Edward J. Balleisen

Private Cops on the Fraud Beat: The Limits of American Business Self-Regulation, 1895–1932

From the late 1890s through the 1920s, a new set of nonprofit, business-funded organizations spearheaded an American campaign against commercial duplicity. These new organizations shaped the legal terrain of fraud, built massive public-education campaigns, and created a private law-enforcement capacity to rival that of the federal government. Largely born out of a desire among business elites to fend off proposals for extensive regulatory oversight of commercial speech, the antifraud crusade grew into a social movement that was influenced by prevailing ideas about social hygiene and emerging techniques of private governance. This initiative highlighted some enduring strengths of business self-regulation, such as agility in responding to regulatory problems; it also revealed a key weakness, which was the tendency to overlook deceptive marketing when practiced by firms that were members of the business establishment.

Throughout the summer of 1933, the residents of Dallas, Texas, could tune into the broadcast of a daily radio bulletin, Sundays excepted. This report did not offer prognostications about the bleak chances for rain, nor the latest intelligence from the nation's swooning cotton markets. It provided no information about upcoming church socials, no listings of used goods for sale, no chronicle of New Deal–related political

EDWARD BALLEISEN is associate professor of history at Duke University and senior fellow at Duke's Kenan Institute for Ethics.

This essay is part of a larger research project on the history of commercial fraud in the United States, focusing on the interplay between governmental and nongovernmental mechanisms of disciplining commercial speech.

I would like to thank the following individuals for comments on earlier drafts: Daniel Carpenter, Pamela Laird, Daniel Levinson-Wilk, Christopher McKenna, Julia Ott, Gunther Peck, Richard Sylla, Carol Sheriff, an anonymous reviewer for *BHR*, and Karin Shapiro, as well as the members of the Harvard Business School Ethics, Law, and Leadership Group and the New York City Market Cultures Reading Group.

Business History Review 83 (Spring 2009): 113–160.

https://doi.org/10.1017/S0007680500000222 Published online by Cambridge University Press

maneuverings in Austin or Washington, D.C. Instead, it gave warnings about commercial tales so tall that they crossed the line of acceptable economic behavior. The shady pitches singled out for attention included local offers of "free lots" that came with a big catch, a "business-stimulator" method for businesses struggling to survive the Depression, and an employment offer that was too good to be true, devised by the innocuously named National Stationery Company.[1]

The inclusion of a fraud report in the Dallas radio lineup was not an idiosyncratic decision of some lone station manager desperate to fill hours of airtime. Similar segments were scheduled by radio stations across the nation in the 1920s and 1930s, all courtesy of officials working for local Better Business Bureaus (BBBs), nonprofit organizations dedicated to exposing commercial flim-flam and to educating consumers and investors. The prevalence of this new form of public service—the fact that it quickly developed into something of a genre—offers an intriguing window on the evolution of capitalism in the United States.

Economic duplicity, of course, was not exactly a new phenomenon in early twentieth-century America. The colonial and post-Revolutionary marketplaces accommodated plenty of swindlers who sought to exact tolls from the highways of legitimate trade. And from the early nineteenth-century, if not before, rapid innovations in technology, finance, and marketing often blurred the line between hard-nosed commercial practices and objectionable deceit. The ongoing pressures of competition, moreover, frequently led otherwise law-abiding businesses to adopt courses of action predicated on economic misrepresentation, as did the stresses created by the financial panics and ensuing downturns that regularly bedeviled the American economy. To make one's way through the nineteenth-century marketplace required constant scrutiny of goods, commercial counterparties, investment vehicles, and even circulating currency. Individuals and firms who did not remain vigilant soon found themselves saddled with dubious patent medicines, uncollectible debts owed by merchants who had misrepresented their financial conditions, stock certificates from fake life-insurance and mining companies, and counterfeit banknotes.[2]

[1] For typical notices of the previous week's radio fraud topics in the summer of 1933, see Dallas Better Business Bureau, Bulletin, 28 July 1933, New York Stock Exchange Archives, New York City.

[2] Steven C. Bullock, "A Mumper among the Gentle: Tom Bell, Colonial Confidence Man," *William & Mary Quarterly*, 3rd ser., 55 (1998): 231–58; James Harvey Young, *The Toadstool Millionaires: A Social History of Patent Medicines before Federal Regulation* (Princeton, 1961); Rowena Olegario, *A Culture of Credit: Embedding Trust and Transparency in American Business* (Cambridge, Mass., 2006); Dan Plazak, *A Hole in the Ground with a Liar at the Top: Fraud and Deceit in the Golden Age of American Mining* (Salt Lake City, 2006); Stephen Mihm, *A Nation of Counterfeiters: Capitalists, Con Men, and the Making of the United States* (Cambridge, Mass., 2007).

In the late nineteenth century, however, the opportunities for large-scale masquerades intensified, as the accelerating pace of industrialization facilitated the emergence of national markets, and thus of increasingly anonymous marketplaces. During the Gilded Age and the Progressive Era, fraud became more sophisticated and extensive, mirroring the growth of large-scale business. By the 1920s, moreover, American marketers had become sufficiently familiar with the psychology underpinning popular consumption and investment to craft emotive sales pitches that effectively played on the enticements and anxieties associated with modernity, complicating the question of what counted as deceptive commercial speech. The result, as made clear by a rich scholarly literature on the history of advertising in the United States, included images of soap that somehow anointed its users with sex appeal, depictions of mouthwash that ostensibly functioned as a talisman against halitosis, and visions of fractional shares in oil wells that would magically transport their owners into the ranks of the wealthy.[3]

Amid this often vexing economic environment, Progressive-Era Americans increasingly identified commercial fraud as a social and economic problem requiring a substantial and coordinated response. The most influential of those responses came from a key segment within the country's early twentieth-century business elites, who crafted a remarkably cohesive plan for combating economic duplicity. Shared by a broad cross-section of executives in leading corporations and embraced by the national Republican Party, this approach emerged in several economic contexts, including the fraudulent procurement of credit, fraudulent bankruptcy, the sale of spurious medical treatments, false advertising and other deceptive marketing practices, and securities swindles. In this article, I probe the business establishment's diagnosis of the "fraud problem" and its chief remedies for it—campaigns of public education, like the Dallas radio spots, legal reforms that more carefully defined the requirements of truthfulness in commercial speech, and private policing of those limits—all overseen by novel nonprofit organizations that had close ties to the corporate world, the Better Business Bureaus chief among them.

The resulting crusade against fraud suggests the need for a more refined understanding of how early twentieth-century business elites viewed governmental regulation of the American economy. In the broad

[3] On the growing sophistication of early twentieth-century American advertising, see Stephen Fox, *The Mirror Makers: A History of Advertising and Its Creators* (New York, 1984); Roland Marchand, *Advertising the American Dream: Making Way for Modernity, 1920–1940* (Berkeley, 1985); Pamela Laird, *Advertising Progress: American Business and the Rise of Consumer Marketing* (Baltimore, 1998); Inger Stole, *Advertising on Trial: Consumer Activism and Corporate Public Relations in the 1930s* (Urbana, 2006).

arena of commercial speech, most business leaders neither preferred that the government remain on the sidelines, nor hoped that public officials would limit their role to facilitating industrywide creation of commercial rules of the game, nor placed their faith in co-optable administrative agencies—three business approaches to regulation in this era that have received particular attention from historians. Rather, business leaders prodded governments at all levels to sharpen statutory prohibitions against misleading commercial communication and to beef up enforcement of those measures by the criminal justice system, albeit with a sizable helping hand from the new nongovernmental institutions dedicated to the fight against deception in the marketplace. Here was a particularly vigorous and far-reaching effort to create "associationalism"—a mode of government–business relations in which the state facilitated substantial intraindustry, and even interindustry, cooperation among leading corporations, in order to stabilize market conditions and solve other socioeconomic problems.[4]

Equally important, the several-decades-long "war" against commercial trickery indicates the need to revise prevailing assessments of how the American state, and especially the legal system, accommodated the drive for associationalist political economy. Historical interpretations of the 1920s generally stress that however much Republican presidents and cabinet officers pursued such policy initiatives, the federal bench proved highly resistant to any cooperative efforts that threatened competition, including modest efforts by trade associations to foster price stabilization. But the judiciary proved quite willing to follow the business community's lead in the antifraud drive, even in the face of complaints that it also restricted competitive business practices. In this

[4] To be clear about the nature of this part of the argument—I do not wish to challenge the relevance of these more venerable depictions of business–government relations for a number of important policy contexts, as laid out in leading works such as the following: Robert Wiebe, *Businessmen and Reform: A Study of the Progressive Movement* (Cambridge, Mass., 1962); Gabriel Kolko, *The Triumph of Conservatism: A Reinterpretation of American History, 1900–1916* (New York, 1963); Ellis Hawley, *The Great War and the Search for a Modern Order: A History of the American People and Their Institutions, 1917–1933* (New York, 1979); Morton Keller, *Regulating a New Economy: Public Policy and Economic Change in America, 1900–1933* (Cambridge, Mass., 1990). Pivotal business interests in the early twentieth century *did* frequently and vociferously oppose regulatory action, especially with regard to labor conditions; they *did*, especially after the cooperative experience of World War I, and including in the area of commercial speech, frequently seek government assistance in facilitating industrywide standard setting; they *did* sometimes fervently desire governmental regulation, as in the case of the creation of the Federal Reserve or the tweaking of transportation rate regulations, or the imposition of federal oversight over food and drugs sold in interstate commerce. In addition, the capacious domain of "business" almost always contained fault lines, as particular industries and firms took different sides of particular regulatory issues. I seek not a new framework for "lumping," but rather some additional "splitting," both about regulatory aspirations and the extent to which they bore institutional fruit.

regard, the battle against fraud represented the height of associational regulation, one facilitated by its alignment with longstanding common-law principles against economic deception.

The early twentieth-century fight against commercial duplicity further points to the enduring strengths and weaknesses of business self-regulation as a means of addressing market failures, or of helping to sustain the confidence that underpins market economies. Antifraud organizations quickly developed effective administrative capacity, at least some bureaucratic autonomy, and considerable goodwill among business owners and managers, particularly within the realm of big business.[5] These assets constituted the hard-won fruits of a social movement of sorts within America's commercial classes, and they enabled the movement's leaders not only to design a comprehensive strategy to attack commercial misrepresentation, but also to carry it out. As a result, the various campaigns for truthful commercial speech often successfully challenged longstanding entrepreneurial practices that privileged secrecy and promoted narrow, short-term economic calculation, thereby fostering more transparent communication between buyers and sellers in a host of markets. At the same time, the leading participants in those campaigns often manifested an ethnocentrism that targeted immigrant businessmen and flirted with the rhetoric of eugenics. The close relations between dominant corporations and key figures in the antifraud movement, moreover, compromised the leaders' collective vision, encouraging them to ignore serious transgressions of their movement's core principles. Thus, the early twentieth-century placement of private cops on the fraud beat underscores both the allure and the dangers of vesting regulatory authority in nongovernmental organizations, especially when those organizations retained close links to the business establishment.

Fraud Run Amok

From McKinley's election in 1896 to Hoover's defeat in 1932, Americans confronted essentially unchallenged public assessments that fraudulent behavior was rampant in their society. Such publicly expressed anxieties had innumerable nineteenth-century precedents. Coverage of prevailing scams was a staple of nineteenth-century newspapers and periodicals, as keyword searches of databases like America's Historical

[5] For an extremely useful exploration of the concept of bureaucratic autonomy by a historically minded political scientist, see Daniel Carpenter, *The Forging of Bureaucratic Autonomy: Reputations, Networks, and Policy Innovation in Executive Agencies, 1862–1928* (Princeton, 2001). Although Carpenter develops this conceptual framework with regard to governmental agencies, it is applicable to nongovernmental organizations as well.

Newspapers or American Periodicals Series readily demonstrate. But the early twentieth-century discourse on commercial fraud conceptualized the problem differently, relating it to a more clearly defined national economy, imagining, and even calculating, its systemic costs.

By the 1920s, government officials and representatives of business organizations placed impressive dollar figures on the price tag imposed by business fraud—or at least figures that their contemporaries found impressive. Credit scams ostensibly amounted to between $250 million and $400 million per year. Insurance swindles reportedly bilked companies out of at least $1 billion annually, while securities fraud allegedly removed at least that amount from the bank accounts of ordinary Americans, and possibly twice that sum. Estimates of total annual fraud costs, which also included the marketing of falsely characterized consumer goods, fraudulent employment scams, and real-estate swindles, typically topped $3 billion to $4 billion, a figure that, if accurate, equaled roughly 1 percent of the American gross domestic product (GDP). That figure represented about $30 for every man, woman, and child in the country; in 2007, it would represent something on the order of $130 billion, or about $430 per person. Although the factual basis for these estimates almost always remained murky, they passed readily into conventional wisdom and were repeated again and again in editorials, magazine stories, and cartoons.[6]

Newspaper coverage and periodical exposés further made clear that American perpetrators of fraud methodically developed more refined schemes of duplicity and more complex forms of organization. Nationwide rings of "credit trimmers" emerged as early as the 1900s to bamboozle manufacturers and wholesalers who sold their wares on the basis of unsecured trade credit. These rings first established members of the conspiracy as independent retailers, either by providing falsified references, buying out established businesses, or creating stores with similar names to those of well-regarded firms that already enjoyed easy access to credit (an early form of identity theft). Once these front enterprises cajoled distant manufacturers or wholesalers to furnish them with substantial inventories, the rings would spirit the goods away for sale by confederates elsewhere. The indebted retailers then either disappeared or falsely declared bankruptcy, before moving on

[6] A sample of fraud cost estimates includes: "Why 'Blue Sky' Laws Are Needed," *Indianapolis Times*, 11 Dec. 1923, in Seymour Cromwell Scrapbooks, vol. 2, New York Stock Exchange Archives; "Financial Crime Loss Is Three Billions Yearly," *New York Times*, 6 July 1924, H5; "Debit 3 Billions a Year to Crooks," *Current Opinion*, 1 Oct. 1924, 510; "War on the White Collar Bandits," *Literary Digest*, 6 Mar. 1926, 11–12; "Getting Rich by Going Broke," *Literary Digest*, 27 Apr. 1929, 65–67; E. Jerome Ellison and Frank W. Brock, *The Run for Your Money* (New York, 1935), 3–4.

to new towns, taking on new commercial identities, and beginning the scheme anew.[7]

Securities fraud similarly came to require significant capital and organizational capacity. As early as 1910, the most effective peddlers of dodgy stocks published ostensibly independent financial newsletters and dailies that mostly offered conventional assessments of the securities markets, but that also relentlessly puffed selected issues controlled by the promoters who owned the tip sheets. Relying on ever more finely tuned compilations of individuals who had previously fallen for securities scams, which contemporaries referred to as "suckers lists," fraudulent promoters employed large crews of clerical workers to distribute their newsletters and other promotional materials to tens, even hundreds of thousands, of potential investors. ("Suckers lists" readily circulated in early twentieth-century American cities, both among stock promoters and through specialized list brokers.) They also frequently oversaw teams of high-pressure salesmen, who either operated out of "boiler rooms," pitching shares over the telephone, or through revivalist-style investment meetings and tours. The latter were especially common in the sale of oil stocks and real-estate investments. In some cases, large-scale stock swindlers even created or gained control over regional stock exchanges, such as the Boston Curb Exchange, to facilitate the market manipulations that persuaded investors to view particular stocks as being in the early stages of a boom.[8]

To business leaders, legal thinkers, and prominent financial journalists, the all-too-rapid evolution of American swindling posed dangers beyond the most direct financial costs to consumers, investors, wholesalers, and insurers. The sap who invested in a fraudulent automobile company withdrew assets from a legitimate savings bank and did not invest in reputable enterprises, thereby increasing their costs of capital. The dupe who purchased worthless items from a fly-by-night mail-order concern, or who responded to the deceptive advertising of a local piano store, reduced the profits of law-abiding retailers. The credit-fraud ring brought losses to legitimate retailers, through sales of

[7] Edward H. Smith, "Profit in Loss," *Saturday Evening Post*, 5 Feb. 1921, 14–15, 59–70; Smith, "The Credit Trimmers," *Saturday Evening Post*, 13 May 1922, 88–100; National Association of Credit Men, *Commerce and the Credit Crook* (New York, 1925); Helen Starr, "How Bankruptcy Brings Bargains in Merchandise," *Los Angeles Times*, 10 May 1925.

[8] Louis Guenther, "Pirates of Promotion: Market Manipulation and Its Part in the Promotion Game," *World's Work* 37 (1919): 393–98; Edward Jerome Dies, "The Fine Art of Catching the 'Sucker,'" *Outlook*, 28 Mar., 4 and 11 Apr. 1923, 590–93, 631–33, 674–78; Edward H. Smith, *Confessions of a Former Confidence Man: A Handbook for Suckers* (New York, 1923); "Tipster Publications Direct Investors' Money into Specially Prepared Channels," Special Bulletin No. 10, New York City Better Business Bureau, 15 Aug. 1924; "Boston Curb Exchange," Special Bulletin of the National Better Business Bureau, 17 Mar. 1927; "Tipster Sheet," Special Bulletin of the National Better Business Bureau, September 1928.

essentially stolen goods at fire-sale prices and higher overhead costs to defrauded suppliers. At the same time, the success of so many deceitful practices set a dangerous example for the legions of American young men on the make, who "learn[ed] to think that that there [was] a better way of getting money than by earning it."[9]

Perhaps the greatest threat posed by fraud concerned the public faith in America's most important marketplaces, or, as one leading spokesman for the business world put it, "the capital of confidence upon which all progress depends." When department stores engaged in bait-and-switch tactics, promoting attractive discounts on goods that turned out to be unavailable once customers came looking for them, elites in the advertising industry increasingly fretted that such schemes fed public skepticism about the truthfulness of advertising in general. By the same token, opinion-makers within the financial sector worried that duplicitous marketing of stocks and bonds would spawn "sectional prejudice against 'money centres,'" perhaps even "bitter and unreasoning suspicion" of all securities, leading potential small investors to "thrust many a dollar down deeper in the sock." By the 1920s, Wall Street had become considerably more reliant on the savings of ordinary Americans, needing regular infusions of capital from the socks (and savings accounts) of wage earners and members of the salaried middle class from across the nation.[10]

Some observers of the American economic scene even expressed the fear that deceptive practices ran the risk of souring ordinary Americans on capitalism altogether. In February 1919, for example, during a particularly severe wave of securities swindles targeting individuals with modest financial resources, witnesses at a Federal Trade Commission hearing depicted such crimes as "a prime cause of social unrest." Amid the early years of the Russian Revolution and a postwar period of intense labor conflict, as well as unprecedented political success by the American Socialist Party, business elites feared that the pervasive experience of becoming a sucker created political openings that radicals might exploit. The danger was only sharpened by the tendency of fraudulent

[9] Marshall D. Beuick, "Who Pays for Credit Frauds?" *Credit Monthly* 28 (May 1926): 9; George Alger, "Unpunished Commercial Crime," *American Lawyer* 12 (Sept. 1904): 380.

[10] H. J. Kenner, *The Fight for Truth in Advertising* (New York, 1936), x; Merle Sidener, "Patroling the Avenues of Publicity," *World's Work* 35 (1918): 638; "Advertising As Power for Good," *Utica Daily Press*, 12 Mar. 1924, in Historical Clippings Files, New York City Better Business Bureau, New York City; R. S. Sharp, "A Suggestion for Curbing the Pirates of Promotion," *World's Work* 45 (1919): 354–56; Boston Better Business Commission, *The Boston Better Business Commission: An Outline of Its Work* (Boston, 1922), 1–2; "The Financial Situation," *Commercial and Financial Chronicle* (11 Feb. 1922), in Cromwell Scrapbooks, vol. 2; "Caution! Trial of South Motors Case," Special Bulletin, National Better Business Bureau, 12 Dec. 1926.

stock promoters to levy sharp public attacks on the allegedly monopolistic power of powerful industrial corporations and the largest New York City investment banks. As the headline writers at the *New York Times* framed the possibility, "Stock Frauds Seen as Spur to Bolshevism."[11]

A Cadre of Professional Fraud Fighters

One might well question whether the specter of unbridled swindling actually threatened to turn large numbers of post–World War I Americans toward the Leninist banner. But leading capitalists became sufficiently anxious about the issue of deceptive commercial speech to create a series of nonprofit business organizations between the mid-1890s and the early 1920s, all primarily dedicated to rooting out fraud in the American marketplace. In 1896, the executives responsible for credit extension by manufacturers and large wholesalers founded a new professional organization, the National Association of Credit Men (NACM), which sought to reduce credit and bankruptcy fraud. Roughly a decade and a half later, a group of prominent advertising executives joined forces through the Associated Advertising Clubs of the World to create a "truth in advertising" movement, which had as its building blocks a series of local "vigilance committees" of urban advertising associations, as well as a National Vigilance Committee. Within a few years, the Investment Bankers of America had instituted an analogous committee focused on the challenges of securities fraud, followed by the New York Stock Exchange's creation of the Business Man's Anti-Stock Swindling League in the immediate aftermath of World War I. By the 1920s, these varied institutional responses to deceptive merchandising and investment peddling had merged through the creation of a nationwide network of metropolitan Better Business Bureaus, coordinated by a National Better Business Bureau.[12]

All these various initiatives predated the flowering of the "second wave" consumer movement in the late 1920s and early 1930s, triggered as it was by the seminal muckraking exposés *It's Your Money* (1927), *100,000,000 Guinea Pigs* (1933), and *Skin Deep* (1934), and given momentum by the creation of independent advocacy groups like Consumer

[11] H. J. Kenner, "Letter to the Editor," *Printer's Ink*, 8 May 1924; "Fighting Frauds and Fakes," *Wilmington (Delaware) Journal*, 3 July 1926, both in Historical Clippings Files; "Social Unrest Laid to Stock Swindling," *New York American*, 22 Feb. 1919; "Stock Frauds Seen As Spur to Bolshevism," *New York Times*, 22 Feb. 1919, both in Stock Fraud Scrapbook, New York Stock Exchange Archives.

[12] On "second wave" consumerism, see Robert Mayer, *The Consumer Movement: Guardians of the Marketplace* (Boston, 1989); Lisabeth Cohen, *A Consumer's Republic: The Politics of Mass Consumption in Postwar America* (New York, 2003); Stole, *Advertising on Trial*.

Research (1929) and Consumers Union (1936). Consumer activists eventually launched withering attacks on mainstream advertising practices, particularly lambasting the turn to purely emotional advertising techniques. This development surely intensified the already powerful inclination within the business establishment to shore up public confidence in advertising through mechanisms of self-regulation. But such critiques came too late to motivate the initial movement within the business establishment to foster honest practices in marketing.[13]

Funded through annual subscriptions by businesses, especially by large corporations, the new antifraud institutions soon came under the direction of individuals whose dominant career experiences lay not with managerial positions in business, but rather with the business of curbing commercial deception. J. Harry Tregoe, H. J. Kenner, and Kenneth Barnard stand as prototypical illustrations of this pattern. Tregoe initially worked in banking and as the credit manager for a Baltimore shoe company, experiences that made him abundantly aware of the costs associated with misrepresentations from debtors. He helped to found NACM in the 1890s, and then took on a variety of positions in the organization over three decades, including president, executive secretary, general manager, and editor of the organization's main publication.[14] Kenner spent his early career as a merchant in North Dakota, serving as an officer for a local merchants association. In 1914, at the age of twenty-six, he was tapped by Minneapolis advertising executives to direct their new vigilance organization, making him the first person to receive a salary for

[13] For useful memoirs of the early evolution of NACM and the Better Business Bureaus, see: J. H. Tregoe, *Pioneers and Traditions of the National Association of Credit Men* (New York, 1946); Kenner, *Fight for Truth in Advertising*. On the early history of NACM, see also Olegario, *Culture of Credit*. There were many other institutions with similar goals and methods, both locally and nationally. The American Medical Association funded a large staff to monitor the marketing of medicines and other health treatments. Chambers of Commerce in places like Chicago and Holyoke, Massachusetts, initiated campaigns in the early 1920s to educate the residents of their cities about investment frauds. In 1924, the American Depositors' Association created a free information bureau so that depositors could inquire about the legitimacy of a given promotion before taking the plunge; the Investment Bankers Association and several national magazines, such as *Outlook* and *World's Work*, maintained similar services. But NACM and the Better Business Bureaus took the leading roles in the business community's efforts to root out fraud, especially outside the domain of health care. "Protecting Wage-Earners from Stock Swindlers," *Literary Digest* 65 (12 June 1920): 153–56; "Educating the Public in Fraudulent Stocks," *World's Work* 46 (Oct. 1923): 25–27; "New Defense against the Stock Promoter," *World's Work* 47 (Apr. 1924): 678–79. On the AMA's antifraud battles, see James Harvey Young, *The Medical Messiahs: A Social History of Health Quackery in Twentieth Century America* (Princeton, 1966). For Wall Street's role in creating the New York City Better Business Bureau, see Julia Ott, "The 'Free and Open' 'People's Market': Public Relations and the New York Stock Exchange, 1913–1929," *Business and Economic History Online* 2 (2004): 1–42.

[14] "To Prosecute Fraudulent Failures," *Baltimore Sun*, 10 Dec. 1897, 10; "To Fight Fraud," *Baltimore Sun*, 6 July 1899, 10; "Tregoe the Busy Man," *Washington Post*, 4 June 1905, F6; "J. H. Tregoe Dead: Credit Authority," *New York Times*, 6 Oct. 1935, 47.

such work. After a year of regional travel preaching the gospel of truthful advertising, he moved on to work for the National Vigilance Committee, and then, in the early 1920s, he helped to inaugurate the New York City Better Business Bureau, which he managed for the next quarter century.[15] Barnard began his nearly fifty-year Better Business Bureau career by helping to launch the Toledo bureau in 1915. During the early 1920s, he worked for the National Vigilance Committee, traveling the country to keep local bureaus abreast of the latest organizational techniques. By 1933 he had become manager of the Chicago Bureau, eventually spearheading national initiatives to clean up the marketing of used cars and life insurance after World War II, before retiring in 1963.[16]

Quickly constructing a vision of fraud prevention as a specialized calling, Tregoe, Kenner, Barnard, and their fellow antifraud specialists arrived at similar conclusions about the root causes of commercial fraud, as well as the most effective means of addressing it. Their approach and sensibilities reflected the era's pervasive embrace of professionalization. Like a host of other highly educated economic and cultural brokers, ranging from industrial engineers, accountants, and personnel managers to public health professionals and social workers, antifraud specialists claimed that their expertise and commitment to the common good prepared them to address significant problems created by rapid economic and social change.[17]

Diagnosing the Fraud Epidemic

Like these other early twentieth-century experts, the band of nascent antifraud professionals began with systematic analyses of causes

[15] "Boosters Rule at Devils Lake," *Aberdeen Weekly American*, 12 Mar. 1913, 4; "Would Discard 'Caveat Emptor': H. J. Kenner of Minneapolis Speaks to Duluth Ad Men and Retail Merchants," *Duluth News Tribune*, 3 Feb. 1915, 12; "Truth is the Rule in Ads," *Kansas City Times*, 10 Nov. 1915, 5; "Kenner Acts As a Watchman," *Duluth News Tribune*, 8 Feb. 1920, Convention Section, 9; James Auchincloss, *The Better Business Bureau: Its Growth and Work* (New York, 1927), 7–8; Kenner, *Fight for Truth in Advertising*, 44–59; "H. J. Kenner, Ex-Head Here of Better Business Bureau," *New York Times*, 9 Jan. 1973, 42.

[16] "They're Blazing Trails for Publicity," *Duluth News Tribune*, 8 Feb. 1920, Convention Section, 4; "Expert to Talk on Advertising," *Los Angeles Times*, 2 Feb. 1923, I4; "Business Convention Ends," *Los Angeles Times*, 6 Sep. 1924, A5; "Tighter Curbs on Advertising Adopted for Enforcement by Business Itself," *New York Times*, 15 Jan. 1935, 7; "Chief of B.B.B. Is Set to Retire," *Chicago Tribune*, 12 Apr. 1963, C9; "Retirement of Ken Barnard," Association of Better Business Bureaus Service Bulletin, 4 Oct. 1963.

[17] The literature on professionalization in this period is enormous. See, for example, Daniel Nelson, *Frederick W. Taylor and the Rise of Scientific Management* (Madison, 1980); Paul Miranti, *Accountancy Comes of Age: The Development of an American Profession, 1886–1940* (Chapel Hill, 1990); Andrea Tone, *The Business of Benevolence in Industrial America* (Ithaca, 1997); John Duffy, *The Sanitarians: A History of American Public Health* (Urbana, 1992); Regina Kunzel, *Fallen Women, Problem Girls: Unmarried Mothers and the Professionalization of Social Work, 1890–1945* (New Haven, 1993).

before constructing strategic programs of action. Swindling flourished in modern America, they reasoned, partly because the economic growth unleashed by industrialization had put savings and disposable income in the hands of relatively unsophisticated consumers and investors. These commercial neophytes struggled to navigate the information asymmetries of a complex modern economy, and they often chased after fantasies of easy riches without even the most cursory of investigations. Whether unscrupulous retailers tried to attract customers to mail-order offerings or retail stores, their beguiling advertisements zeroed in on the near universal allure of the bargain. An army of financial hucksters similarly took advantage of pervasive aspirations for affluence in a society that lionized Horatio Alger figures but had made the path to independent proprietorship far more difficult for individuals without access to social connections and capital. Focusing particularly on the latest technological wonders or booms in oil, mining, or real estate, these promoters pitched penny stocks to "the discontented janitress and the ambitious elevator boy," to the salaried clerks and struggling professionals whose "savings [were] but little, but who [were] obsessed by an easy road to wealth."[18]

Antifraud professionals stressed that the financing of America's participation in World War I accelerated this process, since the mass marketing of Liberty Bonds acculturated millions of wage- and salary-earners to the securities markets. As early as 1919, swindlers had sent brigades of "chipper salesmen" to go "from door to door in city and farming communities, enticing Liberty Bonds from hiding and giving in return lithographed certificates bearing marvelous artists' dreams of derrick after derrick, gusher after gusher, spreading as far as the eye can see." Yet credulity and situational ignorance, the antifraud organizations stressed, extended far beyond those classes of Americans unaccustomed to the ways and wiles of twentieth-century capitalism. In its various bulletins and annual reports, Better Business Bureaus continually marveled at "the gullibility of the business public," who continually found themselves burned by the pitchmen for fraudulent collection agencies or fake commercial directories. NACM officials constantly harped on the susceptibility of so many suppliers to fraudulent requests for credit. Even the New York Stock Exchange had to periodically caution its employees against their propensity for playing the sucker, biting at some spurious

[18] "Advertising Imperils Consumer Confidence," Bulletin, 17 July 1925, National Vigilance Committee, Associated Advertising Clubs of the World; "Salesman's Statements and Advertising Claims," Bulletin, 15 Sept. 1927, National Better Business Bureau; Alger, "Unpunished Commercial Crime," 379; Edward Roberts, "How to End Stock Swindling," *Bangor Maine News*, 15 Dec. 1923, in Cromwell Scrapbooks, vol. 2; "Ignorance Supports Financial Fraud," Bulletin, National Better Business Bureau, July 1929.

"inside" tip, or seeking to ride a wave of public fascination with a worthless stock, hoping to get out at the top.[19]

While the existence of "easy marks" heightened the potential returns of fraudulent schemes, antifraud crusaders further argued that prevailing legal prohibitions against duplicitous commercial speech offered only slight risks to early twentieth-century swindlers. Although the American states had always had numerous legal rules against commercial subterfuge, the country's commercial culture gave the perpetrators of fraud some very strong informal protections. As in Great Britain, the ethos of caveat emptor had sunk deep roots in the United States. American con artists frequently received "admiration" for their "cleverness and dexterity," as in George Chester Randolph's best-selling novels about "Get-Rich-Quick Wallingford." Swindlers operating petty mail-order scams sometimes even mocked the individuals who fell for their pitches, explicitly informing them after the fact that they had been taken for a ride, and suggesting that they had received at least something of value for their money—a bit of experience that would ostensibly wise them up for the next commercial go-round. In a society that prized individualism, that identified citizenship with the ability to look after one's own affairs, and that often viewed proposals for governmental paternalism with abiding skepticism, the victims of a swindle often proved more likely to experience psychological denial (especially in the case of investments gone awry or medical treatments that proved worthless) or to keep their losses to themselves. The individual who kept quiet sometimes did so to avoid the embarrassment, and even the humiliation, of "advertis[ing] the fact that he had permitted a 'slicker' to best him."[20]

[19] "Share Fakers Set a Record," New York *Sun*, 23 May 1920, in Scrapbook on Stock Frauds, 1918–1920, New York Stock Exchange Archives; Associated Advertising Clubs of the World, *The Most Dangerous Enemy of the Oil Industry* (New York, 1919?); Charles Dewey, *Federal Cooperation to Prevent Fraud* (St. Louis, 1926), 2–4; "Are You an Easy Mark," Kansas City Better Business Bureau, *Better Business Bulletin* (31 May 1926); J. H. Tregoe, "Credit Protection and Financial Statements," *Credit Monthly* 28 (Feb. 1926): 23; Circular from E. H. H. Simmons, president of the New York Stock Exchange, to all Exchange employees, 3 May 1927, Records of the New York City Better Business Bureau, New York Stock Exchange Archives. David Hochfelder shows that the emergence of the retail investor also resulted in large measure from widespread popular engagement with bucket shops in the late nineteenth and early twentieth centuries: "'Where the Common People Could Speculate': The Ticker, Bucket Shops, and the Origins of Popular Participation in Financial Markets, 1880–1920," *Journal of American History* 93 (2006): 335–58.

[20] George Robb, *White-Collar Crime in Modern England: Financial Fraud and Business Morality, 1845–1929* (New York, 1992), 147–50; E. H. H. Simmons, *Security Frauds: A National Business Liability* (New York, 1927), 7; Edwin W. Lawrence, "Swindling through the Post Office," *Outlook* 79 (14 Jan. 1905): 121–26; E. D. Hulbert, "Advertising Ethics and the General Welfare," *Survey* 22 (1909): 325–26; Harry S. New, "The Use of the Mail for Fraudulent Purposes," *Annals of the American Academy of Political Science* 125 (May 1926): 58–59.

When individuals nonetheless did complain to the authorities about instances of alleged swindling, successful prosecutions proved to be the exception, rather than the rule. Fraud cases around the turn of the twentieth century usually turned on comparatively complex factual situations, especially regarding the precise character of the misrepresentation at issue, and the question of fraudulent intent. As a result, convictions depended on substantial investigatory and prosecutorial expertise, which was often lacking at every level of government. Moreover, in those relatively rare circumstances in which authorities charged individuals with fraud, prosecutors all too often found themselves outgunned by high-priced defense attorneys, while juries frequently protected local businessmen whose deceit attracted outside capital into their communities. In the even rarer instances in which fraud prosecutions culminated in convictions, the judiciary almost always handed out fairly minimal sentences—either modest fines or relatively short jail stints. If convicted swindlers possessed good political connections, as they often did, even those slight penalties might well be wiped away by pardons. As one early twentieth-century legal expert observed, the perpetrator of credit fraud "may be punished with no greater severity than the man who expectorates on the floor of a public conveyance." The result, critics complained, was that the state's efforts to enforce laws against fraud did little more than slightly increase most swindlers' requirements of working capital, essentially constituting a "license fee."[21]

One final contributor to America's fraud problem gained the attention of early twentieth-century organizations dedicated to fighting fraud: entrenched commercial practices that sustained economic duplicity, typically as a result of firms responding to powerful short-term incentives, without regard to the long-term implications of their actions for broader commercial culture, or for public confidence. Thus, as articles and editorials in the NACM's *Monthly Bulletin* complained repeatedly from the late 1890s through the 1920s, the pressures of competition encouraged far too many wholesalers to extend commercial credit without sufficient investigation, making them likely candidates for credit fraud. Analogous pressures pushed far too many retailers and promoters to flirt with deceptive advertising, and far too many newspapers and magazines to accept such advertisements. And when enterprises of any kind found themselves the victims of a swindle, they proved far too willing to accept a compromise settlement out of what fraudulent promoters

[21] Alger, "Unpunished Commercial Crime," 381; Maurice W. Sloan, "Prosecution of Fraudulent Debtors," *Bulletin of the National Association of Credit Men* 9 (1909): 348; Andre Tridon, "The Post Office: Guardian Angel to the 'Easy,'" *Harper's Weekly* 56 (6 Nov. 1910): 12; John K. Barnes, "Harvest Time for the Get-Rich-Quick Promoter," *World's Work* 35 (Dec. 1917): 158–59; E. H. H. Simmons, "Security Frauds," *Independent* 114 (Dec. 1925): 731.

referred to as their "squawk fund," securing their own financial interest, rather than insisting upon a criminal prosecution that would improve the deterrent value of fraud laws.[22]

An Ethos of Prevention

All these diagnoses guided NACM and the Better Business Bureaus as they developed strategies to protect American markets from the threat of duplicitous commercial speech. In their early years, these organizations focused particularly on lobbying state and federal governments to tighten legal prohibitions against deceptive economic conduct. Thus, NACM's central purpose in its early years was to lobby for a new federal bankruptcy law, in the hope that it would curb fraudulent conveyances and concealment of assets by failing debtors, an endeavor that yielded legislative success in 1898. In addition to lobbying for periodic amendments to the federal bankruptcy code, NACM moved on to press for uniform state laws that would criminalize the signing of a false financial statement in order to obtain credit, or the selling of a retail inventory in bulk without furnishing notice to one's commercial creditors, each a common tactic employed in credit-fraud schemes. By the same token, the AACW concentrated much of its initial energies on pushing a model state statute to punish false statements in advertisements drafted by the advertising journal *Printer's Ink*, a campaign that produced versions of the legislation in forty-three states by 1930. And, throughout the 1920s, the Investment Bankers' Association, the New York Stock Exchange, and the Better Business Bureaus strenuously advocated the adoption of state securities laws that would facilitate criminal prosecutions of fraudulent stock promoters, while simultaneously, and even more strenuously, opposing proposals to create state or federal securities agencies that would have the power to license brokers or to vet public securities offerings.[23]

Almost immediately, however, antifraud organizations expanded their activities to include massive efforts at public education. If a pivotal explanation for pervasive fraud was insufficient skepticism and savvy among ordinary Americans, then surely any sensible attempt to prevent

[22] H. J. Kenner, *Fight for Truth in Advertising*, 3–15; Editorial, *Bulletin of the National Association of Credit Men* 14 (Mar. 1914): 143; "Some Observations Suggested by a Study of Fraud Cases," *Bulletin of the National Association of Credit Men* 21 (June 1919): 346–47; Jules Hart, "Compromise with Fraud Always Poor Business," *Credit Monthly* 25 (Aug. 1923): 34–35; Keyes Winter, "Fools and Their Money," *Harper's Magazine* 151 (Aug. 1927): 371.

[23] Tregoe, *Pioneers and Traditions*; C. H. Arnold, "False Statements," *Bulletin of the National Association of Credit Men* 6 (Oct. 1906): 36–37; Otis Pease, *The Responsibilities of American Advertising: Private Control and Public Influence, 1920–1940* (New Haven, 1958), 44–48; Michael Parrish, *Securities Regulation and the New Deal* (New Haven, 1970), 4–40.

fraud had to teach those Americans how to resist the siren song of the swindler. As one financial journalist with years of experience covering fraud argued in 1919, the most sophisticated antiswindling statutes could not "safeguard people from their own foolishness, and in the last analysis, education in these matters is the individual's best and surest protection."[24]

The advertising vigilance committees, and then the Better Business Bureaus, pursued that goal with a vengeance, taking advantage of all the strategic innovations of the early public-relations industry. Indeed, during the 1920s, the antifraud publicity blitz was all but impossible to avoid in urban America—even aside from the blizzard of bulletins and pamphlets that the various local Bureaus sent to one another, their subscribers, government officials, newspapers, and libraries. From Los Angeles to Atlanta to Boston, industrial workers encountered a rotating stream of posters on factory bulletin boards and educational articles in company magazines. On buses, trains, subways, and streetcars, Better Business Bureau messages bombarded commuters, while Bureau billboards repeated key slogans for the benefit of drivers and their passengers. Individuals who visited banks to make deposits or withdrawals found Bureau advice cards tucked into their account books. Newsletters from local Bureaus filled the nation's mailbags, approaching, though most likely not matching, the prodigious output of swindling stock tip sheets and fraudulent mail-order catalogs. As the pitchmen of worthless stocks and boom-related real-estate ventures turned to revival-like sales lectures, Bureau officials countered with hundreds of annual speeches to women's clubs, business groups, labor organizations, and civic associations. Literally thousands of newspapers, magazines, and trade publications donated advertising space to the truth-in-advertising movement. They also ran extended series by Bureau officials and published financial columnists who regularly relied on Bureau publications and information in framing their commentaries. Once radio stations gained a commercial footing, they quickly followed suit, offering free access to the airwaves for the kinds of short spots and longer segments broadcast to listeners in cities like Dallas.[25]

[24] Louis Guenther, "The Pirates of Promotion: The Wreckage," *World's Work* 37 (Mar. 1919): 512; "Preventing Stock Frauds," *Cheyenne Tribune*, 29 Jan. 1923, in Cromwell Scrapbooks, vol. 2.

[25] For overviews of the publicity campaigns in particular cities, and by the National Better Business Bureau, see Bernard G. Priestly, "Checkmating the Get-Rich-Quick Promoter," *Bankers' Magazine* 111 (Mar. 1925): 317–23; "War Declared!" Buffalo Better Business Bureau Bulletin, 12 Aug. 1925; Edward L. Greene, *Activities of the National Better Business Bureau, 1927–28* (New York, 1928), 15–16; Kansas City Better Business Bureau, *Protecting Legitimate Business and the Public: Annual Report* (Kansas City, 1928): 15–19; Columbus Better Business Bureau, *Annual Report* (Columbus, 1929), 1; Better Business Bureau of Los Angeles, *Second Annual Report* (Los Angeles, 1931).

A Rendering of a Typical BBB Billboard, St. Louis, 1926. St. Louis Better Business Bureau, *Telling the Public*. (Image courtesy of the New York Stock Exchange Archives and the St. Louis Better Business Bureau.)

One can get a more concrete sense of the scale of the Better Business Bureau publicity onslaught by considering its dimensions in the city of Saint Louis. In 1926, the local Better Business Bureau claimed that, each month, it placed the equivalent of thirty-eight full newspaper pages of free commentary in fifty-one different papers, which included three major metropolitan dailies, the local African American paper, twelve foreign-language publications, and a host of suburban weeklies. Together, these sheets counted over 290,000 subscribers. Thousands of free advertisements in dozens more trade journals, labor organs, company magazines, and religious newspapers amplified the message, as did a slew of billboards and neon signs, over one hundred talks by Bureau officials to community groups, free advertisements in theater programs and movie announcements, and regular radio chats by representatives of the local Women's Advertising Club. Finally, through close relations with newspaper editors and the managers of the St. Louis News Service, Bureau officials ensured that their work received ongoing coverage in regional news columns.[26]

In all these efforts at public outreach, antifraud organizations pursued two basic strategies. First, they continually blanketed the country with specific cautions about prevailing scams and misrepresentations, whether in merchandising or the securities markets, warning the public to avoid particular stores, investments, business deals, or promoters. A 1926 display in a Providence, Rhode Island, savings bank typified such strategies, alerting depositors to deceptive investment promotions in real estate, oil, and the automotive industry, among others. At the same time, the antifraud campaign disseminated general advice about how to invest and consume wisely, emphasizing the crucial importance of eschewing retailers who offered supposedly first-rate goods at enormous discounts, promoters who dangled visions of easily attained wealth, or

[26] Better Business Bureau of St. Louis, *Telling the Public* (St. Louis, 1926).

anyone who made a big show of offering something for nothing. Above all else, antifraud campaigners pleaded with the public to rely wherever possible on expert assistance, particularly when selecting investments. "Before you invest, investigate," became the Better Business Bureau's best-known mantra, by which its officials invariably meant that Americans should have the good sense to follow the advice of respectable bankers or brokerage firms in deciding where to place their spare income.[27]

An analogous logic underpinned more focused endeavors to reshape critical elements of America's commercial culture. Since entrenched business practices aided and abetted those who committed fraud, antifraud organizations also took a variety of steps to persuade firms to reject such practices. From the late 1900s onward, the NACM continuously labored to convince its members to embrace credit policies that accorded with its view of the shared long-term interests of all wholesalers and manufacturers. At its annual conventions and through its monthly publication for members, the association repeatedly called for more sustained scrutiny by suppliers of requests for commercial credit and greater willingness to exchange intelligence about the creditworthiness of retailers, including the creation of cooperative credit bureaus that would provide more up-to-date information than the offerings available from standard credit-reporting firms. Within the realm of merchandising, the AACW and then the Better Business Bureaus pressured newspapers and periodicals to reject advertisements that did not meet strict standards of candor, and they eventually helped to organize series of trade conferences in order to adopt unambiguous standards for the categorization of materials such as furs, textiles, and woods.[28]

The Imperative of Organized Vigilance

For all the faith that early twentieth-century antifraud reformers placed in reconfigured statute books and in educational campaigns aimed

[27] For a representative indication of a local Better Business Bureau's warnings about specific fraud activity, see the publication of the New York City Better Business Bureau, *Accuracy*, published from 1925 through 1935. See also "Making Loss Prevention a Systematic Business," Rhode Island Hospital Trust Company, *The Netopian*, 1 Mar. 1927; "The Road to Safe Investment," *Newark Call*, 13 Jan. 1924; Edson B. Smith, "Investors Must Learn to Patronize Reliable Firms," *Boston Traveler*, 30 Mar. 1924, all in Historical Clippings Files.

[28] For concise overviews of these efforts, see William Gregg, "Help the Doctor! Increasing the Curative Work of Credit Protection Fund," *Credit Monthly* 28 (1926): 9; J. H. Tregoe, "A Dozen Rules for Sound Credit," *Bankers' Magazine* 112 (Mar. 1926): 384; Affiliated Better Business Bureaus, *A Guide for Retail Store Advertising* (Boston, 1932). This public-relations onslaught preceded the business establishment's concerted-campaign to blunt the critique of the 1930s consumer movement by more than a decade, and surely helps to account for the rapid conceptualization and implementation of that latter initiative. On the later public-relations effort by large-scale American marketers, see Stole, *Advertising on Trial*.

at improving economic literacy and nudging commercial culture away from practices that facilitated misrepresentation, they did not view such changes as sufficient to address the problem of economic duplicity. To their minds, the parlous state of law enforcement also required urgent attention. Indeed, as early as 1900, the NACM set up local investigating committees composed of volunteer credit men, generally called "vigilance committees," who examined the circumstances surrounding cases of questionable behavior by debtors and passed along evidence of credit fraud to the relevant authorities. Beginning in 1910, first in midwestern cities and then spreading to the eastern seaboard and to a lesser extent to the South and the West, advertising clubs created analogous organs to look into allegations of false advertising, deceptive merchandising, and fraudulent securities promotions. "Putting swindlers in jail for what they have done," the president of the New York Stock Exchange explained in a 1922 speech that encapsulated the philosophy underpinning these initiatives, "will give far more protection to the public than a hundred laws warning criminals of what they may not do."[29]

The moves into private law enforcement built on longstanding traditions in the United States. In addition to the periodic turn to organized vigilantism in places as varied as northern Indiana, central Texas, Montana, San Francisco, and throughout the South in the aftermath of the Civil War, nineteenth-century Americans frequently turned to nongovernmental associations in order to supplement government policing, in many cases with explicit sanction from state legislatures or other public officials. The anti-horse-thief associations throughout late nineteenth-century America stood as examples of this impulse, as did earlier anti-counterfeiting associations of banks and later anti-vice societies, such as the New York Society for the Suppression of Vice and the New England Ward and Watch Society, which pledged to do battle with pornographers, gambling establishments, and abortionists. Typically, such initiatives came from elite and middle-class Americans who embraced the use of law to constrain what they viewed as socially or economically dangerous expressions of individual license, but who despaired of the government's capacity to enforce law on its own, because of either endemic corruption or simple lack of capacity. These

[29] Dorchester Mapes, *Why I Am a Member!: Address to the 5th Annual Convention of the National Association of Credit Men* (New York, 1900); John Field, *Personality: An Address to the 5th Annual Convention of the National Association of Credit Men* (New York, 1900): 8–9; Herbert Houston, "The New Morals of Advertising," *World's Work* 28 (1914): 384–88; "Cromwell Says Blue Sky Laws Easily Evaded," *Rochester Post Express*, 13 Oct. 1922, in Cromwell Scrapbooks, vol. 2.

self-styled reformers also usually wished to retain significant influence over the investigative and prosecutorial process.[30]

In the years surrounding World War I, corporations in several industries that confronted serious crime problems updated this strategy, along with a number of new voluntary agencies concerned about working-class family dynamics and a perceived rise in urban lawbreaking. Within the business world, railroad corporations established a detective bureau to break up freight thefts by rings of insiders. Fire-insurance companies did the same in order to investigate arson gangs, as did guarantee companies to look into cases of embezzlement, and department stores to combat shoplifting. At roughly the same time, middle-class reformers were creating nationwide "desertion bureaus" to track down husbands who had abandoned their families, and they established local groups, like the Chicago Juvenile Protection Association. This organization sought to reshape the rules governing the treatment of adolescent criminal offenders and to provide a battalion of social workers who could take psychological profiles of defendants and monitor convicted teens on probation, thereby magnifying the disciplinary capacity of urban courts.[31]

More so than any of the nineteenth-century forays into private policing, and like other early twentieth-century law-enforcement initiatives by nongovernmental groups, antifraud organizations experienced a steady process of expansion and professionalization. The early volunteer committees soon found themselves overwhelmed by a torrent of complaints, mostly from affected businesses, but also from disgruntled members of the general public. They responded to a crippling workload by successfully lobbying for the creation of independent organizations with substantial staffs, run by salaried professionals, all funded by subscriptions, primarily from big business. After years of debate over issues of practicality and institutional control, NACM supplemented its local vigilance committees in 1916 with a national Investigation and Prosecution Committee, for which it raised $25,000. By 1926, the newly renamed Investigation and Prosecution Department boasted a multi-

[30] Richard Maxwell Brown, *Strains of Violence: Historical Studies of American Violence and Vigilantism* (New York, 1975); Cindy Higgins, "Frontier Protective and Social Network," *Journal of the West* 42 (2003): 63–73; Mihm, *Nation of Counterfeiters*; Nicole Beisel, *Imperiled Innocents: Anthony Comstock and Family Reproduction in Victorian America* (Princeton, 1997); Andrea Tone, *Devices and Desires: A History of Contraceptives in America* (New York, 2001): 4–25.

[31] On the status of these corporate moves into private policing as models for NACM's approach to credit fraud, see Garrett W. Cotter, "New Styles in Credit Crime," *Credit Monthly* 27 (Feb. 1925): 44; Elaine Abelson, *When Ladies Go-A-Thieving: Middle-Class Shoplifters in the Victorian Department Store* (New York, 1992), 145–46. On the anticrime ventures of middle-class reform organizations, see Michael Willrich, *City of Courts: Socializing Justice in Progressive Era Chicago* (New York, 2003), 133–71.

year Prosecution Fund of nearly $2 million (an equivalent share of American GDP in 2007 would be around $300 million), regional offices throughout the country, and a corps of forty experienced investigators who could draw on the services of local credit men's associations in more than forty states. This unit pursued as many 750 investigations annually and referred hundreds of cases to state and federal prosecutors, most of which resulted in indictments and convictions. The local and national Better Business Bureaus, though starting later than the NACM, quickly built an even heftier administrative capacity. In 1916, the AACW's National Vigilance Committee, the direct forerunner of the National Better Business Bureau, ran on a shoestring budget of $15,000 and had two employees, while many local bureaus still operated primarily on a voluntary basis. By the mid-1920s, total annual expenditures by all the BBBs approached $1 million (roughly equal to $150 million as a share of 2007 GDP), as forty-three local bureaus, spread across nineteen states in every region of the country, collectively handled tens of thousands of complaints about securities fraud, catchpenny scams, and misleading or false advertising. Most also maintained "shopping systems" to monitor retail establishments in their communities, sending out paid female shoppers to department stores and other retailers that advertised heavily, in order to assess the extent to which the stores lived up to the promises of their advertisements and followed ethical sales practices.[32]

In public commentary, spokespersons for the Better Business Bureaus, like the Boston department-store executive Louis Kirstein, emphasized that assessments by independent shoppers served as a salutary check on retail marketing campaigns. These evaluations, Kirstein consistently stressed, offered a means of correcting inevitable mistakes and demonstrated to smaller competitors that the Bureau's commercial standards obtained for all sellers in the urban marketplace. The actual bureaucratic mechanics of the shopping systems, though, suggest that they additionally sought to police the behavior of an ever-larger retail workforce, including not only in-house advertising staff, but also buyers and sales personnel. In Boston, for example, the form that Bureau shoppers had to fill out featured numerous questions about the deportment and level of service provided by salespersons, as well as these queries:

[32] "Report of the Investigation and Prosecution Committee," *Bulletin of the National Credit Men's Association* 21 (1919): 630–40; *Commerce and the Credit Crook*, 8–9; "The Campaign Starts! For Second Credit Protection Fund," *Credit Monthly* 31 (Feb. 1929): 15–16; Tregoe, *Pioneers and Traditions*, 71–90; Auchincloss, *Better Business Bureau*, 8; Carl H. Getz, "Fighting the Wildcat Advertiser: How Better Business Bureaus in Thirty-Seven Cities Wage Active War on the Fake Stock Promoter," *Bankers' Magazine* 106 (1923): 70–74; "Business Bureaus' Session to Aim at Highest Service," *Indianapolis Star*, 23 Sept. 1925, in Historical Clippings Files; John Richardson, "Business Policing Itself through Better Business Bureaus," *Harvard Business Review* 10 (1931): 69–73.

"Did representations of S. P. [salesperson] agree with representations in advertisement?" and "Did S. P. misrepresent merchandise?" Employees of large-scale retailers often received commissions as an element of their compensation, and so had strong incentives to move merchandise, even if their characterizations of goods or other sales tactics violated store policies. The shopping system thus furnished a means of keeping store workers from ignoring store dictates about the treatment of customers, compensating for imperfect lines of authority within stores. As such, it constituted a companion mechanism to the pervasive reliance on teams of store detectives, whom managers charged with preventing both shoplifting and employee theft.[33]

Especially in the case of the Better Business Bureaus, the emphasis on independent monitoring and policing also reflected an attempt to make public education campaigns more effective. For specific cautions about prevailing scams to have real value, they had to occur before large numbers of individuals had taken the bait. "If the information comes to the Bureau only after a number of prospects have already parted with their money," an article in a Trust Company magazine explained in 1927, it will be much more difficult "to retrieve for them their vanished funds," or to "save loss for others." Such timeliness depended not only on efficient channels of communication, but also on an extensive warning system of "listening posts" that would allow fraud monitors to pick up early signals of commercial or financial chicanery, and on the willingness of the "public . . . to report immediately anything that appears at all questionable or doubtful."[34]

Even more important, antifraud organizations recognized that more vigorous enforcement was a crucial precondition to forging a stronger deterrent against the commission of fraud, and that such enforcement would have to overcome the daunting barriers to collective action that were rooted in administrative incapacity and an individualistic commercial culture. The common inclination of fraud victims to eschew the time and expense associated with criminal proceedings, especially if they were able to extract some restitution from a swindler's squawk fund, presented companion difficulties for law enforcement. Silent suckers furnished authorities with no basis to launch an investigation, and no oral testimony or documentary evidence on which to base a prosecution.

[33] "Sees Public Faith Growing through More Honest Ads," *New York Daily News*, 9 Mar. 1923; G. F. Olwin, "Advertising Censor Guards the Public," *Indianapolis Star*, 2 Jan. 1922, both in Historical Clippings File; "Guide for Boston Better Business Shoppers," box 11, folder A-9-10-2, Louis Kirstein Papers, Baker Library, Harvard Business School, Boston, Mass. On the origins of private detectives in department stores, see Abelson, *When Ladies Go-A-Thieving*, 120–47.

[34] "Making Loss Prevention a Systematic Business"; Boston Better Business Commission, *Our Accomplishments in 1924: Third Annual Report* (Boston, 1924), 5.

In their public-education initiatives, organizations such as the NACM and the Better Business Bureaus repeatedly sought to chip away at the common disinclination to bring swindlers to justice. NACM placed particularly great emphasis on this goal. Its monthly periodical consistently advocated that its members maintain good recordkeeping practices to ease the task of evidence gathering should any of their debtors turn to fraud. It also repeatedly extolled the civic mindedness of credit executives who treated credit swindlers with the contempt that they deserved, and heaped scorn on credit managers who shied away from their civic responsibilities by accepting compromise offers in fraud cases. "DON'T let apathy and supinity rule when you have been victimized by a credit crook," the editors proclaimed in one 1914 issue. "Remember, he has made a raid, not on you alone, but on the great business organization of which you are but a part. Arouse yourself; do all in your power, cost it little or much, to rid the commercial commonwealth of those who would assault that relationship of faith and confidence . . . which is the basis of solid business growth." The credit man with a spine, in other words, the manly credit man, worked to send fraudulent debtors to prison, even at the expense of a remunerative payoff, just as the manly retailer lived up to the promises he made in a Sunday newspaper advertising spread.[35]

Even when defrauded individuals or businesses wished to cooperate with law-enforcement officials, though, the investigative complexities of fraud cases often strained the capacity of early twentieth-century police forces and prosecutors' offices, especially when scams were the work of fraud rings operating across state lines. By building up a corps of professional investigators, many of whom had experience in district attorneys' offices or with the Inspector Service of the United States Post Office Department, antifraud organizations attempted to match the sophisticated tactics and geographic reach of the most successful perpetrators of fraud. Both NACM and the National Vigilance Committee developed national clearinghouses of evidence about fraud by the early 1920s, keeping track of evolving scams and the careers of prominent swindlers, and maintaining rogues' galleries in the form of photographic collections to assist in the identification of individuals who had a penchant for skipping town and changing their names and life stories.

The national network among credit associations and BBBs facilitated the sharing of intelligence about fast-moving fraud and fraudsters, further empowering antifraud investigators. And once those investigators amassed what they viewed as clear-cut evidence of criminal activity, they

[35] J. H. Tregoe, "General Letters to Members," National Association of Credit Men, 1 Aug. 1924, Baker Library, Harvard Business School; W. A. Williams, "Keep Crooks out of Business," *Credit Monthly* 30 (Mar. 1928): 7–8, 24; Editorial Squib, *Bulletin of the National Association of Credit Men* 14 (Dec. 1914): 980.

An NACM investigator compares a photograph of a credit-fraud suspect with the pictures in the organization's Rogue's Gallery, kept in New York City. (*Credit Monthly*, May 1928, p. 32. Reprinted with permission of the National Association of Credit Management.)

passed along their findings to governmental officials, greatly easing the task of prosecution.[36]

The development of significant investigative capacity dovetailed with the NACM's and Better Business Bureaus' goals of public education. A network of seasoned detectives facilitated arrests, indictments, and prosecutions, all of which received extensive coverage from an overwhelmingly sympathetic press. The resulting stream of articles about enforcement of the various criminal-fraud statutes offered additional opportunities to inform the public about the tell-tale signs of fraud, while simultaneously signaling to both outright swindlers and legitimate enterprises that deceptive marketing brought consequences. Such attention, BBB officials maintained, generated public indignation, which in turn "spurred prosecuting authorities and juries to a less lenient frame of mind where swindlers [were] concerned." Fundraising campaigns, like the NACM's effort to raise nearly $2 million for its Investigation and Prosecution Department in 1925, furnished similar opportunities

[36] "Credit Protection Counsels," *Credit Monthly* 28 (Sept. 1928): 36; "A New Rogue's Gallery," *Credit Monthly* 30 (1928): 32; Simmons, *Security Frauds*, 14. For examples of the nationwide character of BBB investigations, see: Letter from Henry Jay Case, Director, New York Stock Exchange Committee on Records and Investigations, to W. P. Collis, Manager, New York Better Business Bureau Finance Division, 29 May 1928; letter from W. P. Collis to Henry Jay Case, 25 June 1928, both in records of the New York City Better Business Bureau, New York Stock Exchange Archives; and Columbus Better Business Bureau Financial Bulletin, 22 Sept. 1930.

to heighten awareness of antifraud messages, by potential dupes and deceivers alike.[37]

By keeping the initial monitoring and investigation of fraudulent activity within the confines of a nongovernment agency friendly to well-established businesses, moreover, the antifraud organizations maintained considerable flexibility in law enforcement—and much more flexibility than would likely have been possible had business leaders opted solely for a strategy of exerting their political influence to place more police detectives and prosecutors on the fraud beat. Especially in cases where established businesses or promoters embarked on an advertising campaign or marketing strategy that flirted with misrepresentation, the Better Business Bureaus had a clear policy of initially approaching the firm in question quietly, "endeavor[ing] to impress the advertiser with the desirability and the advisability of raising the standard of his own copy." In the great majority of instances in which Bureau investigations identified problematic marketing practices, businesses readily accepted proposed adjustments, even frequently retracting the advertising in question. The publications of local Bureaus teem with overviews of these settlements achieved through "friendly persuasion," as in the 1928 Annual Report of the Kansas City Bureau, which reported that it had "secured changes in 670 inaccurate advertisements," ranging from instances of "Underwear Over-valued," to "Furniture Cut Deceptive," "Deceptive Comparative Prices," "Hat Advertising Corrected," and "Real Estate Exaggerations." If advertisers rebuffed efforts at "moral suasion," Bureau officials often progressed to the next step of public disclosure, using their own publications, their connections, and their considerable public-relations skills to shine a spotlight on a given business's problematic tactics. Cases went to state or federal prosecutors only in those instances where BBB administrators confronted what they viewed as recalcitrance or obstreperousness. From the 1920s into the post–World War II era, this move occurred only once or twice for every hundred complaints that the organization deemed to be justified.[38]

[37] Better Business Bureau of New York City, *Safeguarding the Integrity of Business: The Sixth Annual Report* (New York, 1928), 9. By the mid-1920s, many bulletins and press releases from local BBBs read like police blotters, chronicling the arrests, indictments, convictions, and cease-and-desist orders resulting from BBB investigations. *Credit Monthly* similarly highlighted the successes of its Prosecution Department, especially through the regular column of C. D. West, its longtime manager. On the publicity value of fund-raising and its connection to deterrence, see National Association of Credit Men, *About the National Fund for Credit Protection* (New York, 1925), 7; "Suppressing Credit Crime," *Credit Monthly* 27 (Jan. 1925): 8.

[38] "Would Broaden Work of Better Business Bureaus," *Printer's Ink*, 11 Sept. 1924, in Historical Clippings Files; Kansas City Better Business Bureau, *Protecting Legitimate Business and the Public: 1928 Annual Report* (Kansas City, 1928), 3–5, 10–11; Better Business Bureau of New York City, *Facts, Then Action: A Merchandise Report, 1925–1930* (New York, 1930).

The scale of the business establishment's war on fraud must be kept in perspective, of course. Amid the onset of the Great Depression, after almost two decades of rapid economic expansion, the persons collectively employed by all the nation's Better Business Bureaus likely totaled fewer than a thousand, a workforce roughly similar in size to that employed by a single large-scale advertising firm, N. W. Ayer & Co., and less than 3 percent of the employees at a leading national retailer, such as Sears, Roebuck & Co.[39] At no point did the bureaucratic resources of NACM and the Better Business Bureaus approach those of the largest corporate enterprises. Indeed, the corps of store detectives working for the nation's large urban department stores probably exceeded the full complement of BBB employees and NACM's Prosecution and Investigation Department combined, while the force of private railroad police, totaling ten thousand in 1930, certainly did so.[40] Nonetheless, the number of fraud monitors and educators compared quite favorably with the administrative infrastructure at the Federal Trade Commission. In 1930, the FTC employed only 450 persons and possessed an annual budget of approximately $1.5 million, with which it had to carry out its legal mandates to enforce not only federal prohibitions against deceptive advertising, but also violations of the antitrust laws. If one adds the considerable in-kind contributions of advertising space by publications and radio stations to the BBBs, the effective disciplinary and educational footprint of the antifraud organizations likely exceeded that of the FTC before the New Deal by a considerable amount.[41]

The Scope of Capitalist Collectivism

Suffusing all these various activities was an extraordinary degree of confidence. Especially in the 1920s, leaders in the quickly maturing antifraud establishment vigorously asserted their expertise in matters concerning fraud, which they conceptualized most commonly in the idiom of public health. NACM officials repeatedly characterized their

[39] Ralph M. Hower, *The History of an Advertising Agency: N. W. Ayer & Sons at Work, 1869–1949* (Cambridge, Mass., 1949), 503; Emmet and Jeuck, *Catalogues and Counters*, 595.

[40] Abelson notes that by the early years of the twentieth-century, most large department stores had internal staffs of ten to fifteen detectives, figures that likely increased by the 1920s. *When Ladies Go A-Thieving*, 142; "Shoplifters Are Bane of Stores," *Los Angeles Times*, 11 Dec. 1910, IIIE; "Halcyon Days of Shoplifters Gone, Say Expert Sleuths," *Washington Post*, 9 July 1916, E9; "Thwarting the Shoplifter," *Washington Post*, 29 Mar. 1925, 75; "Thwarting the Xmas Shoplifter," *Washington Post*, 16 Dec. 1928, 7; Theodore D. Irwin, "Guarding the Nation's Railroads," *Washington Post*, 14 Dec. 1930, SM2.

[41] Federal Trade Commission, *Annual Report of the Federal Trade Commission for the Fiscal Year ending June 30, 1930* (Washington, D.C., 1930), 24–25.

endeavors as "sanitary work" or "organized credit hygiene," and insisted that "communities should be vaccinated against commercial crime just as they are against smallpox." *Credit Monthly* frequently represented the association's spokespersons as credit physicians who could safeguard the country's businesses from the poisonous depredations of the "credit crook." Better Business Bureaus managers received an analogous message from E. H. H. Simmons, then the president of the New York Stock Exchange, in September 1927. The Bureaus, along with the Exchange, Simmons declared, had obligations in the "economic and business field closely resembling [those] which medical men [have] in the field of public health and sanitation." Just as the physicians had "educated the public in matters of health . . . rendering it immune to the scourges of disease which formerly worked such havoc with human life," so antifraud leaders had the fundamental task of "educat[ing] the American investor into a similar condition of immunity from . . . the swindling profession, and . . . [of] clear[ing] up the conditions where these parasites on our national business establishments lurk[ed] and [bred]." Like the public-health officials who combated the environmental conditions that bred tuberculosis, yellow fever, and malaria during and after the Progressive Era, antifraud professionals portrayed their labors as rooted in scientific understanding and aimed at safeguarding the community against serious threats to its well-being.[42]

Accompanying such self-presentations were insistent claims that antifraud organizations represented the American public as a whole, and looked out for the "public welfare" without fear or favor. NACM publications characterized its members as crusaders for the economic commonweal, on occasion literally depicting them in the garb of medieval Crusaders, upholding the ancient virtues of *Vigilantia* and *Fidelitas.* Better Business Bureaus repeatedly proclaimed that they had "no axe to grind," no interest to protect, that their "methods have been scientific," that, perhaps most strikingly, they were "literally of, by, and for the public." "Unprejudiced, unbiased, and adher[ing] strictly to its own work and purposes," the Oklahoma City Bureau declared in 1930, the organization "never allowed its facilities or influence to be used to further selfish or personal rights." James Auchincloss, then president of the National BBB, echoed this sentiment a few years earlier, pronouncing that

[42] Tregoe, "General Letters to Members," 1 Aug. 1924; "When Guerilla Efforts Failed—The Sheriff's Posse Took Hold!" *Credit Monthly* 27 (1925): 9; "The Fight against Commercial Crime," *Credit Monthly* 27 (Apr. 1925): 10; Simmons, *Securities Frauds*, 15–16. On early twentieth-century public-health campaigns, see Duffy, *The Sanitarians*; Margaret Humphreys, *Yellow Fever and the South* (New Brunswick, 1992); Humphreys, *Malaria: Poverty, Race, and Public Health in the United States* (Baltimore, 2001).

Dr. NACM takes on the credit crook. The caption reads, "Which is the best medicine—Credit Protection or Credit Fraud?" (*Credit Monthly* cover, February 1926. Reprinted with permission of the National Association of Credit Management.)

at the root of antifraud work was "the undoubted note of patriotism[,] . . . which adds to the general prosperity of our country."[43]

Indeed, antifraud professionals often asserted de facto jurisdiction over fraudulent behavior, blurring the lines between public and private authority. The media tended to accept this way of framing private fraud policing, as indicated by a 1926 cartoon in the *New Orleans Times Picayune*, which depicted NACM on a motorcycle, hot on the heels of a band of commercial swindlers. The cartoonist not only chose to render the individual symbolizing the organization in a policeman's uniform, but also gave his motorcycle the nameplate "U.S.A." and titled his drawing "The National Policeman." In other words, this illustration literally clothed a private association of business executives with the legitimacy of the state.[44]

[43] H. J. Kenner, "The Bureau's Purpose," Kansas City Better Business Bureau Bulletin, 2 Feb. 1927; Boston Better Business Bureau, "How Frauds Hurt Business," *Bulletin* 1 (3 Oct. 1929); Buffalo Better Business Bureau, "Detective Agency Decision Reversed," Bulletin, 31 May 1931; Oklahoma City Better Business Bureau, *Report of Better Business Bureau Activities* (Oct. 1930), 6; James C. Auchincloss, *Better Business Bureau*, 14.

[44] Untitled Illustration, *Credit Monthly* 32 (1930): 21–22.

The National Policeman. NACM as the national vindicator of the law. (Reprinted in *Credit Monthly*, May 1926, p. 9. © 1926 The Times-Picayune Publishing Co. All rights reserved. Used with permission of the *Times Picayune.*)

Throughout the 1920s, America's dominant Republican Party enthusiastically ratified the quasi-public character of antifraud institutions, while the country's highest officials regularly gave them full-throated endorsements and sought their counsel and assistance. Presidents Coolidge and Hoover publicly voiced strong support for the endeavors of nongovernmental fraud fighters. Coolidge observed that "wherever deception, falsehood, and fraud creep in, they undermine the whole structure," a calamity to "our commercial life" that could only be prevented "by the businessmen themselves"; Hoover praised the Better Business Bureaus for greatly "contributing to the economic stability and progress of the country." Treasury Secretary Andrew Mellon, Attorney General John Sargent, Secretary of the Post Office Harry New, and a number of lower-level political appointees expressed similar sentiments, in some cases as testimonials for NACM's periodic nationwide fundraising drives for its Investigation and Prosecution Unit.[45]

The standing of antifraud professionals with Republican leaders translated into influence over key legal appointments. Thus, the New York City and National Better Business Bureaus, along with the institutions that had done so much to conjure them into being, the Investment Bankers of America and the New York Stock Exchange, had significant say over key prosecutorial positions in their bailiwicks, such as the United States attorney for the New York's Southern Federal District or the New York State assistant attorney general responsible for enforcement of securities fraud. At the same time, numerous government detectives and prosecutors who had significant experience with fraud cases accepted employment at private antifraud agencies, deepening the links between them and the authorities. With such strong personal and political connections, it should come as no surprise that the era's law-enforcement officials leaned heavily on the relatively new antifraud organizations, especially when embarking on high-profile fraud crackdowns in the 1920s, as the Post Office did amid the Texas oil boom of the early 1920s or the rush to cash in on Florida real estate a few years later.[46]

Collectively, the various elements of the antifraud crusade constituted something of a social movement within the confines of American business, though one obviously emanating from within the ranks of the elite, rather than from the social or cultural margins. Its adherents wished to remake significant elements of American commercial culture —to convince often skeptical corporate bigwigs, small-scale entrepre-

[45] "President Coolidge on Truth-in-Advertising," *Accuracy* 2 (Nov. 1926): 7; "Anti-Fraud Campaign Has Coolidge Support," *New York Times*, 22 Sept. 1924, Historical Clippings Files; "Herbert Hoover Approves," *Credit Monthly* 27 (Apr. 1925): 10; Columbus Better Business Bureau, *Financial Bulletin*, 3 Oct. 1932; "'Deserving of the Support of the Business Public,'" *Credit Monthly* 27 (Apr. 1925): 11; Letter from A. W. Mellon to W. H. Pouch, *Credit Monthly* 31 (Mar. 1929): 13; "Honorable Charles H. Tuttle on Business and Law," *Accuracy* 3 (Apr. 1927), 1; Dewey, *Federal Cooperation to Prevent Fraud.*

[46] "Corrupt 'Bankruptcy Ring' Newest Business Brigand," *New York Times*, 23 Dec. 1923, sec. 8, 10; "Mattuck to Direct War on Swindlers," *New York Times*, 5 Oct. 1925, 5; "Heads Stock Fraud Bureau," *New York Times*, 12 Feb. 1929, 18; Advertisement, Schwab's Bureau of Investigation, *New York Times*, 24 Oct. 1926, E7; "Credit Protection Counsels," *Credit Monthly* 28 (Sept. 1926): 36; "Credit Men Meet in 42nd Convention," *New York Times*, 21 June 1937, 30; "Booming Better Business," *Financial World*, 3 Oct. 1925, in Historical Clippings Files; "Buckner to Fight Business Frauds," *New York Times*, 19 Mar. 1925, 23; "Florida Facts for New Yorkers," Member News Bulletin No. 43, Better Business Bureau of New York City, 9 June 1926; "Better Business in Securities," *Wall St. News*, 5 Apr. 1927; "Fighting Frauds," *Xenia (Ohio) Republican*, 23 Apr. 1927, both in Historical Clippings Files.

neurs, middle managers, securities promoters, and advertising agencies that they should eschew the prospect of a quick buck, and focus instead on the task of building sustainable reputations over the long term, acting not only to further their own narrow interests but also to promote the stability of their industry and the broader economy. As the figures within the antifraud vanguard fine-tuned this pitch, they did not restrict themselves to rational appeals for standards of forthright commercial speech and vigorous enforcement whenever marketers violated those standards. Instead, they frequently conjured evangelical visions of manly commercial fellowship, and they self-consciously sought to infuse their commitment to honest economic communication into the evolving social rituals of the business establishment.

Toward these ends, NACM and the Better Business Bureaus annually convened national conventions where members of the antifraud fraternity could commune with one another, deliberating over new directions in the broader campaign, expanding networks of information sharing, and mutually testifying to the righteousness of the cause, all in the name of achieving a "Crusader Spirit," a "strong enthusiasm and a nation-wide effort." They made periodic fund-raising campaigns into collective expressions of esprit de corps, through which participants could offer tangible evidence of their commitment. Even more frequently, local chapters of these organizations held lunches and dinners, or dispatched speakers to the monthly meetings of Rotary Clubs, for similar purposes. At such gatherings, business leaders shared a good meal, usually at a local hotel, and then, "after cigars had been lighted," listened to a talk that harangued the fraudster and those who abetted his machinations, while extolling the business community's exertions to rid itself of confidence-killing deception. Tellingly, antifraud activists did not shy away from the language of communitarian action, repeatedly characterizing their various initiatives in the 1910s and 1920s as a "movement" for truth in advertising. The commercial establishment's fight against fraud depended as much on personal contexts of fellowship as it did on sophisticated lobbying campaigns, impressive public-relations machinery, and ever more extensive bureaucratic techniques of commercial surveillance.[47]

[47] "The Credit Men's Dinner," *New York Times*, 23 Apr. 1897, 2; "Dinner to Fraud Fighters," *New York Times*, 6 Feb. 1906, 7; "Investors Put on Right Track: H. J. Kenner Tells Brooklyn Kiwanis Club How," *Brooklyn Eagle*, 3 Mar. 1924, "Would Broaden Work of Better Business Bureaus," *Printer's Ink*, 11 Sept. 1924, "National Business Group Convention Opens Here Today," *Indianapolis Star*, 21 Sept. 1925, all in Historical Clippings File; "Noted Visitor Coming: J. H. Tregoe of the National Credit Men's Association," *Charlotte Observer*, 12 Dec. 1913, 6; "Suppressing Credit Crime: Organization of the National Fund," *Credit Monthly* 27 (Jan. 1925): 8; Edward F. Lamb, "An Honest Commerce Crusade," *Credit Monthly* 28 (Aug. 1926): 18; John E. Norvell, "Forward for the Fund!" *Credit Monthly* 28 (Sept. 1926): 19. For coverage of NACM conventions, see the August issues of *Bulletin of the National Association of Credit Men* through 1920, and then the organization's separately published conference proceedings.

https://doi.org/10.1017/S0007680500000222 Published online by Cambridge University Press

The Antifraud Campaign and the Associational State

In many respects, the antifraud work of the National Association of Credit Men and the national and local Better Business Bureaus fits comfortably into prevailing interpretations of the stance toward regulation that American big business adopted in the 1920s, which stressed the antipathy of corporate America to administrative agencies that could bog down enterprises with endless rules and bureaucratic processes.[48] The new business-funded antifraud organizations, like so many of their corporate patrons, rejected most proposals to create large and intrusive government bureaucracies as a strategy of addressing the social ills, economic instability, or other externalities generated by modern industrial economies. In the securities arena, for example, Better Business Bureau leaders vigorously criticized any suggestion that the state ought to protect investors by rigorously licensing stockbrokers or, even worse, by vetting public offerings of stocks or bonds to ensure their legitimacy. Indeed, the very founding of the New York City Better Business Bureau formed a central element of Wall Street's efforts to deflect legislative proposals to have New York adopt "blue sky" legislation that would create such administrative authority. As the Associated Advertising Clubs of the World forthrightly argued in 1919, "If an industry does not clean house for itself, the law will do it, and the law often operates in such a manner as to injure the legitimate while seeking to stop the faker."[49]

Visceral antagonism to the administrative state was accompanied by a hearty embrace of the post–World War I Republican call for associationalism. NACM was a leading example of the Republican preference for trade groups that cooperated on a wide array of economic issues, responding to economic challenges through the mutualistic setting of commercial standards (in this case, appropriate policies for evaluating credit requests and exchanging credit intelligence). Although the Better Business Bureaus had a much wider purview than run-of-the mill trade groups, they facilitated associationalism in a host of contexts. Most important, the Bureaus defined and continually refined a set of principles

[48] On the widespread antipathy of post–World War I American business to bureaucratic regulation, see G. Cullom Davis, "The Transformation of the Federal Trade Commission, 1914–1929," *Mississippi Valley Historical Review* 49 (1962): 437–55; Parrish, *Securities Regulation in the New Deal*; Morton Keller, "The Pluralist State: American Economic Regulation in Comparative Perspective, 1900–1930," in *Regulation in Perspective: Historical Essays*, ed. Thomas McCraw (Cambridge, Mass., 1981), 56–94.

[49] Seymour Cromwell's Scrapbooks at the New York Stock Exchange furnish abundant evidence of the Stock Exchange's antagonism to "blue sky" proposals in the New York State Legislature. The eventual creation of the New York City Better Business Bureau followed a wave of failures among marginal brokerage firms in 1921, which heightened political pressure for greater oversight of the securities markets. Associated Advertising Clubs of the World, *Most Dangerous Enemy*, 4.

for truth in advertising, which they disseminated among newspapers, magazines, and early radio stations, along with advertising agencies and frequent purchasers of advertising, like urban department stores. In the latter half of the decade, the national BBB also took a leading role, along with the Federal Trade Commission, in convening a series of conferences among leading retailers of furs, clothing, furniture, and numerous other lines of goods to hammer out transparent standards for the use of trade names that would be clear, not just to manufacturers and dealers, but also to the buying public.

Again and again, the antifraud establishment characterized these various initiatives as forms of "home rule" by American business, paralleling the sentiments that drove associationalism in so many other corners of the post–World War I American economy. As H. J. Kenner emphasized in a 1926 speech to the New England Association of Advertising Clubs, the organized business community had pledged to keep "its own house in order." Acting through the Better Business Bureaus and their campaigns of public education, their impartial monitoring of the marketplace, and their disinterested cooperation with the authorities in law enforcement, he stated, "Business will impress Government and the public alike with its determination to police its own domain. Respect for Business and for Law will then grow apace." This preference for commercial and financial self-government greatly influenced the Better Business Bureau's approach to fraud policing, which stressed, wherever possible, flexible adjustments or reliance on the pressure of public disclosure, rather than a turn to the all-too-cumbersome disciplinary power of the state.[50] In fashioning a discourse of "home rule," the antiswindling brigade mirrored the contemporaneous language of southern segregationists. Like their political counterparts in the Southern Democratic Party, who demanded unchallenged jurisdiction over race relations in their states, business elites asserted their right to deal with the issues related to fraud on their terms, through their administrative and investigative authority.[51]

Crucial aspects of business's war against fraud, however, require adjustments in the prevailing historical narratives of associational business regulation between the end of the Great War and the beginning of the

[50] Ellis Hawley, "Three Facets of Hooverian Associationalism: Lumber, Aviation, and Movies, 1921–1930," in *Regulation in Perspective*, ed. McCraw, 95–123; H. J. Kenner, *Business Self-Discipline* (New York, 1927), 1.

[51] For trenchant analyses of the politics of segregation in the early twentieth-century South, see J. Morgan Kousser, *The Shaping of Southern Politics: Suffrage Restriction and the Establishment of the One Party South, 1880–1910* (Yale, 1974); Glenda Gilmore, *Gender and Jim Crow: Women and the Politics of White Supremacy in North Carolina, 1896–1920* (Chapel Hill, 1996); J. Douglas Smith, *Managing White Supremacy: Race, Politics, and Citizenship in Jim Crow Virginia* (Chapel Hill, 2002).

New Deal. The dilemmas posed by duplicitous commercial speech convinced a broad cross-section of American business leaders of the need for an additional layer of governmental oversight, though not through a compliant, or even "captured," administrative bureaucracy that would stabilize economic conditions for dominant firms.[52] Instead, the specter of public confidence sapped by fraud led corporations, especially within the sectors of large-scale retailing, finance, and the media, to turn to the state for retrospective economic regulation through the criminal code: a tighter set of criminal laws in the area of deceptive commercial speech, and then vigorous enforcement of those more constraining laws, focusing particularly on dodgy small-scale enterprises and outright fly-by-night firms. Such enforcement centrally involved the state—indeed, it generally entailed increased resources for investigative and prosecutorial manpower, and frequently led to the creation of new law-enforcement divisions focused specifically on fraud, such as in the office of the New York attorney general or that of the United States Attorney in Southern New York. But these authorities worked in conjunction with the new nonprofit organizations created by business elites, organizations that often had greater financial resources and administrative capacity, and that increasingly served as an investigative filter, initially handling complaints and deciding which cases merited attention from the government.[53]

These cozy relations between antifraud organizations and law-enforcement officials faced no sanction from the American judiciary, in sharp distinction to the cold shoulder that early twentieth-century judges gave to price-fixing agreements and, in many cases, to mere efforts to share information about prices and costs, contexts that have received much more scholarly attention. American cartels and open-price associations had to struggle against age-old legal suspicion of restraints of trade.[54] NACM and the Better Business Bureaus, by contrast, could and did portray their endeavors as attempts to vindicate American law, to breathe life into longstanding common-law precepts against economic deceit that had previously remained dormant because the government faced so many problems in amassing sufficient evidence to gain indictments or in prosecuting cases with sufficient expertise to make

[52] On compliant regulation and regulatory capture, see Kolko, *Triumph of Conservatism*; Richard Vietor, *Contrived Competition: Regulation and Deregulation in America* (Cambridge, Mass., 1994).

[53] Better Business Bureau reports from around the country offered periodic tallies of the successful prosecutions that they initiated, at all levels of government. For examples, see the reports of the New York City, Kansas City, and Los Angeles Bureaus.

[54] Keller, "The Pluralist State"; Tony Freyer, *Regulating Big Business: Antitrust in Great Britain and America* (New York, 1992); Gerald Berk, "Communities of Competitors: Open Price Associations and the American State, 1911–1929," *Social Science History* 20 (1996): 375–400.

indictments stick. In both state and federal courts, judges typically endorsed such activities.

One member of the federal bench made the following argument in a 1941 case concerning the obligation of the Oklahoma City BBB to pay Social Security taxes:

> The Bureau carries on a continuous campaign of fraud prevention work. It warns the public against fraudulent plans and schemes. It endeavors to induce the local advertising agencies not to accept advertisements from the promoters of such plans and schemes. Through newspaper advertisements, radio talks, bulletins, and posters, it acquaints the public with fraudulent practices. It exposes specific fraudulent practices being carried on in Oklahoma City. It also endeavors to induce merchants to refrain from misleading advertising, extravagant claims, and price comparisons, and to conform to a high standard of business ethics. It endeavors to educate the consumer to buy wisely.[55]

No Bureau official could have complained about such a supportive depiction of the organization's work. In 1929, the New York City magistrate George W. Simpson penned a perhaps even more revealing note to the BBB manager H. J. Kenner in advance of his appearance at a Rotary Club luncheon, in which he implored Kenner to "enlist Rotary in our cause," by which he meant the effort not only to "stop outright fraud," but also to "head off . . . border-line fraud." Simpson signed the note, "Fraternally yours," an epistolary gesture that greatly helps to explain judicial deference to the strategies of public-spirited businessmen and antifraud professionals, whose socioeconomic and educational backgrounds, after all, were similar to the prototypical mid-twentieth-century American jurist.[56]

Unsurprisingly in light of such sentiments, the judiciary tended to view legal challenges to the activities of Better Business Bureaus with skepticism. Most important, when businessmen whom the Bureaus had publicly attacked for fraudulent practices brought libel suits filed against the organizations, courts universally rejected the suits. American judges shied away from placing roadblocks in the path of the antifraud campaign.[57] As a result, in the arena of regulating commercial

[55] Jones, *Collector of Revenue, v. Better Business Bureau of Oklahoma City*, 123 Fed. 2nd 767 (U.S. Court of Appeals for the 10th Circuit, 1941).

[56] H. J. Kenner, *You and the Integrity of Business: An Address to the Rotary Club of New York* (New York, 1929).

[57] On the universal failure of libel claims against the Bureaus, see Boston Better Business Bureau, "No Libel Action Lost," *Bulletin*, 7 Nov. 1929; Richardson, "Business Policing Itself," 74; Kenner, *Fight for Truth in Advertising*, 264–65; James Auchincloss, *The Growth of the Better Business Bureau* (New York, 1931), 6; *Artloom Corporation v. National Better Business Bureau et al.*, 48 Fed. 2nd 897 (U.S. District Court for the Southern District of New York, 1931); *McCann v. New York Stock Exchange et al.*, 107 Fed. 2nd 908 (U.S. Court of Appeals for the 2nd Circuit, 1939).

https://doi.org/10.1017/S0007680500000222 Published online by Cambridge University Press

speech, business–government associationalism reached its apex. Here, the cooperative impulse among business elites skirted the generally confining implications of early twentieth-century America's jurisprudential preference for economic competition. Here the relations between business and the American state more closely approximated the situation in early twentieth-century Europe, where governments tended to ratify price-fixing agreements as a means of bringing order to a tumultuous economic environment.

The Two Faces of Private Regulation

Because the early twentieth-century antifraud campaigns received such strong support from American government at both the federal and state levels, it represented a particularly far-reaching experiment in business self-governance. The champions of this experiment did not hesitate to trumpet its successes, which they depicted as a vindication for business "home rule" and "self-government" more generally. In addition to legislative victories that extended the statutory restraints on misrepresentations by bankrupts, advertisers, and commercial debtors, the spokespersons for antifraud organizations missed few opportunities to broadcast their accomplishments, especially in bringing the individuals, businesses, and rings who engaged in fraud to face the criminal justice system.

Both NACM and the Better Business Bureaus kept careful track of their investigations, partly to justify the effectiveness of the organizations to their business subscribers through monthly updates and annual reports. Both institutions could also point to evidence of significant contributions to law enforcement, and even some indications of deterrence. Between 1925 and 1929, the labors of NACM's Investigation and Prosecution Department resulted in nearly 1,600 indictments from either state or federal grand juries: of the cases that had gone to trial by June 1929, prosecutors had secured more than 734 convictions, achieving a success rate of over 80 percent. Government prosecutors reported that this reflected considerably better conviction rates than before NACM began assisting in evidence gathering, both for fraud cases and for criminal complaints generally.[58]

Over the course of the 1920s, Better Business Bureau managers could point to an even wider array of accomplishments. In addition to

[58] William F. Egelhofer, "Credit and Commercial Crime," *Lawyer and Banker and Central Law Journal* 21 (1928): 28; Elmer Leslie McDowell, "No Quarter for Creditors," *North American Review* 236 (1933): 148; "Credit Men at Seattle Discuss War on Fraud," *New York Times*, 13 June 1928, 31; "Fraud Fight Convicts 734," *New York Times*, 17 June 1929.

https://doi.org/10.1017/S0007680500000222 Published online by Cambridge University Press

the standardization of trade names through industry conferences, the local and national bureaus had assisted the print media and radio stations in assessing suspicious requests for advertising space, culminating in the rejection of thousands of proposed ads, including nearly all pitches for "get-rich-quick" schemes in respectable publications. They had collectively handled several million complaints about either securities promotions or the marketing practices of advertisers, and had negotiated tens of thousands of adjustments in marketing policies by urban retailers across the country. Such adjustments occurred more readily because of the credibility that the bureaus possessed with most businesses, and because of their capacity to operate flexibly and, when they so chose, outside the glare of publicity. Like NACM, the Better Business Bureaus also made a significant mark on the enforcement of fraud laws. Lobbying by both Bureau directors and credit men in New York City facilitated the creation of a special metropolitan commercial fraud court, and investigations undertaken by bureaus across the country led to hundreds of indictments and convictions, especially under the federal mail-fraud statutes and state securities-fraud laws, like New York's Martin Act, which criminalized deception in securities promotions.[59]

The directors of the business community's battles against fraud further claimed that their various undertakings had made a real difference to the nation's marketplaces, cutting down the numbers of suckers taken for a ride and dramatically improving business ethics. NACM oversaw the founding of dozens of credit-exchange and adjustment bureaus across the country, which its officials portrayed as reducing the susceptibility of suppliers to credit fraud or fraudulent bankruptcy. Repeated public warnings from the Better Business Bureau helped to limit public losses in a host of post–World War I investment and employment scams, most prominently those related to the Texas oil and Florida land booms, and to efforts by fraudulent stock-brokerage firms to convince the holders of blue-chip securities to switch them for a variety of fraudulent stock promotions. Within the realm of merchandising, executives at several large department stores became convinced that the Bureau's outside monitoring of advertising served as a useful check on store practices, leading to "the improvement of retail stores as public institutions." As a result of the outside prodding, these executives encouraged their buyers

[59] "Trade Honesty Gain Reported," *Christian Science Monitor*, 3 Feb. 1927, in Historical Clippings Files; "Periodical Men Act to Curb Ad Frauds," *New York Times*, 10 Oct. 1928, 31; "Magazines Rejected $2,000,000 in Ads," *New York Times*, 5 Jan. 1930, 2; Better Business Bureau of New York City, *Facts, Then Action*; Affiliated Better Business Bureaus, *A Guide for Retail Store Advertising*; Buffalo Better Business Bureau, "New Codes of Advertising Practices," *Bulletin* 2 (31 May 1933); "New Frauds Court Called a Success," *New York Times*, 21 July 1923, 5; Phillip Ives, "Prompt Prosecution of Commercial Fraud," *Credit Monthly* 25 (Apr. 1923): 15; "Sees Speedy Trials Best Curb on Fraud," *New York Times*, 22 Jan. 1929, 51.

and division managers not only to exercise greater care in formulating advertisements and to cooperate with any Bureau investigations, but also to engage in their own surveillance of competitors.[60]

Antifraud professionals could even point to indications that their labors had created a more substantial deterrent to commercial skullduggery. According to NACM, tighter credit standards and heightened prosecution of credit fraud resulted in a 32 percent decline in the number of cases that credit men referred to its Investigation and Prosecution Department between 1925 and 1928. As early as 1926, the group's general manager, J. H. Tregoe, assured its members, "'Watch your step' has become the motto of the commercial crook." The Better Business trumpeted an assessment of retail advertising in St. Louis that pointed to only 2 percent error rates by the mid-1930s, as well as a study of two fraudulent stock promotions that found a disproportionate number of suckers living in areas not served by a Bureau. These findings seemed to suggest that swindlers tended to avoid territory under the watchful eyes of Bureau employees.[61] Whether or not all these assertions had a solid factual basis, they gained currency in the nation's print media, as suggested by a 1929 cartoon in the *New Orleans Times Picayune*. Depicting the apprehension of a "credit crook" by a robust "Credit Men's Association," figured as a policeman, the cartoon includes as onlookers both a very pleased representative of "New Orleans Business," and a fearful "potential credit crook."

Indeed, by the mid-1920s, the growing influence and impact of the American antifraud movement encouraged several of its leaders to begin thinking in transnational terms. Within NACM, officials envisioned an international credit bureau, which would monitor the truthfulness of communications between commercial creditors and debtors, even when they were separated by oceans and national boundaries, while fostering "international co-ordination of credit methods and ideals." Pivotal figures in the truth-in-advertising movement similarly wished to expand abroad, targeting Europe, and especially England, as propitious ground for antifraud bureaus. Such confident proposals for extensions of "soft" American power dovetailed closely with the dramatic expansion of Rotary International across the globe and the effort to bring

[60] E. B. Moran, "Facts, Not Opinions," *Credit Monthly* 25 (July 1925): 30; "Avoided Loss of $920," *Credit Monthly* 27 (Feb. 1925), 13; "Department Store Has Accuracy Meeting," *Accuracy* 1 (Sept. 1925): 1; Kansas City Better Business Bureau, "Cooperates with Bureaus," Bulletin, 29 Nov. 1926; Kenner, *Fight for Truth in Advertising*, 167–68.

[61] "The Campaign Starts!" *Credit Monthly* 31 (Feb. 1929): 16; Tregoe, "General Letters to Members," 1 June 1926; Philadelphia Better Business Bureau, "Protecting the Commercial Reputation of Philadelphia Throughout the Nation," Bulletin 443, Dec. 1931; Kenner, *Fight for Truth in Advertising*, 169–70; Oklahoma City Better Business Bureau, *Report of Better Business Bureau Activities*, 6.

Sure Protection. The deterrent value of effective fraud enforcement. (Reprinted in *Credit Monthly*, June 1929, p. 16. © 1929 The Times-Picayune Publishing Co. All rights reserved. Used with permission of the *Times Picayune*.)

American retailing strategies to Europe during the 1930s, initiatives that broadly shared the ideological predispositions of the campaign for commercial truthfulness, as well as the participation of many of the same business elites. To business leaders like Louis Kirstein, American "self-government of industry" had sufficiently proved itself to offer a model that business communities in other industrialized nations would do well to emulate.[62]

For all the successes of the Credit Men's Associations and the Better Business Bureaus, however, the regulation of deceptive commercial

[62] Cuthbert Greig, "All in the Same Boat: Here and Abroad Credit Problems Are Similar," *Credit Monthly* 30 (Nov. 1928): 5–6; Louis Kirstein, "Better Business Bureaus and How They Serve," Manuscript text of speech before the Incorporated Association of Retail Distributors, Hotel Metropole, London, 21 Apr. 1925, Kirstein Papers. On the expansion of interwar American commercial culture into Europe, see Victoria de Grazia, *Irresistible Empire: America's Advance through Twentieth-Century Europe* (New York, 2005), esp. 15–74, 130–83.

practices through self-regulation and retrospective law enforcement had some serious limitations. The inclination of credit managers to prefer short-term improvements to their balance sheets over the longer-term health of the industrial economy's general commercial credit system frequently proved to be obstacles to NACM's campaign. Otherwise, the *Credit Monthly* would not have had to continue issuing insistent pleas throughout the 1920s for credit managers to perform due diligence in vetting potential mercantile customers, to share their knowledge about problematic debtors, and to refuse to accept compromise payments from debtors who had misrepresented their financial situations. By the admission of the Better Business Bureaus themselves, all the public warnings, all the rejected advertisements and negotiated adjustments of marketing policies, and all the arrests and convictions did not put that much of a dent in their overall estimates of fraud incidence. Cut off from easy access to established media organs, swindlers merely turned in greater numbers to the production of their own tip sheets and financial papers, which they distributed widely throughout the country. No longer able to unload a given worthless stock or real-estate development because of public exposure, promoters moved on to another town, another scheme, often pursuing some twist to well-known scams that kept the sucker bait fresh. At no point in the 1920s did either law-enforcement officials or representatives of the nongovernmental antifraud organizations estimate actual declines in the annual losses resulting from fraud. Furthermore, the onset of economic depression sharpened the incentives for deceptive advertising as retailers chased ever more elusive consumer dollars and created new avenues for stock swindling, chiefly through attempts to reorganize bankrupt companies.[63]

Throughout the interwar period, antifraud campaigners generally sought to solidify their newly gained authority, often through a kind of rhetorical alchemy. These individuals had to show a business constituency increasingly drawn to quantitative assessments of success that contributions to antifraud organizations led to appropriate and predicted results. But they also had a predisposition to find new threats to commercial confidence and to magnify the nature of such dangers. Like "police" in a variety of contexts, and like modern organizational consultants, antifraud professionals had a powerful incentive simultaneously

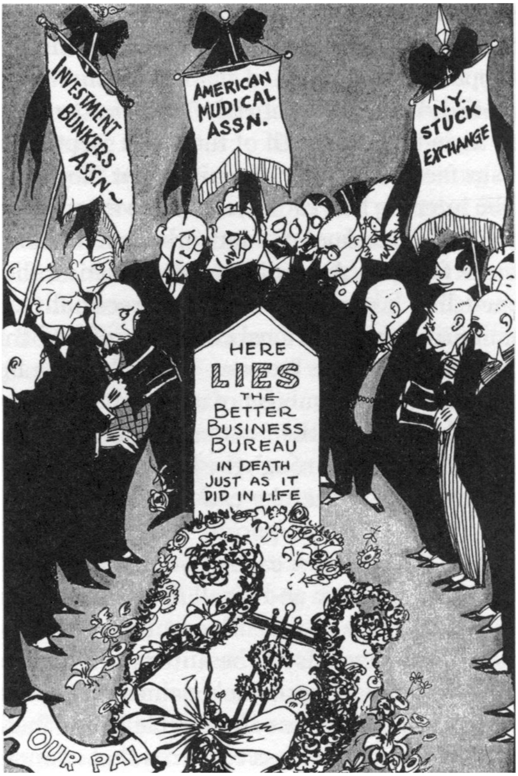
[63] Edward F. Lamb, "Ten Months of the Fund," *Credit Monthly* 28 (June 1926): 51; Williams, "Keep Crooks out of Business;" "One Out of 117 Wanted to Prosecute," *Credit Monthly* 30 (July 1928): 3; Elizabeth Frazer, "The Dynamiters," *Saturday Evening Post* 201 (17 Nov. 1928): 16–17, 52, 54, 56; "Getting Rich by Going Broke," *Literary Digest* 101 (27 Apr. 1929): 65–67; Richardson, "Business Policing Itself," 71–72; Better Business Bureau of New York City, *Blocking the Return of the Stock Swindler* (New York, 1933); McDowell, "No Quarter for Creditors"; Elison and Brock, *Run for Your Money*, 3–4; Kenner, *Fight for Truth in Advertising*, 202–4.

to preen about their impact and to caution about the fearful consequences of their constituencies failing to provide them with ongoing funding and support.

This dynamic did not go unnoticed. On occasion during the 1920s, and even more so in the aftermath of the Great Depression, the Better Business Bureaus faced stinging complaints that they did not truly represent the public interest, but, rather, looked to extend the position and influence of their new bureaucratic network, or to further the interests of their corporate funders. According to their critics, the BBBs sometimes functioned like a protection racket, essentially extorting subscriptions from businessmen. If local concerns refused solicitations for annual dues, opponents of the Bureaus insisted, those businesses frequently found themselves the subject of a Bureau investigation. The organization would then expose their ostensibly unfair commercial practices to public condemnation through the Bureaus' excellent connections with the mainstream press, thereby causing irreparable harm to their enterprises.

At other times, the Bureaus' castigators maintained that they systematically kept relatively new and small firms from gaining footholds through sharp competition or inventive puffery. "Our indignation is dulled by nausea," one nemesis of the antifraud organizations fulminated, "[w]hen we see large, 'reputable' business organizations that are getting away with murder pay these susceptible Better Business Bureaus to attack and destroy small business concerns that cannot pay off." Another common complaint was that the Bureaus consistently ignored the unethical, or even illegal, commercial practices of the large corporations on which the Bureaus depended for much of their funding. Essentially accusing the Bureau network of operating like the more sophisticated tip sheets of stock swindlers, which often railed against all the fraudulent promotions clogging the nation's mailbags even as they flogged their own valueless schemes, the critics alleged that the antifraud network "served the purposes of the Stock Exchange by throwing suspicion outward, which served also . . . to prevent scrutiny inward."[64] An illustration in a 1931 exposé of the antifraud organizations nicely encapsulated this latter contention, portraying BBBs as the exceedingly good "pal" of the business establishment. With these lines of attack, Bureau critics extended a standard libertarian critique of governmental administrative regulation to the economic establishment's preferred mechanisms of "home rule." In either case, regulatory institutions turned out to be

[64] Frank O'Sullivan, *Rackets: An Exposé of the Methods and Practices of the Better Business Bureaus* (Chicago, 1933), 41–42, 21–29, 59–61; Edwin C. Riegel, *The Indictment of the Better Business Bureau Conspiracy* (New York, 1931), 10–16; Manhattan Board of Commerce, *Do Better Business Bureaus Better Business?* (New York, 1930).



The Better Business Bureau's figurative funeral amid the corporate scandals that came to light in the early 1930s, attended by all its greatest admirers, the business elite. (From *The Indictment of the Better Business Bureau Conspiracy, Stock Exchange Gambling, Bastard Government*, by Edwin C. Riegel, 1931, p. 48. From the Science, Industry & Business Library, The New York Public Library, Astor, Lenox, and Tilden Foundations.)

the pawns of entrenched businesses, which simply created indefensible barriers to entry for would-be competitors.

Skeptics of the Bureau further condemned its pretensions to "quasi-public" status, calling it an "invisible government" without accountability or oversight. Echoing nineteenth-century attacks on credit reporting and early twentieth-century critiques of the U.S. Post Office's powers to issue fraud orders, which barred commercial enterprises from the U.S. mails, the opponents of antifraud organizations rejected the organization's vaunted surveillance networks and influence over prosecutors and the press. They characterized such methods as "un-American," requiring a "system of espionage that [was] more vicious than the fraud it professe[d] to suppress," and ignoring all principles of due process. The

https://doi.org/10.1017/S0007680500000222 Published online by Cambridge University Press

dependence of Bureau employees on the businesses that they ostensibly would oversee attracted similar complaints. Even the very name of the organization came under assault, since the word "Bureau" falsely suggested to ordinary Americans that it had official public status. "Vigilance Committee," the institution's original moniker, implicitly struck one critic, the iconoclastic social commentator Edwin C. Riegel, as more appropriate, since the approach that it took was evocative of the Ku Klux Klan, or, as he dubbed it, the "Clue Cliques Clan of Commerce." For Riegel, the parallels between the antifraud campaign and the cause of white supremacy extended far beyond strategies of rhetoric.[65]

Bureau officials responded to these criticisms partly by noting that they had shown the willingness to pressure a number of large, established companies, such as Macy's Department Store and the Firestone Tire Company, to drop allegedly misleading aspects of advertising campaigns. Mostly, though, they and their allies concentrated on attacking the credibility of their critics, whom Bureau defenders claimed fell into one of three groups. The first comprised businessmen who at best pursued questionable marketing practices themselves, at worst regularly crossed the line into illegal misrepresentations in their own enterprises, and criticized the antifraud campaign to deflect attention from "their own malpractices." This group included the stock promoters George Graham Rice and Charles Beadon, both of whom railed against the Bureaus in their stock tip sheets as recompense for years of public warnings about their various enterprises, and who eventually faced indictments and fraud convictions. A second source of criticism ostensibly came from professional agitators and cranks, like Frank O'Sullivan and Edwin Riegel, who owed their livelihoods to windmill tilting against the central institutions of modern American society. Riegel tellingly operated through a self-created outfit known as the Consumers Guild of America, which constituted little more than a shell organization to dress up its president's periodic libertarian rants against big business and big government alike. Finally, antifraud organizations offered targets to a range of allegedly demagogic politicians, such as Iowa senator Smith W. Brookhart, who wished to solidify their political credentials as opponents of concentrated economic power. Whatever the source of criticism, the Columbus Better Business Bureau contended, it merely constituted "the squealing of a stuck pig."[66]

[65] O'Sullivan, *Rackets*, 90–91, 122–25; Riegel, *Indictment of the Better Business Bureau Conspiracy*, 2–3, 7, 34–42.

[66] National Better Business Bureau, "'Tipster Sheets': To Succeed, the Tipster Must Deceive," Bulletin, 30 Sept. 1928; H. J. Kenner, *You and the Integrity of Business* (New York, 1929): 12–13; Auchincloss, *Growth of the Better Business Bureau*, 6; "Mr. Riegel Comes to St. Louis," *St. Louis Better Business Bureau Bulletin* 4 (9 July 1931); Columbus Better Business Bureau, *The Pig Squeals!* (Columbus, 1934?); Kenner, *Fight for Truth*, 131–34; 264–65; Elison and Brock, *Run for Your Money*, 252–54.

The compromised backgrounds of many of those squealing hogs, however, do not necessarily vitiate the force of all their arguments. As their critics insisted, early twentieth-century antiswindling campaigns consistently cast suspicions on Americans who inhabited the commercial and social margins. These campaigns were overwhelmingly funded by large-scale enterprises whose managers believed that small firms invariably constituted the gravest threat to standards of fair dealing and broader commercial confidence. In addition, the professionals at the head of NACM and the various Better Business Bureaus overwhelmingly came from America's native-born Protestant establishment, and their worldviews were shaped by the values and expectations of that establishment. J. Harry Tregoe, the most important leader at NACM during its first thirty years, offers an instructive example. A fixture of Baltimore's Presbyterian community and a stalwart Republican, he devoted considerable attention to his city's Baltimore Young Men's Christian Association, expressed deep-seated hostility toward alcohol consumption, and imbibed the waxing nativism of the post–World War I era. To Tregoe, the basis of American civilization was increasingly under siege, from the "low-thinking foreigner" and the labor radical alike. As he explained when denouncing the American Federation of Labor leader Samuel Gompers for criticizing a Supreme Court decision in 1922, "The safety of America is threatened by barbarians like those who caused the downfall of Rome."[67]

Given such ethnocentrism, it should come as little surprise that the antifraud campaign had more than a tinge of anti-immigrant animus, just like the public-health initiatives that its publicists so frequently held up as models. To be sure, the antifraud organizations consistently viewed immigrant communities as a critical audience for educational outreach about best practices for consumers and investors. But in working to fashion a nationwide "vacuum-cleaning system," a network powerful enough to remove what one NACM mandarin saw as the "unclean . . . lepers" that imperiled domestic economic health, these institutions frequently focused their investigative resources on immigrant communities that ostensibly both produced and harbored perpetrators of fraud.[68]

The credit men especially targeted ethnic groups. One group that came in for especially close scrutiny was the Syrian community, which developed a reputation for incorporating recently arrived compatriots into fraud rings. Eastern European Jews also attracted disproportion-

[67] "Wallbrook Presbyterians," *Baltimore Sun*, 14 Jan. 1898, 10; "Tregoe the Busy Man;" "Booze Worst Foe to Business: Whiskey Makes Liars, National Credit Association Secretary Says," *Kansas City Times*, 18 Jan. 1917, 2; "Warns of Alien Bandits in Trade," *Philadelphia Inquirer*, 11 Oct. 1920, 18; "Tregoe Rebukes Gompers," *New York Times*, 13 June 1922, 4.

[68] Sidener, "Promoting the Avenues of Publicity," 638.

ate attention, featuring prominently in the monthly rundown of arrests and convictions published by *Credit Monthly*, as well as in the publication's periodic accounts of the detective work that brought commercial crooks to justice. As NACM's chief investigator C. D. West made clear in one such case profile of a Russian Jew who was a serial credit swindler, West's organization sought to "free business of the parasite[,] . . . . the dishonest immigrant who believes that a change of name and a little American veneer will bring him a fortune overnight."[69]

In an analogous vein, Better Business Bureau officials expended the lion's share of their energies on combating commercial untruths by outright con artists and relatively small businesses that pushed the limits of acceptable puffery, hyperbole, and bombast. With the exception of some large-scale retailers that relied heavily on newspaper advertising, the Bureaus left alone the big corporations whose executives sat on their boards of directors. As a result, at no point during the 1920s stock boom did any of the Better Business Bureaus identify some of the era's most egregious conflicts of interest or misrepresentations within the hallowed confines of the reputable finance industry, all of which came to light amid the congressional investigations of the early 1930s. Just as their critics charged, Bureau investigators piously steered clear of securities listed on the nation's major stock exchanges, and repeatedly pressed ordinary investors to place their trust, and their savings, in the hands of "expert" investment counselors from the nation's banking industry. Bureau managers issued no warnings about the deceitful tactics used by most leading investment banks to push exceedingly risky Latin American bond issues on their customers, no cautions about the stock manipulations undertaken by several leading New York City banks, no admonitions about the duplicitous marketing of Kreuger & Toll bonds to thousands of small investors, or the beguiling promises associated with the bond flotations of the Insull public-utilities empire.[70]

In response to an inquiry from a New York City financial reporter, one employee in that city's Better Business Bureau did voice some concerns in 1927 about the high overhead costs and questionable management practices of the new investment trusts then attracting so much

[69] Williams, "Keep Crooks out of Business," 8; Smith, "The Credit Trimmers," 92; C. D. West, "Commercial Crook Meets His Waterloo," *Credit Monthly* 25 (1923): 32; Edward F. Lamb, "An Honest Commercial Crusade," *Credit Monthly* 28 (Aug. 1926): 18. On the antagonism toward immigrants that characterized much of the public-health movement in the early twentieth century, see Alan Kraut, *Silent Travelers: Germs, Genes, and the Immigrant Menace* (Baltimore, 1995).

[70] The best overviews of these corporate scandals remain: Ferdinand Pecora, *Wall Street under Oath: The Story of Our Modern Moneychangers* (New York, 1939); John Kenneth Galbraith, *The Great Crash* (New York, 1955); Forrest McDonald, *Insull* (Chicago, 1962); and John Brooks, *Once in Golconda: A True Drama of Wall Street* (New York, 1969).

attention from investors. But the Bureau's manager, H. J. Kenner, issued a clarifying public letter the very next day, insisting that the employee's remarks were "merely . . . his personal views on the subject," and that the Bureau had no institutional position on the advisability of investing in investment trusts, as it confined itself to "facts" about "companies which may appear to be under suspicion."[71] Despite the hundreds of Bureau bulletins about shady investments pushed by outside promoters looking to corral a portion of an increasingly wealthy society's savings, the nation's most prominent antifraud organization remained blind to the seamier practices of the investment banks and brokerage firms that primarily bankrolled it. Tellingly, in 1930 the New York City Better Business Bureau placed Richard Whitney, then president of the New York Stock Exchange, on its Advisory Board, oblivious, like the rest of the country, to the financial improprieties surrounding his brokerage firm that would eventually land him in prison.[72] Implicitly convinced of their patrons' respectability and honor, Bureau officials simply could not entertain the possibility that their chief backers might be major contributors to the problem of duplicity in the American marketplace. For Kenner and other leaders of the antifraud movement, fraud crept in on the feet of outsiders.

* * *

Together, the achievements and blind spots of early twentieth-century American antifraud organizations reinforce the analyses of economic self-regulation put forward by late twentieth-century sociologists and political scientists. As the Australian scholar John Braithwaite has argued, in an influential review of several experiments with private regulatory mechanisms in the 1970s and early 1980s, "Corporations may be more capable than the government of regulating their business activities. But if they are more capable, they are not necessarily more willing to regulate effectively." As Braithwaite documents in a host of contexts, businesses charged with authority to govern themselves in order to align their commercial and industrial practices with the common good generally have fewer problems with compliance than governmental regulators, and typically prove far more able to tailor regulatory responses to the particular circumstances of a given enterprise or economic sec-

[71] "The Better Business Bureau and Investment Trusts," *Journal of Commerce*, 20 July 1927, Historical Clippings Files. Although the *Journal of Commerce* deferentially printed Kenner's letter, it also asserted that the previous story included the attributions to the Bureau after "the explicit and reiterated assurances" from the quoted employee that "he was an officer of that organization and authorized to speak for it."

[72] "Business Bureau Elects," *New York Times*, 20 June 1930, 44. On Whitney's fall from grace, see Galbraith, *The Great Crash*, 161–65.

https://doi.org/10.1017/S0007680500000222 Published online by Cambridge University Press

tor. But unless the top managements of self-regulating businesses embrace regulatory goals as priorities, and unless they confront consistent, meaningful government oversight, the regulatory outcomes are likely to be minimally effective at best.[73]

A very similar dynamic characterized the labors of post–World War I antifraud organizations like NACM and the Better Business Bureaus. Where they chose to tread—in clarifying commercial rules for advertising, merchandising, and granting credit, or in putting unambiguously fraudulent promoters and brokerage firms under close surveillance—their close links to prominent businesses and law enforcement, along with their ability to handle disputes flexibly, allowed them to make considerable headway. A 1925 speech to employees by Sheldon Coons, the advertising manager of Gimbels Department Store, encapsulates many of these advantages. The Better Business Bureau, Coons assured his audience, perhaps disingenuously, "is not a police organization. It is not an organization run by somebody trying to interfere with our business. It is an organization designed and financed by New York stores and investment houses. Our membership is costing us several thousands [of] dollars a year. We are members of this Bureau because we want an outside check upon our activities."[74] A friend, rather than the bureaucratic enemy, Coons instructed his workers, the Better Business Bureau deserved cooperation and respect. But the circumscribed territory in which antifraud organizations chose to exercise their jurisdiction, and thus to press the willingness of the business world to cooperate with them and show them respect, also ensured some rather glaring failures, and with those failures came a turn to far more vigorous forms of governmental regulation during the Roosevelt administration.

And yet, the impulse for self-regulation of commercial speech by no means completely gave way before the onslaught of the modern administrative state, even at the height of the New Deal. The Securities & Exchange Commission, for example, remained greatly dependent on older self-regulatory institutions, like the New York Stock Exchange and the Better Business Bureau, which continued their investigative roles into the 1930s and beyond, presenting governmental officials with evidence of misrepresentation by stock promoters. The SEC also came to rely crucially on new self-regulatory bodies, such as the National Association of Securities Dealers (now the Financial Industry Regulatory Authority, or FINRA), which assumed initial authority for policing the training and marketing practices of stock brokers, and the Committee

[73] John Braithwaite, "Enforced Self-Regulation: A New Strategy for Corporate Crime Control," *Michigan Law Review* 80 (1982): 1466–1507, quote at 1469.

[74] Quoted in "Department Store Has Accuracy Meeting."

on Accounting Procedure (now the Financial Accounting Standards Board, or FASB), which offered influential recommendations on how the SEC should require public corporations to keep their books and communicate their circumstances to investors. Such institutional mechanisms endured throughout the twentieth century and into the twenty-first, sometimes because they proved useful and relatively inexpensive, often because their leaders formed powerful organizational networks that amplified their capacity, and almost always because their backers possessed political clout. As a result, these mechanisms helped to constitute the nation's regulatory framework, and they powerfully shaped postwar approaches to business ethics. If historians of twentieth-century America wish to comprehend the shifting nature of the business–government relationship, whether before or after the flood of deregulation in the 1970s—if they wish to retrace the shifting meanings of business morality, whether in corporate boardrooms, on the floors of local retailers, or in the offices of mortgage brokers—they will have to move beyond analysis of the classic administrative state. Historians, in addition, will have to consider the private and quasi-public regulatory frameworks that extended well beyond the confines of legislative statute, agency rule-making, and governmental enforcement, and that, as in the case of the early twentieth-century campaign against commercial fraud, so frequently structured public regulatory responses to the nation's perceived socioeconomic ills.