

Book Reviews

Jennifer Balint, Editor

Fraud: An American History from Barnum to Madoff. By Edward J. Balleisen. Princeton: Princeton University Press, 2018.

Reviewed by Ajay K. Mehrotra, American Bar Foundation & Northwestern University

Sociolegal scholars of regulation have long observed the dialectic that exists between innovative types of fraudulent economic activities and the adoption of antifraud regulations and reforms. In the conventional narrative, the law is often depicted as a laggard: when the legal system does finally catch up to new forms of deception, the hucksters are usually on to their next scheme and their next mark. The law is hopelessly seen as one step behind.

With his outstanding new book, legal and business historian Ed Balleisen provides a broad cultural and new institutionalist perspective to this ongoing dynamic and standard story. Balleisen persuasively demonstrates that, from the early Republic to the present, Americans have been deeply ambivalent about economic guile. American business leaders and reformers alike have frequently acknowledged that economic duplicity is an endemic part of modern capitalism and that greater latitude for business innovations is often seen as necessary to provide the opportunities for both beneficial economic growth and deleterious creative deception.

Balleisen traces the development of this deep-seated ambivalence to show that regulatory responses to business fraud have generally shifted over time, reflecting changing attitudes toward business–state relations. During the nineteenth century, he shows that the common law tilted toward an ethos of individualism and commercial permissiveness, which made it difficult to sustain civil and criminal fraud allegations. By contrast, during the Progressive Era and the New Deal, Americans turned to the state to develop new types of protections to guard against the excesses of commercial and financial dishonesty. Since the 1970s, the pendulum has swung back, according to Balleisen, in favor of business, as lawmakers have contended that robust economic growth requires a lighter regulatory stance. Balleisen, in sum, masterfully chronicles the rise, decline, and re-emergence of a legal culture of caveat emptor.

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In doing so, the book also sheds light on the conceptual foundations of fraud and the importance of trust for modern business transactions. In the first two chapters, Balleisen provides a succinct and useful summary of the social science literature on economic deception. Focusing mainly on the cognitive biases and heuristic devices analyzed by behavioral economics, he shows that business dishonesty has been undergirded mainly by an asymmetry of information between transacting parties. The remainder of the book illustrates how this concept has operated in American history: Although swindlers like P. T. Barnum exploited information asymmetries to fleece their customers, antifraud regulators, social reformers, and enlightened business leaders tried to devise legal and other institutional means to counter and mitigate these asymmetries.

Balleisen provides much more than just a traditional narrative history of American fraud and antifraud regulation; he also delivers a broad neoinstitutionalist perspective on that history. He demonstrates that lawmakers and reformers understood that formal law alone could not combat or keep up with the innovative and dynamic nature of business deceit. Law remained a laggard. As a result, reformers turned to other institutions such as the popular press and quasi-public organizations such as the Better Business Bureau to help police the line between legitimate business puffery and dishonest economic activities.

Indeed, journalists and the modern media play a critical role in Balleisen's new institutionalist history. Time and time again we see that reputational risk and the fear of being exposed as a fraud by the media, rather than direct legal culpability, often compelled charlatans to curb their practices or move on to their next scam. The popular press, we see, has been vital to building and destroying the trust and reputational capital that sustains modern business transactions.

Although *Fraud* as a whole provides a balanced and neutral account of the historical dynamic between new types of business deception and attempts to counter them, Balleisen ends the book on a surprisingly optimistic note—one that seems to elide the ambivalence that is at the heart of his historical narrative. After conceding that “no capitalist society will ever rid itself” of business fraud completely, Balleisen concludes that “the history of American antifraud regulation shows that inventive governance can stay abreast of all the new twists to old games, shut down the worst frauds, fortify consumers and investors against imposition and sustain, at reasonable costs, the social trust necessary for modern capitalism” (383). Perhaps the modern regulatory state can do all that. But after reading about two centuries of clever, beguiling, charismatic con artists, one cannot help but wonder if the law and “inventive governance”

will always remain one step behind. One cannot help but wonder whether Ed Balleisen himself has been duped by his own optimism, whether he has been the unsuspecting mark of his own unintended, intellectual swindle.

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Access to Justice and Human Security: Cultural Contradictions in Rural South Africa. By Sindiso Mnisi Weeks. New York: Routledge, 2017.

Reviewed by Heinz Klug, University of Wisconsin

This book is a wonderful study of what Sindiso Mnisi Weeks calls the “vernacular management system” as well as an extraordinary exploration of the idea and practice of “access to justice” at both an empirical and philosophical level. The book is rooted in a rich description of the nature of rural South Africa and its historical location with respect to colonialism and apartheid with important implications for the role of what South Africa’s constitution terms traditional leadership and authority. The site of this study, Msinga district in South Africa’s KwaZulu-Natal province, has a particular place in the country’s history of dispossession and impoverishment, in which violence has never been very far from the surface—and Mnisi Weeks does not shy away from discussing the history of “interdistrict fighting [ungamela]” (163) and “assassination squads” (169) that have long been part of the history of this area. In this regard, the author gives little hint of the dangers inherent in conducting an ethnographic study on conflict management in this context.

While Mnisi Weeks seems to have begun her project with the goal of undertaking a rich empirical study of what official South African government language now calls “traditional courts,” the book produces an understanding of the role and range of different fora that make up the “vernacular management system” and leads Mnisi Weeks to question the very meaning of justice (30). Instead of adopting the long established notion of dispute resolution—which remains the official approach to “traditional courts”—Mnisi Weeks challenges us to think of justice in this context (and maybe more broadly) as being at its root a question of “access to human security.” In this regard, the book emphasises the centrality of a human needs approach to address the “existing long term conflicts that are undeniably embedded in the very