personnel changes, or questioning executive compensation and perks. Many have begun to lobby politically, demanding more disclosure, more information on profit levels and debt loads, and even (at times) questioning environmental practices and labour conditions.[30] Second, with 24-hour business news and increased public interest in investment and markets, investigative financial journalism has become more important. Canada's major national newspaper, the *Globe & Mail,* regularly issues reports on insider trading, or the gap between executive salaries (up) and profit levels (down). Third, new technologies offer unprecedented opportunities to monitor and discipline market players. Trades can be tracked as they happen, electronic "markers" differentiating insider trades can be purchased. Surveillance equipment is easy to acquire and install. And email has forever changed evidence-gathering, since it is impossible to render messages permanently irretrievable to those with sufficient time, resources, and computer savvy to retrieve them. Technological innovations allow regulators, in theory, to intervene as soon as "abnormal" trading patterns are discovered. They ease evidence-gathering and make convictions easier. But will they be used this way? The relative power of the parties involved may tell us more than the characteristics of the technologies.

Summing up: Canada today has a sophisticated and complex regulatory system of Self Regulatory Organizations (SROs) and government agencies. There are 13 official securities commissions, one in each province and territory, [31] originally established to facilitate resource extraction and capital raising in the mining industry. Securities commissions have long been viewed by government and by business as a necessary evil—sometimes more "evil" than "necessary," sometimes the reverse. However in 2004, oppositional groups and media are celebrating regulation as the saviour of free enterprise, [32] the quick fix to bring back investors and perpetuate prosperity. Section II examines measures which, it is hoped, will accomplish these goals.

The New Crackdown

On February 12, 2004, the federal government introduced a series of amendments to the *Criminal Code of Canada*. The Bill makes "improper insider trading" a criminal offense, increasing maximum penalties from 10 to 14 years.[33] Maximum penalties for "market manipulation" were doubled from 5 to 10 years. "Tipping," defined as "knowingly conveying inside information to another person with knowledge that it might be used to secure a trading advantage or illegal benefit," becomes a hybrid offense, where the Crown decides how to prosecute. If indictable, the maximum prison term is 5 years; if summary, fines are assessed.[34] The Minister of Justice emphasized in press releases that "stiff criminal penalties" would be reserved for "the most egregious cases."[35] To encourage judicial severity, sentencing guidelines—a list of "aggravating factors"—will be issued. Bill C-13 also provides whistleblower protection for employees who report illegal activities, and empowers courts to force third parties, such as banks, to provide all necessary documents.[36] Failure to comply can result in fines up to $250,000 and 6 months in jail. Changes in civil and administrative law are also under consideration, including measures strengthening corporate governance through the Canada Business Corporations Act (Canada, Department of Finance, 2003).

Bill C-13 is the Canadian government's most recent and visible response to wordwide corporate debacles such as Enron, Worldcom, and Parmalat, and its response to charges that Canada has been "too lenient" with corporate offenses in the past. Leniency is deemed problematic not because it imperils justice or threatens the rule of law, nor because it denies victims' compensation, but because it threatens investor confidence. Imposing new penalties on powerful financial elites is not something the federal government does often or easily. Attributing criminal liability to management for unsafe working conditions, for example, was under discussion for 50 years.[37] Constitutional issues add to the difficulties, because the provinces are legally responsible for stock exchanges and securities, while the federal government has jurisdiction over criminal law. Insider trading, then, was previously handled in administrative proceedings or by provincial courts on a quasi-criminal basis. Bill C-13 strengthens federal authority, giving the Attorney General of Canada concurrent jurisdiction with provincial Attorneys General in all cases that "threaten the national interest in the integrity of capital markets."[38]

Jurisdictional struggles are as old as Canada itself. The impetus for Bill C-13 was the necessity for Canada to respond to the *Sarbanes-Oxley Act* (2002). Since the passage of the North American Free Trade Agreement (NAFTA) in 1988, the Canadian economy has been ever more tightly tied to the United States. Canada is America's largest trading partner, and it has the largest number of non-American companies selling shares in the United States. Increasingly, American financial markets and stock exchanges, particularly the New York Stock Exchange, are the only ones that matter. Thus when the US government acts, Canada must respond. Indeed, precisely those terms were used to introduce and justify Bill C-13 in the House of Commons.[39]

The Canadian response was initially drafted at a private dinner meeting attended by a "select group of government officials, senior regulators and industry officials," including David Brown, head of the Ontario Securities Commission, David Dodge, governor of the Bank of Canada, and the deputy Minister of Finance. At this meeting, in March 2002, the implications of Enron, strategies to restore investor confidence, and policy options were discussed. Some of these recommendations have since been adopted by provincial regulatory commissions, albeit in piecemeal form. The Canadian Securities Administrators, a coordinating body which represents all 13 provincial regulators, urged its members to adopt a series of "Best Practices." These include mandatory halts in trading before major corporate announcements, real-time "markers" differentiating insider trades from others, measures to control "bucket shops" offshore, and the creation of international data bases. Ontario has taken the lead, decreeing that CEOs and CFOs must personally certify the accuracy of information in their financial statements. Audit committees must contain Directors who are independent of management and audits must be overseen by the Canadian Public Accountancy Board, (a new regulatory body created in July 2002). In addition, to obtain OSC permission to list on the TSX, publicly owned companies must have audits and financial statements done by a firm recognized by the CPAB. In September, 2003, Ontario and Quebec adopted a measure pioneered by Manitoba the preceding year, allowing Securities Commissions to order restitution to investors "where losses were incurred by illegal acts or improper advice."[40]

Self-regulatory organizations have also been active, particularly the chartered accounting profession. The Canadian Public Accountancy Board (CPAB), was created to set standards for auditors, although firms listed in Canada can bypass the CPAB by registering with the American body, (the Board of Public Companies' Accounting Oversight Board. Most recently, "independent" security analysts and mutual funds have come under scrutiny. Investment analysts, researchers who tell investors which stocks to buy and sell, are market investors themselves. They are also employees in stock-selling organizations. Potential conflicts of interest are endemic. In a 2001 report (*Setting Analyst Standards),* the Toronto Stock Exchange, the Broker Dealers Association, and the Canadian Venture Exchange recommended new conflict of interest rules, which were adopted in June, 2002.

Efforts have also been made to reform corporate governance.[41] A group of major institutional investors formed the Canadian Coalition for Good Governance in June 2002. This body issued a series of recommendations designed "to provide more power, oversight and independence to boards of directors and audit committees."[42] Although the TSX adopted new corporate governance guidelines in 1995, it is once again discussing the wisdom of requiring continuous disclosure. Even executive compensation is under scrutiny, as executive compensation levels soar while stock values and profit levels plummet.

Enforcement

Enforcement, portrayed in the 1990s as unnecessarily stringent, is now lamented as lax. "Canada suffers weak and inconsistent enforcement and investor protection. Wrongdoers too frequently go unpunished, and adjudication is unduly delayed." Enforcement, moreover, is "costly, duplicative and inefficient."[43] The lack of jail sentences is decried,[44] and now "global fraudsters" have identified Canada as the jurisdiction of choice. The Chair of the Canadian Securities Administrators (CSA) himself says that Canada has more inside trades prior to major announcements than the United States.

In September 2002 a provincial-federal task force with representatives from the government (Ontario, Quebec, BC, and Alberta Securities Commissions) and the private sector (the Investment Dealers Association, the *Bourse de Montreal*, and Market Regulation Services) was appointed. Its 32 recommendations called for more and better RCMP investigations, increased scrutiny of "offshore accounts" from regions with "inadequate regulatory regimes," and new directives for dealing with inside information for "senior managers, directors, lawyers and accountants."[45] To improve enforcement, multidisciplinary teams of accounting and economics professionals and municipal, provincial, and federal law enforcement personnel were recommended.

The federal government acted a year later, setting aside $120 million dollars. Dedicated interdisciplinary Integrated Market Enforcement Teams (IMET) will be set up in Toronto, Montreal, Vancouver, and Calgary. Two IMET teams now operating in Toronto contain staff from the RCMP, the OSC, the Investment Dealers Association (IDA), the Mutual Fund Dealers Association (MFDA), and Market Regulatory Services (MRS Inc., a TSX affiliate that monitors trading patterns. On June 14, 2004, IMET made its first arrest, charging Steve McRae of "no fixed address" with Theft over $5,000 and Laundering the Proceeds of Crime. McRae is accused of removing 17 securities certificates between July, 1998 and March, 2000 from unclaimed accounts at HSBC Canada, his employer at the time, and selling them for $370,000. IMET is presently working on a second case, described as a cross-border market manipulation and insider trading scheme.

Provincial agencies have also beefed up enforcement. Ontario increased penalties for illegal insider trading from two years to five, and maximum fines from $1 million to $5 million per count. Companies could be ordered to remit triple the profits made or losses avoided, whichever was greater. In a speech on May 27, 2004, OSC head David Brown boasted of progress since 2000: triple the number of inside trading cases prosecuted, more than 100 actions settled, judicial delay cut from 21 to 13 months, trial time from 15 to 11 months. Jail sentences were obtained when sought 80 percent of the time (unfortunately he does not say how often they were sought). Remaining enforcement delays, botched investigations and prosecutions are attributed to "lack of coordination" between three levels of police (federal, provincial, and city), three levels of government, and 13 Regulatory Commissions. His Director of Enforcement, Michael Watson, explained the problem this way: "A lot of people don't . . . think there is anything wrong with it [insider trading]"; moreover risks of detection are low, rewards high. He recommends better data tracking to deter "bad apples."

Despite all the rhetoric, many high profile cases remain in limbo. Bre-X Minerals imploded in the spring of 1997 when it was discovered that gold assays at their Indonesia mine ("the world's largest gold deposit") were "salted." Stocks became worthless overnight. Charges have only now been laid, eight counts of insider trading against a former executive who sold $84 million of Bre-X stock just before the fraud was discovered. Livent, a Toronto entertainment company, went bankrupt in 1998. Charges were laid by the SEC in the United States shortly thereafter, but the OSC waited three years before charging Livent's chief executives with manipulating financial records to hide losses of $100 million.

Similar examples of regulatory reluctance abound. Poonam Puri (2001)[46] examined enforcement under the Competition Act, the Income Tax Act and others; she found no significant change in historically lax enforcement patterns. Mary Condon[47] examined administrative sanctions assessed by securities regulators in 13 jurisdictions across Canada. Administrative sanctions are the most commonly used regulators prefer them to Criminal Code or penal statutes under securities law because regulators can act on their own, without going through courts or other external bodies. Thus they take the least time. Although Condon found significant inter-provincial differences in the severity, frequency, and rationale of administrative penalties, the total number of cases decided nationwide from 2000 to 2003 was 83.[48] The majority of cases, 213 in all, were "resolved" by settlement agreements—where no guilt is admitted and sanctions are moot. Such settlements were the regulatory instruments of choice in the most active provincial agencies (Alberta, British Columbia, and Ontario); used for a wide range of offenses, from failing to file insider-trading reports to distributing securities without registration.[49]

Self-regulatory agencies have similar enforcement records.[50] For example, the Investment Dealers Association, like most SROs, is both lobbyist and regulator for the brokerage industry. In 2003, the IDA received 1,506 complaints, mostly about "unsuitable" investments and unauthorized trading. Complaints were up 41 percent. Eleven members were hit with criminal charges, 629 with civil claims. Fifty-seven internal investigations were heard, 729 files opened, and fines totalling $265,189 (firms) and $3.2 million (individuals) were assessed.[51]

The mutual fund industry, which doubled in net worth from $131.5 billion in 1994 to $474 billion in 2004,[52] has been virtually ignored by regulators in the past. A task force established in 2002 by the Canadian Securities Administrators found significant conflicts of interest, lax enforcement, weak rules and standards. It recommended forcing companies to set up independent governance boards with the power to fire managers who put company interests before those of unit-holders. Similar proposals had been first endorsed back in 1969. However, CSA recommendations were once again blocked by powerful lobbies from the mutual funds industry. It argued that investor protection must be tied to market efficiency to avoid "burdening the industry with unnecessary and costly structures."[53] Another clever move was the hiring of the senior regulator who represented the OSC on the CSA task force. In her new capacity, she now argues, "The CSA was asking for the impossible and the unnecessary."[54] The Investment Funds Institute of Canada, a lobby group representing the 200 largest firms, asserted: "The interests of investors and the industry are the same." It characterized the industry's relations with regulators as "mature," a "give and take relationship."[55] Thus new regulations give oversight committees the power to "vet," not "veto," conflicts of interests; meaning committees will only see disputes that fund managers refer to them. Their strongest sanction is to "instruct" fund managers to "publicize the committee's displeasure."[56] Persuasion has replaced mandatory requirements. [57]

Thus, in the middle of the self-advertised greatest crackdown ever on financial crime, it is easy to find evidence that the power of business to resist, shape, and defeat regulatory initiatives remains.

Change, or Regulatory Status Quo?

The previous sections illustrates that there has been, thus far, more rhetoric and posturing from government and SROs than tough, zero-tolerance action. Neither the democratization of governance heralded by theorists[58] nor the crackdown trumpeted by media are apparent. Are these new laws and increased penalties purely symbolic? Will these initiatives outlast media interest and actually make such crimes unprofitable? Can they prevent the next Enron (or a scaled-down Canadian version)?

There *are* new developments with the potential to dramatically strengthen enforcement. Oppositional stockholder rights groups have become increasingly aggressive, lobbying for mandatory disclosure, bans on insider trading, and ceilings on executive compensation. Such groups supply pro-regulatory pressure to balance the constant, unremitting anti-regulatory pressure furnished by corporate lobbies, a countervailing force formerly in short supply. However investors are still a minority and a relatively privileged one at that, and investor lawsuits do little to protect the public. Lawsuits (even class actions) are basically individualistic, delivering the largest benefits to the biggest investors (and law firms!). They offer no public remedies, no symbolic redress, no "closure," nothing to compensate citizens for indirect losses when currencies decline and taxes increase to cover corporate malfeasance and theft. They typically deliver mere pennies, to the vast majority of unsecured creditors who see their life savings, pensions and nest-eggs destroyed. And there is no redress at all for employees facing job loss, pension loss, and unemployment.

Heightened public interest and the advent of investigative financial journalism also have counter-hegemonic potential. Publicity on the costs and ubiquity of corporate crime can direct public and political attention to the massive inequality in media outrage in regard to traditional offenders (bank robbers or "welfare cheats") in comparison to kid-glove, business-section coverage of corporate crime, which is typically a thousand times more costly.[59] Audiences can also be alerted to the massive discrepancy in sanctions. The multinational corporation steals millions and is fined the equivalent of its profits for a day; the penniless welfare cheat is imprisoned five years, and cut off welfare forever. Such exposes may strengthen oppositional groups seeking to stem corporate power, with possible long-term socio-cultural effects on popular beliefs about the beneficence of corporations.

But the most fervently promoted panacea is the technological fix. New technologies with the ability to "mark" inside trades, new surveillance capabilities, and the permanent nature of email communications make the democratization of control possible. If put into effect, these innovations increase trade visibility, make it harder for regulators and SROs to ignore suspicious trading patterns, and lay an evidence trail that makes conviction more certain. However, technologies interact with relations of power. Decisions about the design and deployment of new technologies within companies are made by CEOs and Boards of Directors. Decisions on surveillance equipment utilized by government agencies are made by politicians dependent on corporate goodwill ideologically, economically, and politically. Self-regulatory organizations typically play both regulatory and industry promotion roles. The primary targets of technological surveillance thus far, the recipients of the most intensive, intrusive monitoring, have been low-level employees—clerical staff, warehouse and call-center workers. [60]

There are other reasons for scepticism. Over the last three decades, maintaining nation-specific market regulation when capital is free to go anywhere is all but impossible. In Canada, and increasingly elsewhere, American stock exchanges and regulatory regimes are the only ones that count. This is why Sarbanes-Oxley impacted trading throughout the developed world. The United States has one of the most politicized regulatory systems in the world; under George Bush, Jr., business and free enterprise are worshipped, government and regulation reviled.[61] However, because the United States is a democratic country, major financial scandals routinely produce tough-sounding measures and relatively vigorous enforcement. But when stock markets bounce back, when media take up new scandals, when neo-liberal forces and business resume muscle-flexing, few indeed are the institutions and actors capable of mounting effective opposition. Budget cuts and regulatory rollbacks are therefore likely to return, repeating entrenched patterns of the past. As O'Brien notes, this "structural imbalance" is the Achilles heel of American regulatory systems.[62]

As nation-states' power has waned (with the dramatic exception of the world's only remaining superpower), the power of capital has increased.[63] Capital has a virtual monopoly on information about itself, a monopoly defended by the constitutional rights of corporations (which are extensive) and the barricades erected by an array of laws. Patents, definitions of privacy that privilege "trade secrets," and the commodification of everything from genes to breast cancer cures produce cultures where making money is accepted as the only legitimate goal of individuals and organizations.[64] Such messages are promoted through advertising, marketing, and public relations campaigns. Discourses lionizing the "free" individual and denigrating any kind of limit or regulation on profit-making and growth are inescapable: "U.S. business spent 60 percent more on marketing in 1992 than the U.S. as a nation spent on all private and public education."[65] The 100 largest transnational corporations in the world produce the bulk of these messages, shaping goals, belief systems, and "common-sense"expectations. Indeed, recent criticism of corporate behavior has spurred many transnational companies to seize the initiative. They have established and sponsored organizations to promote "social responsibility" and define "good corporate citizenship," thereby shaping what these terms should—and should not—mean.[66] No one should be surprised when such organizations produce codes which stress the importance of individual ethics and voluntary action over zero-tolerance regulation backed by criminal sanctions.[67]

The increased acceptance of profit-maximization as a legitimate life goal has significant impact on conscience and ethics, on patterns of socialization, on the all-important informal levels of social control. If doctrines of greed dominate socialization processes, value systems stressing honesty, social equality, and responsibility for others are weakened. Social control works most effectively when individuals shame themselves and significant others.[68] However, if family and peers accept values which tell executives that their only responsibility is to make the most money they can, for themselves and the company, and show increasing profits every quarter, no shaming is possible. There is no discrepancy between the way executives have been socialized to act and their present behaviour. The "star system," the cult of celebrity CEOs, the worship of cowboy capitalists sends similar criminogenic messages. Enron, for example, was lauded in 2001 for "dismantling the New Deal regulatory legacy;" shortly before it imploded, its CEO was named second-best in America, and it was voted the most innovative company by *Fortune* magazine six years in a row.[69] Such values promote codes of ethics that justify and promote law-breaking.

To understand the potential to secure rigorous enforcement, we must also look at the silences in the regulatory debates, the questions not asked, the issues not debated. For example, all the major players in regulatory debates—business, regulatory experts, and politicians—have assumed that the job of government was to promote the wealth of private investors and ensure the lasting prosperity of business. This is seen as fact, as simply "common sense." But such beliefs set real limits on regulatory agendas. If the main purpose of regulation is to make Canada safe for (corporate) investors, and stock markets safe for speculators, the regulatory debate will not address measures promoting equity and equality among citizens. *And once stock markets have recovered and investors are confident once more, the pressure on regulators to act will diminish.* As the major rationale for regulation, such an objective is perilously vulnerable. Moreover, the actors themselves, the voices attaching meanings to terms such as "regulatory crackdown," are primarily older white males from financially privileged backgrounds with similar educational credentials, lifestyles, and contacts. Actors from different backgrounds, with different "common sense" assumptions and value systems, are simply not in the room. The divergent ideas they might bring to the table are therefore not discussed, let alone debated. Such silences indicate how corporate-sponsored values set agendas at the most basic level, by shaping the ideas up for debate. When analysis is limited to debating the options these actors put on the regulatory table, the shape and overall slant of the table is neither seen nor problematized.

Conclusion

Globalization and the resilience of anti-regulatory arguments in neo-liberal states make it simplistic to take the latest state promises at face value. However, it is equally simplistic to assume that patterns of the past predict, circumscribe, or foretell the future. Cultures, human beings, financial forces and technological change are much too complex for deterministic formulae of the past. New voices, technologies, and laws are assuredly part of this new mix. At the most minimal level, they provide new and visible yardsticks against which regulatory efficiency and judicial zeal will be measured by oppositional groups. In this sense alone, today's crackdown on corporate crime is a significant event.

Acknowledgments

The author gratefully acknowledges the research support of the Social Science and Humanities Council of Canada, grant No. 410-2004-2230. I would also like to thank Mary Condon and Steve Bittle for their comments, and Justin O'Brien and participants in the International Conference on Governance, Belfast, September 21–22, 2004, where an early version of this paper was presented. This material will be published in an upcoming book of conference papers.

Endnotes

1. The legislation came into force June 4, 2004.
2. See Phelps, M., H. McKay, T. Allen, P. Brunet, W. Dobson, E. Harris, M. Tims, (2003) It's Time: Report of the Committee to Review the Structure of Securities Regulation in Canada. Canada: Department of Finance, December 17 (online at www.wise-averties.ca).
3. Archibald, T., K. Jull, and K. Roach (2004) "The Changed Face of Corporate Criminal Liability." *Criminal Law Quarterly* 48:367–96.
4. Carson, W. (1980) "The Institutionalization of Ambiguity: Early British Factory Acts." In G. Geis and E. Stotland, eds., *White-Collar Theory and Research.* Beverly Hills, Ca.: Sage, Carson, W. (1970) "White Collar Crime and the Enforcement of Factory Legislation." *British Journal of Criminology,* 10:383–98, and Snider, L. (1993) *Bad Business: Corporate Crime in Canada.* Scarborough, Ontario: Nelson.
5. Snider, L. (1978) "Corporate Crime in Canada: A Preliminary Report." *Canadian Journal of Criminology*, 20, 2:178–202; Stanbury, W. (1986-87) "The New Competition Act and Competition Tribunal Act: Not with a Bang but a Whimper?" *Canadian Business Law Journal* 12:2-42; Stanbury, W. (1977) *Business Interests and the Reform of Canadian Competition Policy 1971–75.* Toronto: Carswell/Methuen.
6. Which, ironically enough, required new regulations and new regulatory bodies! (Pearce and Tombs, 2003).

7. See Doern, B., and S. Wilks (1998) "Introduction," in B. Doern and S. Wilks, eds., *Changing Regulatory Institutions in Britain and North America.* Toronto: University of Toronto Press, 3–25, Doern B. and S. Wilks (1996) "Conclusions: International Convergence and National Contrasts." in B. Doern and S. Wilks, eds., *Comparative Competition Policy: National Institutions in a Global Market.* Oxford: Clarendon Press, 327–59; Fooks, G. (2003) "Auditors and the Permissive Society: Market Failure, Globalization and Financial Regulation in the United States." *Risk Management: An International Journal* 5(2):17–26; Tombs, S. (1996). "Injury, Death and the Deregulation Fetish: The Politics of Occupational Safety Regulation in United Kingdom Manufacturing Industries." *International Journal of Health Services*, 26(2):309–29.
8. See Snider, L. (1993) *Bad Business: Corporate Crime in Canada.* Scarborough, Ontario: Nelson, page 14; also Braithwaite, J. (1989) *Crime, Shame and Reintegration.* Cambridge: Cambridge University Press; Coleman, J. (1989) *The Criminal Elite.* New York: St. Martin's; Pearce, F., and S. Tombs (1998) *Toxic Capitalism: Corporate Crime and the Chemical Industry*. Aldershot: Ashgate/Dartmouth.
9. There are also splits within each designation: between industrial and financial capitalism (with many claiming that the needs of the latter have eclipsed the former), and between occupational health and safety movements (typically working class) and environmental movements (typically middle class).
10. The latest examples of this phenomenon occurred in Mexico and Argentina.
11. Condon, M. (1998) *Making Disclosure: Ideas and Interests in Ontario Securities Regulation*. Toronto: University of Toronto Press, Page 19.
12. Condon 1998, op. cit., 20.
13. Condon 1998, op. cit., 29.
14. Condon 1998, op. cit., 24–25.
15. The Prospectors and Developers Association predated the BDA, but it has never been a key player. Opposed to the establishment of the OSC in 1945, it was seen primarily as an interest group.
16. Sending Viola MacMillan to prison and cracking down on penny stock promoters in Toronto stimulated the growth of the Vancouver Stock Exchange. The VSE then became the favoured speculators' market, with lax or absent regulations and "a flaccid internal self-regulating body that would protect the name of any broker found chiselling. . . " (Macbeth, 1985:126).
17. This is a classic example of what Haines and Gurney (2003) call Regulatory Conflict, because the OSC argued that fixing rates would violate the Combines Investigation Act (now the Competition Act), federal legislation designed to promote competition.
18. Condon 1998, op. cit., 242.
19. Friedman, M. (1962) *Capitalism and Freedom.* Chicago: University of Chicago Press, Posner, R. (1976) *Antitrust Law.* Chicago: University of Chicago Press. Posner, R. (1977) *Economic Analysis of Law.* 2nd ed. New York: Little Brown.
20. Calavita, K. (1983) "The Demise of the Occupational Safety and Health Administration: A Case Study in Symbolic Action." *Social Problems* 30(4):437–48.
21. Clarkson, S. (2002) *Uncle Sam and Us: Globalization, Neoconservativisms and the Canadian State.* Toronto: University of Toronto Press; Snider, L. (2004) "Resisting Neo-Liberalism: The Poisoned Water Disaster in Walkerton, Ontario." *Social and Legal Studies* 13(2):265–90.
22. Stanbury, W. (1986–87) "The New Competition Act and Competition Tribunal Act: Not with a Bang but a Whimper?" *Canadian Business Law Journal* 12:2–42. Stanbury, W. (1977) Business Interests and the Reform of Canadian Competition Policy 1971–75. Toronto: Carswell/Methuen; Snider, L. (1993) *Bad Business: Corporate Crime in Canada*. Scarborough, Ontario: Nelson.
23. Barlow, M. and T. Clark (2002) *Global Showdown: How the New Activists are Fighting Corporate Rule.* Toronto: Stoddart, 2002; Fudge, J. and B. Cossman,

(2002) "Introduction: Privatization, Law and the Challenge to Feminism," in B. Cossman and J. Fudge, eds. *Privatization, Law and the Challenge:* 3–37; Sharp, A. (1998) "Income Distribution in Canada in the 1990s: The Offsetting Impact of Government on Growing Market Inequality." *Canada Watch* V6, June; Schrecker, E. (2001) "From the Welfare State to the No-Second-Chances State," in S. Boyd, D. Chunn, R. Menzies, editors, *[Ab]using Power: The Canadian Experience.* Halifax: Fernwood.

24. Control of companies is still concentrated within small corporate elites, and wealth distribution is wildly—and increasingly—unequal. In 1982 the average CEO in the US earned about 45 times as much as the average employee, by 2000 he (seldom she) earned 458 times as much (Cernetig, 2002).
25. Phelps, M., H. McKay, T. Allen, P. Brunet, W. Dobson, E. Harris, M. Tims, (2003) *It's Time: Report of the Committee to Review the Structure of Securities Regulation in Canada.* Canada: Department of Finance, December 17, page 6 (online at *www.wise-averties.ca*); also Report on Business Magazine, June 2004 (*Globe & Mail insert).*
26. Phelps et al 2003, page 2, op. cit.
27. The Toronto Stock Exchange now handles 95% of all equity trading in Canada, 30 million transactions a year, with 530 employees handling 1,340 senior equities (June 2004 *Report on Business Magazine).* These are essentially blue chip stocks from established, often trans-national corporations. The TSX Venture Exchange lists stocks from smaller, less established "emerging" companies, 2,275 in 2004. It was formed by combining the small capital components of the Toronto, Vancouver, Alberta and Winnipeg exchanges, to allow entrepreneurs to raise capital quickly. Allowing "a prospector to get a grubstake to go out and do his thing." is as important today—and probably as male-dominated—as it was when these words were written in 1945 (Advertising Supplement of the Toronto Stock Exchange, *Report on Business Magazine,* June 2004).
28. Phelps et al., 2003, Op. cit., p. 4.
29. Porter, J. (1965) *The Vertical Mosaic.* Toronto: University of Toronto Press; Clement, W. (1975) *The Canadian Corporate Elite.* Toronto: McClelland and Stewart.
30. Yaron, G. (2002) *Canadian Shareholder Activism in an Era of Global Deregulation.* Vancouver: Shareholder Association for Research and Education, at www.share.ca.
31. In the spring of 2003 the federal commission set up the "Wise Persons Committee." charged with investigating the practicality and efficiency of this arrangement (www.wise-averties.ca). A report issued in September, 2003 recommends that this system be abolished and replaced with one national regulatory body, controlled and administered by the federal government, with regional offices.
32. This includes self-regulatory bodies such as the Toronto Stock Exchange, which recently published a three-page advertisement in Canada's premier business journal touting its capacity to monitor every trade "in real time," and its power to reverse trades (Advertising Supplement, *Report on Business Magazine,* June, 2004).
33. Michael Watson, head of enforcement at the OSC, argued before the Senate Banking Committee that this wording would make successful prosecution impossible, forcing the Crown to prove suspects knew the information was not publicly disclosed, and sought to take advantage of this fact. He recommended "trading with knowledge of" inside information instead. However no wording changes were made.
34. Fines under the Criminal Code of Canada are in theory unlimited.
35. Mackay R. and M. Smith, (2004) "Bill C-13: An Act to Amend the Criminal Code (Capital markets Fraud and Evidence-Gathering). Ottawa: Parliamentary Research Branch, Legislative summary, LS-468E, page 4–5.
36. The Canadian Bankers Association argued such penalties would be "very unfair," and requested more time to comply. Their pleas were apparently not heard.
37. Bittle, S. (2004) "Constituting the Corporate Criminal: Corporate Criminal Liability in Post-Westray Canada," unpublished paper, Department of Sociology, Queen's

University; Glasbeek, H. (2002) *Wealth by Stealth. Corporate Crime, Corporate Law and the Perversion of Democracy.* Toronto: Between the Lines.

38. Mackay and Smith, 2004, op. cit., p. 2.
39. Department of Finance Canada (2003) "Fostering Confidence in Canada's Capital Markets," online at *www.fin.gc.ca/activty/pubs/fostering_e.html*; also Department of Justice Canada (2003) *Backgrounder: Federal Strategy to Deter.*
40. Department of Finance, op. cit..
41. The federal Ministry of Finance, however, insists corporate governance is "already strong." They argue that because Canada has more small public companies and closely held corporations than the US, it should place "greater reliance on principles and voluntary guidelines" than the Americans. One would assume this means they are against greater criminalization, a position quite different from that taken by the Ministry of Justice (Canada, Minister of Finance, *www.fin.gc.ca/toce/2003*, Sept. 10, 2003, accessed July 5, 2004).
42. As Ronen Shamir (2004) notes, multinational corporations are now attempting to shape the meaning of corporate social responsibility, in ways that minimize structural oversight and maximize voluntary, individualistic corporate-friendly initiatives.
43. Quotes from Phelps et al., op. cit., p. 25.
44. This is not new, concern that this might send the "wrong" signal to investors is. Canada has seldom imposed jail sentences in any kind of corporate crime, financial or social. Over the 100 year history of the Combines Investigation Act, passed in 1898, now the Competition Act, legislation that covers everything from price fixing to false advertising, no executives have ever served prison time. Orders of prohibition, which allow companies to escape liability by promising not to commit the offense again, have been the dominant disposition (Snider, 1978, 1993; Stanbury, 1977; also Puri, 2001).
45. *Toronto Star,* Nov. 13, 2003: C1; also Phelps, 2003, op. cit. at 26.
46. Puri, P. (2001) "Sentencing the Criminal Corporation." *Osgoode Hall Law Journal* Summer/Fall, 39(2/3):612–53.
47. Condon, M. (2003) "The Use of Public Interest Enforcement Orders by Securities Regulators in Canada." *Research Study Prepared for the Wise Persons' Committee,* October. Online at *www.wise-averties.ca*.
48. Condon, 2003, op. cit., at 419, footnote 4.
49. Condon, 2003 op. cit. at 439, footnote 22.
50. The most important Self-Regulatory Organizations (SROs) in Canada are the Investment Dealers Association of Canada, the Mutual Fund Dealers Association of Canada (MFDA), and the stock exchanges in Toronto and Montreal (the TSX, TSX Venture Exchange, and the *Bourse de Montreal* (ME). There are also specialized private services, notably Market Regulation Services Inc. (MRS), an independent body which does market surveillance, investigation and enforcement for the Toronto Exchanges, and the Canadian Investor Protection Fund (CIPF), an industry-funded body to prevent investment dealer insolvency (Phelps, 2003: 18).
51. An OSC report published in 2001 recommended that the lobbying and regulatory functions of the IDA be separated, due to extreme conflicts of interest. However the final version of the Report did not do this. As reported in the press, the investigators "were ultimately persuaded... .that such a move wasn't justified" (K. Howlett, *Globe & Mail,* Jan. 27, 2004: B5).
52. Damsell, K., (2004) "IFIC Lobbies for Grants, Critics Charge." *Globe & Mail,* June 22, 2004:B8.
53. Church, E. (2004) "Who's Standing Up for the Investor?" *Globe & Mail,* June 22: B9.
54. Church, E. (2004), op. cit.
55. Damsell (2004), op. cit.
56. E. Church (2004), op. cit..

57. The lobby group also tells us the industry has a new Code of Ethics which prevents members from "personal trading and receiving gifts" (Damsell, *Globe & Mail,* June 22, 2004: B8). Presumably the Code is silent on executive compensation, which rose steeply despite declining equity levels (11.3% in 2002, 2.8% in 2003) (Willis, *Globe & Mail,* June 23, 2004: B9).
58. See Rose, N., and P. Miller (1992) "Political Power beyond the State: Problematics of Government." *British Journal of Sociology* 43:173–205; Rose, N. (1999) *Powers of Political Freedom: Reframing Political Thought.* Cambridge: Cambridge University Press; Rose, N. (1990) *Governing the Soul: The Shaping of the Private Self.* London: Routledge; Gandy, O. (1993) *The Panoptic Sort: A Political Economy of Personal Information.* Boulder, Colo.: Westview Press; Ericson, R. and K. Haggerty (1997) *Policing the Risk Society.* Toronto: University of Toronto Press.
59. See Clarke, M. (2000) *Regulation: The Social Control of Business between Law and Politics.* London: Macmillan; Calavita, K., H. Pontell, and R. Tillman (1997) *Big Money Crime: Fraud and Politics in the Savings and Loan Crisis*. Berkeley: University of California Press; Rosoff, S., H. Pontell, and R. Tillman (2007) *Profit Without Honor: White-Collar Crime and the Looting of America.* Upper Saddle River, NJ: Prentice Hall.
60. Ehrenreich, B. ((2001) *Nickel and Dimed: On (Not) Getting By in America.* New York: Metropolitan Books; Snider, L. (2002) "Theft of Time: Disciplining through Science and Law." *Osgoode Hall Law Journal*, 40, 4, 1:89–113.
61. American business history is a case in point. A series of scandals, from the railway trusts of the 19^{th} century, the price fixing scandals in the 1950s and 1960s, Penn Central in the 1970s, Mike Milken and the junk bond scandal in the 1980s and the 150 billion dollar savings and loan debacle (Calavita et al., 1997, Rosoff et al., 1998) all initially produced tough rhetoric and new measures, followed by deregulation, budget cuts and regulatory neglect.
62. O'Brien, J. (2003) *Wall Street on Trial.* Chicester, U.K.: Wiley, page 1.
63. See Mishra, R. (1999) *Globalization and the Welfare State*. Cheltenham: Edward Elgar; Monbiot, G. (2000) *The Captive State. The Corporate Takeover of Britain*. London: Macmillan; Pearce, F., and S. Tombs (1998) *Toxic Capitalism: Corporate Crime and the Chemical Industry.* Aldershot: Ashgate/Dartmouth.
64. Fooks, G. (2003) "Auditors and the Permissive Society: Market Failure, Globalization and Financial Regulation in the United States." *Risk Management: An International Journal* 5, 2:17–26; Tombs, S., and D. Whyte (2003) "Scrutinizing the Powerful" in S. Tombs and D. Whyte, eds., *Unmasking the Crimes of the Powerful.* New York: Peter Lang, pp. 3–48.
65. Glasbeek, H. (2002) *Wealth by Stealth. Corporate Crime, Corporate Law and the Perversion of Democracy.* Toronto: Between the Lines.
66. Shamir, R., (2004) "Between Self-Regulation and the Alien Tort Claims Act: On the Contested Concept of Corporate Social Responsibility." *Law & Society Review* 38(4):635–63.
67. International legal systems are in their infancy, and at this stage none of the world's most powerful countries is willing to cede any sovereignty to them.
68. Braithwaite, J. (1989) *Crime, Shame and Reintegration.* Cambridge: Cambridge University Press.
69. Fooks (2003), op. cit. at 17.

References

Archibald, T., K. Jull and K. Roach (2004) "The Changed Face of Corporate Criminal Liability." *Criminal Law Quarterly* 48:367–96.

Barlow, M., and T. Clark (2002) *Global Showdown: How the New Activists are Fighting Corporate Rule.* Toronto: Stoddart, 2002.

Bittle, S. (2004) "Constituting the Corporate Criminal: Corporate Criminal Liability in Post-Westray Canada," unpublished paper. Department of Sociology, Queen's University.

Braithwaite, J. (1989) *Crime, Shame and Reintegration.* Cambridge: Cambridge University Press.

Calavita, K., H. Pontell, and R. Tillman (1997) *Big Money Crime: Fraud and Politics in the Savings and Loan Crisis.* Berkeley: University of California Press.

Calavita, K. (1983) "The Demise of the Occupational Safety and Health Administration: A Case Study in Symbolic Action," *Social Problems* 30(4):437–48.

Carson, W. (1980) "The Institutionalization of Ambiguity: Early British Factory Acts." In *White-Collar Theory and Research,* Editors G. Geis and E. Stotland. Beverly Hills, CA: Sage.

Carson, W. (1970) "White-Collar Crime and the Enforcement of Factory Legislation," *British Journal of Criminology* 10:383–98.

Cernetig, M. (2002) "Witch Hunt on Wall Street?" *Globe & Mail,* June 1: F8.

Church, E., (2004) "Who's Standing Up for the Investor?" *Globe & Mail,* June 22:B9.

Clarke, M. (2000) *Regulation: The Social Control of Business between Law and Politics.* London: Macmillan.

Clarkson, S. (2002) *Uncle Sam and Us: Globalization, Neoconservativisms and the Canadian State.* Toronto: University of Toronto Press.

Clement, W. (1975) *The Canadian Corporate Elite.* Toronto: McClelland and Stewart.

Coleman, J. (1989) *The Criminal Elite.* New York: St. Martin's.

Condon, M. (2003) "The Use of Public Interest Enforcement Orders by Securities Regulators in Canada," *Research Study Prepared for the Wise Persons' Committee,* October. Online at *www.wise-averties.ca*.

Condon, M. (1998) *Making Disclosure: Ideas and Interests in Ontario Securities Regulation.* Toronto: University of Toronto Press.

Damsell, K., (2004) "IFIC Lobbies for Grants, Critics Charge," *Globe & Mail,* June 22, 2004:B.

Department of Finance Canada (2003) "Fostering Confidence in Canada's Capital Markets," online at www.fin.gc.ca/activty/pubs/fostering_e.html.

Department of Justice Canada (2003) *Backgrounder: Federal Strategy to Deter Serious Capital Market Fraud*. Online at www.canada.justice.gc.ca.

Doern, B., and S. Wilks (1998) "Introduction." Pp. 3–25 in *Changing Regulatory Institutions in Britain and North America,* Editors B. Doern and S. Wilks. Toronto: University of Toronto Press,.

Doern B., and S. Wilks (1996) "Conclusions: International Convergence and National Contrasts." Pp. 327–59 in *Comparative Competition Policy: National Institutions in a Global Market,* Editors B. Doern and S. Wilks. Oxford: Clarendon Press,.

Ehrenreich, B. (2001) *Nickel and Dimed: On (Not) Getting By in America.* New York: Metropolitan Books.

Ericson, R., and K. Haggerty (1997) *Policing the Risk Society.* Toronto: University of Toronto Press.

Fooks, G., (2003) "Auditors and the Permissive Society: Market Failure, Globalization and Financial Regulation in the United States." *Risk Management: An International Journal* 5(2):17–26.

Friedman, M. (1962) *Capitalism and Freedom.* Chicago: University of Chicago Press.

Fudge, J., and B. Cossman, (2002) "Introduction: Privatization, Law and the Challenge to Feminism," pp. 3–37 in *Privatization, Law and the Challenge*, Editors B. Cossman and J. Fudge. Toronto: University of Toronto Press.

Gandy, O. (1993) *The Panoptic Sort: A Political Economy of Personal Information.* Boulder, CO: Westview Press.

Glasbeek, H. (2002) *Wealth by Stealth. Corporate Crime, Corporate Law and the Perversion of Democracy.* Toronto: Between the Lines.

Haines, F., and D. Gurney, (2003) "The Shadows of the Law: Contemporary Approaches to Regulation and the Problem of Regulatory Conflict." *Law and Policy* 25 (4):353–79.

Howlett, K. (2004) "OSC Urges Securities Bill Change." *Globe & Mail*, March 11: B7.

Howlett, K., and J. McFarland, (2004) "OSC Says Enforcement a Priority." *Globe & Mail,* March 30, B10.

Leonhardt, D. (2002) "How Will Washington Read the Signs?" *The New York Times,* February 10, Money & Business, p. 1.

Macbeth, M. (1985) "Reining in the Cowboys," *Canadian Business,* May.

Mackay R., and M. Smith, (2004) "Bill C-13: An Act to Amend the Criminal Code (Capital markets Fraud and Evidence-Gathering). Ottawa: Parliamentary Research Branch, Legislative summary, LS-468E.

Mishra, R. (1999) *Globalization and the Welfare State.* Cheltenham: Edward Elgar.

Monbiot, G. (2000) *The Captive State. The Corporate Takeover of Britain.* London: Macmillan.

O'Brien, J. (2003) *Wall Street on Trial.* Chicester, U.K.: Wiley.

Pearce, F., and S. Tombs (2003) "'Dance Your Anger and Your Joys': Multinational Corporations, Power, 'Crime."' In *Blackwell Companion to Criminology,* Editor C. Sumner. London: Blackwell.

Pearce, F., and S. Tombs (1998) *Toxic Capitalism: Corporate Crime and the Chemical Industry*. Aldershot, NH: Ashgate/Dartmouth.

Phelps, M., H. McKay, T. Allen, P. Brunet, W. Dobson, E. Harris, M. Tims, (2003) *It's Time: Report of the Committee to Review the Structure of Securities Regulation in Canada.* Canada: Department of Finance, December 17 (online at www.wise-averties.ca).

Porter, J. (1965) *The Vertical Mosaic.* Toronto: University of Toronto Press.

Posner, R. (1976) *Antitrust Law.* Chicago: University of Chicago Press.

Posner, R. (1977) *Economic Analysis of Law.* 2nd ed. New York: Little Brown.

Puri, P. (2001) "Sentencing the Criminal Corporation." *Osgoode Hall Law Journal* Summer/Fall 39(2/3):612–53.

Rose, N., and P. Miller (1992) "Political Power beyond the State: Problematics of Government." *British Journal of Sociology* 43:173–205.

Rose, N. (1999) *Powers of Political Freedom: Reframing Political Thought.* Cambridge: Cambridge University Press.

Rose, N. (1990) *Governing the Soul: The Shaping of the Private Self.* London: Routledge.

Rosoff, S., H. Pontell, and R. Tillman (2007) *Profit Without Honor. White-Collar Crime and the Looting of America.* Upper Saddle River, NJ: Prentice Hall.

Setting Analyst Standards: Recommendations for the Supervision and Practice of Canadian Securities Industry Analysts (2001, October). Toronto: Toronto Stock Exchange, Investment Dealers Association, Canadian Venture Exchange.

Schrecker, E. (2001) "From the Welfare State to the No-Second-Chances State." In *[Ab]using Power: The Canadian Experience,* Editors S. Boyd, D. Chunn, and R. Menzies. Halifax: Fernwood.

Shamir, R., (2004) "Between Self-Regulation and the Alien Tort Claims Act: On the Contested Concept of Corporate Social Responsibility." *Law & Society Review* 38(4):635–63.

Shapiro, S. (1990) "Collaring the Crime, not the Criminal: Reconsidering the Concept of White-Collar Crime." *American Sociological Review* 55:123–40.

Shapiro, S. (1984) *Wayward Capitalists: Target of the Securities and Exchange Commission.* New Haven: Yale University Press.

Sharp, A. (1998) "Income Distribution in Canada in the 1990s: The Offsetting Impact of Government on Growing Market Inequality." *Canada Watch* V6, June.

Slapper, G., and S. Tombs (1999) *Corporate Crime.* London: Longman.

Snider, L. (2004) "Resisting Neo-Liberalism: The Poisoned Water Disaster in Walkerton, Ontario." *Social and Legal Studies* 13(2):265–90.

Snider, L. (2002) "Theft of Time: Disciplining through Science and Law." *Osgoode Hall Law Journal* 40(4,1):89–113.

Snider, L. (2000), "The Sociology of Corporate Crime: An Obituary." *Theoretical Criminology* 4(2):169–205.

Snider, L. (1996) "Options for Public Accountability." In *Regulatory Efficiency and the Role of Risk Assessment,* Editor M. Mehta. Kingston, Ont.: School of Policy Studies, Queen's University.

Snider, L. (1993) *Bad Business: Corporate Crime in Canada.* Scarborough, Ontario: Nelson.

Snider, L. (1978) "Corporate Crime in Canada: A Preliminary Report." *Canadian Journal of Criminology* 20(2):178–202.

Stanbury, W. (1995) "Public Policy towards Individuals Involved in Competition-Law Offenses in Canada." Pp. 214–44 in *Corporate Crime: Contemporary Debates,* Editors F. Pearce and L. Snider.Toronto: University of Toronto Press:.

Stanbury, W. (1986–87) "The New Competition Act and Competition Tribunal Act: Not with a Bang but a Whimper?" *Canadian Business Law Journal* 12:2–42.

Stanbury, W. (1977) *Business Interests and the Reform of Canadian Competition Policy 1971–75.* Toronto: Carswell/Methuen.

Tombs, S. (1996). "Injury, Death and the Deregulation Fetish: The Politics of Occupational Safety Regulation in United Kingdom Manufacturing Industries." *International Journal of Health Services* 26(2):309–29.

Tombs, S. and D. Whyte (2003) "Scrutinizing the Powerful." Pp. 3–48 in *Unmasking the Crimes of the Powerful,* Editors S. Tombs and D. Whyte.New York: Peter Lang.

Willis, A. (2004) "Even in a Bear Market, Some Fund Managers Saw a Bonanza." *Globe & Mail*, June 23, B9.

Yaron, G. (2002) *Canadian Shareholder Activism in an Era of Global Deregulation.* Vancouver: Shareholder Association for Research and Education, at www.share.ca.