The lessons of ‘Enron’

Media accounts, corporate crimes,
and financial markets

JAMES W. WILLIAMS
York University, Canada

Abstract

While the novelty of Enron and WorldCom as corporate scandals should not be overstated, these events are distinguished by the sheer volume of media coverage that followed in their wake. Drawing from an analysis of over 300 newspaper and magazine articles, this article argues that while this media coverage varies in its diagnosis of the scandals, it is rooted in a common set of taken-for-granted assumptions as to the nature, form, and operation of financial markets. These various points of complementarity suggest that the coverage of the scandals is less significant as an exercise in collective sense-making than as a re-investment in a particular market discourse, a form of financial intelligibility germane to the scandals themselves and instructive vis-à-vis the future study of corporate and white-collar crime.

Key Words

business media • corporate scandal • discursive formation • Enron • financial crime

Introduction: a story of corporate scandal

On the afternoon of 28 July 2001, Jeffrey Skilling resigned from his post as CEO of Enron Corp. citing ‘personal reasons’. This marked the first in a series of events that culminated in two of the largest corporate bankruptcies
in US history (Enron and WorldCom), the indictment and disbanding of venerable accounting firm Arthur Andersen, probes of the securities and investment banking industries by New York State Attorney General Eliot Spitzer, and a wholesale re-evaluation of the perceived successes of the aptly termed ‘bull’ economy of the 1990s. On their face, these scandals provide ideal fodder for criminological analysis. There is the prevalence of greed, the systemic nature of corporate corruption, the necessity of economic regulation, and the inherent instability of the capitalist mode of production. The scandals thus reinforce what corporate and white-collar crime scholars have long been telling us: corporate misdeeds are pervasive and well entrenched, and are accompanied by discernable forms of ‘real’ harm. Finding ourselves within this familiar territory, the task of analyzing the scandals would appear to be rather straightforward. As with scandals of the past, the underlying causes of these events should be probed along with their role in exposing the fault lines and systemic weaknesses of the neo-liberal political economy. The desired result would be another entry in the ever-expanding catalogue of corporate criminality.

Notwithstanding the value of this type of approach (see, for example, Friedrichs, 2004), there is another plot line to this story of corporate scandal. This follows, not from the immediate causes and consequences of the scandals, nor from their revelations about the insidiousness of corporate capitalism, but rather from the onslaught of articles, commentaries, and opinion pieces that followed in their wake. Whether in the form of daily newspapers, nightly newscasts, or 24-hour news channels, the collapse of Enron and WorldCom precipitated a veritable explosion of discussion, commentary, and debate as a parade of experts and media commentators opined on the causes of the scandals and the preferred course of reform. In providing this coverage, these commentators had a lot to say not only about the scandals as discrete financial events, but also about markets, investors, law, and regulation more generally. In fact, it is this wider discussion that represents the most intriguing aspect of this story of corporate scandal.

Adopting the media accounts of the scandals as its focus, this article argues that these commentaries offer a fascinating glimpse into a more veiled and subterranean cluster of cultural narratives and discourses bearing on the nature, operation, and attributes of financial markets. While these discursive representations are typically taken-for-granted and operate below the level of daily discourse, the corporate scandals of 2001/2 forced them out into the open. Here they were mobilized and deployed as part of an effort to make sense of the scandals and to reconcile the apparent contradictions between trust, transparency, and legality, as purported attributes of capital markets, and the undeniable reality of systemic manipulation, deceit, and illegality. By examining these discourses, and their rendering of financial markets as discursive objects with identifiable properties and laws of motion, this analysis shifts the grounds of discussion from the immediate causes and consequences of corporate wrongdoing to the broader discursive conditions and contexts in which these crimes occur, and
are allowed to occur, as well as the types of knowledge claims that sustain them. It is hoped that, in charting this course of analysis, the article will not only provide for a more nuanced understanding of corporate criminality but also will shed light on the evolving role of the media in shaping public discourse around markets and the terms of reference through which the possibilities as well as limits of regulation are framed and contemplated.

The recounting of this alternate story line proceeds through three main sections. The first section surveys the existing literature on media representations of corporate crime, as well as business and finance more generally, and exposes a number of key limitations. Following a discussion of methodology, the results of the analysis are outlined in the second section. Here it is revealed that despite very real conflicts and disagreements as to the identified causes of the scandals and the preferred avenues of reform, the media accounts are in fact complementary in their underlying vision of financial markets. Adopting a Foucauldian stance, the third section takes up the theoretical implications of these points of complementarity and locates the media accounts within a broader discourse of financial markets. The article then concludes with a brief discussion of the implications of this analysis for the future of corporate and white-collar crime research and scholarship.

Media representations of corporate crimes and financial markets

The media, in their various forms and guises, have long been an object of interest to social scientists working in a variety of fields. Within these accounts, the media are typically conceived as a representational medium and/or interpretive device through which the social world is selectively coded, formatted, and communicated to a variety of audiences. This dynamic is far from passive and by no means neutral as the social world is itself constituted through these interpretive frames and is accorded an intelligibility informed by broader social logics, relations, and interests. Media accounts are thus regularly implicated in the production and legitimation of dominant forms of social, political, and economic organization (see Hall et al., 1978; Hall, 1982; Hartley, 1982; Herman and Chomsky, 1988; Gamson et al., 1992; Fiske, 1994; Bourdieu, 1998).

This critical understanding of the media as a sense-making device and vector of dominant discourse has clearly found its way into criminological and socio-legal literatures where media representations of crime, policing, and law are regularly implicated in the reproduction of narrowly hegemonic conceptions of criminality, disorder, and (in)justice—often through the production of distorted representations of crime and the invocation of essentialized criminal identities (Ericson et al., 1991; Schlesinger and Tumber, 1992; Sparks, 1992; Surette, 1998; Altheide, 2002; Doyle, 2003). However, this body of work is dominated by conventional forms of street crime and interpersonal violence, and has infrequently turned its eye to representations of corporate and white-collar crime.¹ To the extent that corporate crime has been taken up
as an object of analysis (Evans and Lundman, 1983; Randall, 1987; Wright et al., 1995; McMullan and Heinz, 1998; Lynch et al., 2000; Goff, 2001; McMullan, 2001; Burns and Orrick, 2002), accounts have focused primarily on social crimes (e.g. health and safety, and environmental violations) rather than financial misconduct. Moreover, this work typically adopts as its focus the limits of media coverage—including the general lack of media attention to corporate wrongdoing and, in the rare instances where these cases are publicized, the media’s tendency to highlight their accidental and tragic nature while overlooking their status as crimes and their roots in the broader political economy. While no doubt valuable in revealing the complicity of the media in supporting dominant representations of crime, this critique ultimately centers on that which is excluded or silenced in media-sponsored attributional frames, rather than the broader question of how business, law, and the State are actively represented in these types of accounts. The offense of the media in these cases is thus not simply one of omission, but also commission.

The limited research on the media construction of corporate crime is by no means confined to the criminological literature, but also extends to the coverage of business and the economy more generally. With a handful of notable exceptions (Snow and Parker, 1984; Tinker, 1985; Lehman and Tinker, 1987; Parsons, 1989; Lehman, 1992; Warner and Molotch, 1993; Clark et al., 2004), there are very few accounts of the role of the media in representing business, finance, and the economy—this despite the fact the media ‘constitute[s] a significant medium through which economic ideas and opinions are legitimated’ (Parsons, 1989: 2). The existing literature has been particularly remiss in its treatment of the business press as one of the privileged spaces where notions of economies and markets are produced and disseminated. This includes the business sections of daily newspapers, specialized business publications such as the Financial Times, the Wall Street Journal, Forbes, and Fortune, as well as a host of TV business news programs and specialty channels that have emerged over the past 10 to 15 years. In each of these formats, the business media exert a formidable influence on investment decisions and mobilize taken-for-granted assumptions regarding the nature of financial markets. The role of the business press in the construction and ‘ontological glorification’ (Bourdieu, 1987: 846) of the ‘New Economy’ is a testament to this power of representation (see Thrift, 2001; Conrad, 2003; Froud et al., 2003). Yet, despite this influence as a ‘new form of discursive power in the financial markets’ (Clark et al., 2004: 290), media representations of business, the economy, and finance have received very little attention in the academic literature.

It is these very limitations that inspire the present analysis. Resisting the tendency to focus on the causes and consequences of the scandals, and to hold the media to account for the limits in their coverage, the objective here is to cast the analysis far more broadly and to examine the wider discursive frameworks that inform and enliven the media accounts. In line with this analytical posture, the media representations of the scandals are conceived, not simply as postmortems on a series of high-profile corporate deaths, but as
vehicles for the communication of broader discursive meanings and hegemonic sensibilities bearing on the nature and workings of financial markets. The media accounts are thus the leading edge of a diagnostic project that is itself couched in broader notions of ‘investor confidence’, ‘market integrity’, ‘fair dealing’, and the preferred balance between ‘market freedom’ and ‘regulatory oversight’. In this respect, the accounts provide an ideal opportunity to explore the discursive subtext underlying these acts of corporate malfeasance and to probe its significance as a precursor to the next wave of scandal.

Methodology

Empirically, this analysis is informed by a review of more than 300 media articles on the subject of the corporate scandals of 2001/2002 and the ensuing regulatory response. These articles were collected through a series of searches performed using the Lexis-Nexis database and geared toward five core publications: (1) the New York Times; (2) the Washington Post; (3) the Los Angeles Times; (4) the Globe and Mail; and (5) The Economist. These were selected on the basis of prestige, circulation, and regional representation. The New York Times, the Washington Post, and the Los Angeles Times are not only among the top newspapers in the U.S. in terms of circulation and are highly regarded, reflecting coverage of the scandals from three key geo-political perspectives: New York as the home of the equity markets and the key financial players, Washington as the seat of political power, and Los Angeles as a representative of western opinion and a direct victim (along with the rest of California) of Enron trading abuses in the energy markets. The Globe and Mail was selected in order to provide a non-US perspective from a country that is nevertheless heavily influenced by American markets. The Globe and Mail has the largest circulation of the two national newspapers in Canada and provides extensive coverage of business and financial markets. Finally, The Economist was included not only for its international perspective, but also its more technical, market-oriented take on the scandals.

Multiple searches of these five core publications were conducted based on a one-year time frame: 1 December 2001 to 30 November 2002. This reflects the first and most significant cycle of media coverage and includes the bankruptcy of Enron (2 December 2001) and WorldCom (21 July 2002), as well as the passage of Sarbanes-Oxley (30 July 2002). While the fallout from the scandals continues, the most intense period of commentary, debate, and regulatory activity is captured in the above timeline. After testing a number of search terms in various combinations, two appeared to be the most appropriate: ‘Enron’ and ‘markets’. These yielded articles that were relevant not only to the Enron scandal, but also to the other cases of financial misconduct (e.g. Adelphia; Sunbeam; Global Crossing; and WorldCom) with ‘Enron’ increasingly used as a moniker for the various improprieties uncovered over the course of 2002. This yielded a total of 2125 articles. Following an extensive editorial process that excluded articles...
with only tangential references to Enron and the other scandals, or that merely provided factual updates on various legal and regulatory proceedings rather than more extensive coverage and commentary, the sample was narrowed down to a total of 334 articles. These included news stories as well as a number of editorial and op-ed pieces.

Once collected and organized by date, these transcripts were then analyzed and thematically coded based on the following questions: (1) what are the identified causes and consequences of the scandals; (2) to what extent are they attributed to individual versus systemic factors; (3) what types of policy and regulatory responses are advocated and why; and (4) how are ‘markets’, ‘regulation’, and terms such as ‘market integrity’ and ‘investor confidence’, represented in the accounts and how are these representations used to justify or legitimate particular diagnoses of the scandals and/or preferred policy responses. These queries informed the first iteration of the analysis in which all of the articles were systematically reviewed and a number of core thematic categories were developed including: (1) causes (bad apple versus systemic); (2) responses (legal regulation versus self-correction); (3) markets (natural versus social); (4) law and the economy (oppositional versus complementary); and (5) justifications (‘market integrity’, ‘investor confidence’, and ‘trust’) to articulate and justify these various stances. These formed the basis for the second iteration in which the articles were re-analyzed and then coded in terms of these respective categories. Overall, this analytical process can be described as a type of critical discourse analysis (see Fairclough and Wodak, 1997). Rather than focusing on the number of times specific words or phrases were mentioned, as per a more conventional content analysis, my primary interest was in revealing the linkages between the discursive constructions of these events, their translation into specific narrative frames through which the corporate scandals were made sense of as forms of financial wrongdoing, and the specific logics, rationalities, and ideologies that informed this sense-making project. This is a common tack in media analysis, one rooted in an understanding of the news media as a type discursive space (Hier, 2002).

Framing the accounts: conflict and complementarity

One of the first insights to emerge from the analysis is that the media accounts are structured in terms of two core discourses—what I term ‘discourses of attribution’ and ‘discourses of recovery’. The attributional discourses emerged in the immediate aftermath of the scandals and were geared to providing a preliminary account of the underlying causes and likely repercussions of key events such as the bankruptcies of Enron and WorldCom, the prosecution of Arthur Andersen, and the Spitzer probe of the securities and investment banking industries. It is at this point that the events were initially problematized and defined in terms of a series of primary conceptual frames. These frames are informed by five attributional or etiological
clusters: (1) executive wrongdoing and the manipulation of financial accounts; (2) audit failures and conflicts-of-interest in the accounting profession; (3) ineffective corporate governance; (4) deceptive stock recommendations and conflicts-of-interest in the investment banking industry; and (5) regulatory failure and political influence peddling. These represent the basic story lines upon which the media drew in reporting on the scandals.

Based in large part on the types of attributional discourses that were selected and deployed, various discourses of recovery soon followed. Here the identified causes of the scandals are aligned with specific economic and policy moves. These discourses possess a normative and moral dimension and are articulated in reference to the imperatives of restoring ‘trust’ and ‘investor confidence’ in the markets, and preventing similar types of incidents from occurring in the future. In a manner analogous to the attributional discourses, recovery discourses are structured around a number of core thematic clusters including: (1) additional criminal and civil penalties for executive wrongdoing; (2) reforms to accounting standards and oversight; (3) the separation of accounting and consulting functions; (4) changes to corporate governance; and (5) the elimination of conflicts-of-interest between the research and investment banking functions of Wall Street firms.

Conflict

Cast in terms of these core themes, what is most striking about the accounts is the absence of a single, coherent, or unified, media response. Contrary to the conventional wisdom that media accounts of corporate and white-collar crime coalesce around a rather narrow band of attributional frames, reports both across and within different publications, as well as individual articles, are clearly divided over the root causes of the scandals and the preferred economic, legal, and regulatory response. Some reports attribute the scandals to the actions of a handful of ‘bad apples’ produced in conjunction with the natural excesses of the market and an investing public that should have known better: thus the importance of ‘getting bad apples out of the bushel so that people can have greater confidence in the rest of the bushel when they go to invest’ (New York Times, 25 July 2002). Others view the scandals as a more systemic expression of institutionalized corruption, wrongdoing, and conflicts-of-interest facilitated by an inadequate and/or compromised regulatory machinery:

With each fresh turn in the Enron tale, one conclusion gets plainer. America’s biggest bankruptcy was not a result merely of commercial misfortune or personal crookedness. The collapse was possible only because of flaws in the way that American capitalism has worked over the past decade. These flaws were widely known, and much discussed. 

(The Economist, 19 January 2002)

These opposing accounts are then accompanied by very different visions of the requisite legal and regulatory response. For those who favour the bad
apple narrative, the scandals are conceived as an inevitable and enduring feature of the capitalist market economy:

For anyone still reeling from the recent disclosures about Enron, Tyco International, and WorldCom among others, I have some news: business has always been this way... So the next time a tycoon is indicted or a company collapses like a house of cards, don’t be so alarmed. It’s happened before. And rest assured that it will happen again.

(New York Times, 7 July 2002)

Within these accounts, regulation, to the extent that it interferes with the natural efficiencies of markets, is dismissed as both ineffective and potentially dangerous, ‘We all know that corporate failures are a permanent feature of a healthy and vigorous marketplace. Eliminating failures would mean eliminating competition—and that can’t be a good thing’ (Globe and Mail, 1 May 2002). In the words of Alan Greenberg, chairman of the executive committee at the Wall Street firm Bear, Stearns, and Co., ‘Enron is indicative of nothing. There’s always people who do something they shouldn’t and you’ll never be able to legislate against it. This stuff happens’ (Washington Post, 17 February 2002). Moreover, intervention is deemed unnecessary, given the natural tendency of the market to self-correct and exercise its own form of financial justice on wayward economic actors,

American capitalism goes through this all the time. The question this time was, does it still have its self-corrective powers? I think the evidence is that it does. It’s amazing the speed with which the corrective antitoxins were injected into the system.


Thus, ‘The cure for most excesses of the stockmarket bubble lie in its very bursting ... The biggest mistake would be to sacrifice the benefits of well-functioning capital markets’ (The Economist, 8 June 2002).

In contrast with this view of a natural reckoning, commentators on the other side of the spectrum demand wide-ranging and systemic reforms to corporate and professional governance, ‘In the wake of Enron, the nation’s system of corporate governance badly needs new machinery to watch over the watchers’ (Washington Post, 21 May 2002). With the scandals framed as a deviation or aberration from normal market functioning, these legislative and regulatory adjustments are viewed as essential to shoring up investor confidence in the short term and preventing future calamities,

To lure back investors fearful of more Enron-like accounting scandals, the investment industries may now have to accept new federal investor protections they have long blocked. That makes this a good time to think boldly about reforming not only the accounting process, but the safeguards built into the basic governing structure of public corporations.

(LA Times, 11 February 2002)
All of this is to suggest that media accounts are characterized by vigorous debate and competing interpretations of both the causes of the scandals and the preferred regulatory response. These struggles and contradictions are neither inconsequential, nor mere matters of discursive nuance. They reflect very real differences in the conceptual framing of these events as well as the underlying discourses and modes of legitimation upon which they are based.

Complementarity

While diversity and conflict were clearly evident in media coverage of the scandals, one would be remiss to conclude that these accounts are entirely lacking in common ground. Quite the contrary. What the analysis reveals is that these various lines of conflict and struggle are in fact undergirded by a far more rudimentary and inchoate set of assumptions regarding the nature, value, functioning, and regulatability of financial markets. These rationalities are the grounds for a unique form of discursive complementarity within which the more visible conflicts and debates around the scandals are defined and framed. To be clear, this is not to suggest that the various interpretations alluded to above coalesce around a more fundamental agreement or consensus as to the real causes of the scandals, or the most appropriate legal and regulatory response. Instead, what is at stake here are the implicit forms of intelligibility that are invoked and circulated within these accounts, and which provide a window into the discursive rhetorics and interpretive devices through which capitalist economies are organized, constituted, and reproduced. These points of complementarity include: (1) naturalization, normalization, and valorization of markets; (2) law and markets as exogenous and mutually exclusive; (3) the validity of a financial versus public frame of reference; (4) trust, transparency, independence, and the inherent regulatability of markets; and (5) closure strategies and the outer boundaries of the reform effort. Each will be explored in turn.

Naturalization, normalization, and valorization of markets

The first point of complementarity involves a common discursive investment on the part of media analysts and commentators in a particular representation of financial markets, one that supports and reaffirms their existence as natural and largely autonomous entities. Despite conflicting and contradictory positions with respect to the causes of and appropriate responses to the scandals, the various frames remain grounded within a basic set of taken-for-granted assumptions regarding ‘the market’ as a reified sphere of activity operating according to specific rules and principles, and thus generating certain practical regularities. More importantly, these regularities are not viewed as expressions of social or political logics and interests, but rather as manifestations of the natural laws of economic exchange. This is not to suggest that markets are inherently or exclusively
rational and well-ordered—they are clearly prone to excess and exuberance—but rather that they possess an independence and sense of agency that is naturalized and expressed in terms of the animalistic (and notably gendered) metaphors of the bull and the bear:

All last year and into this one, Americans dismissed the bear market in stocks as little more than a playful and frisky cub pawing through the picnic litter. Only in the last ten weeks have people begun to see him as an angry 800 pound grizzly, capable of lacerating national economic hopes and individual portfolios alike. 

*(LA Times, 28 July 2002a)*

Other accounts adopt a more anthropomorphic view of the market:

If you imagine the market as a mythical angry god that is demanding sacrifices to those who had long worshipped it, there is no way to guess when it finally will be appeased. It already has consumed the early-retirement dreams of some, the college-funding hopes of others and the reputations of hundreds of corporate executives. But it may yet want more.

*(LA Times, 28 July 2002b)*

The market thus possesses a spirit and personality—it is not only ‘angry’ but also ‘skittish’, ‘morbid’, ‘expectant’, and in need of ‘reassurance’—as well as a range of needs and demands to which regulators and government must respond.

Also at play in this representation of markets as natural and autonomous entities is an ethic of normalization whereby proponents of both self-correction and regulatory intervention remain wedded to a conception of the scandals as aberrations or deviations from ‘normal’ market functioning that can be remedied through either the natural tendency of the markets to self-correct or various forms of regulatory adjustment. Under either scenario, what remains ‘misrecognized’ (Bourdieu, 1996: 265) is the possibility that manipulation, secrecy, and deception are normal features of a healthy and well-functioning market.

Following closely on the heels of these dynamics of naturalization and normalization is a valorization of the US market economy as a whole. Despite fundamental disagreements as to how markets should best be governed in compliance with their natural logics, both supporters and detractors of market regulation couch their opinions in the truism that US capital markets are the most efficient, effective, and productive in the world. For evidence of this superiority, comparisons are drawn with other national economies and the difficulties encountered during times of crisis, ‘The response to Enron must be compared with what happens in countries in which these cycles of reform do not occur. Market functioning is completely distorted by corrupt systems, and the corruption becomes increasingly entrenched as time goes on’ *(Globe and Mail, 22 June 2002)*. A similar deference to the value and vitality of US financial markets emerges from the *LA Times*: ‘Many countries are poor because they do not have..."
trustworthy investment markets capable of distributing capital to businesses and families. The lesson of Enron is that the trustworthiness of the vital U.S. market needs protection’ (LA Times, 27 January 2002). The extent to which this valorization presupposes a discourse of normalization, articulated in terms of the need to avoid fixing what is not broken, is also clearly evident in a number of accounts:

An intelligent response to the Enrons and WorldComs needs to begin by acknowledging the strengths of the American business model and the dangers of attempting to fix what is not broken ... It is in the nature of capitalism to make progress in fits and starts. To some degree, lurching cycles of sentiment are part of the process ... It would be unwise to expect them ever to be eliminated, and rash to try.

(The Economist, 13 July 2002)

Underlying the accounts of the scandals is thus a clear investment in a broader set of cultural scripts regarding the value and effectiveness of the American form of capitalism, this despite evidence of the failure of this same market economy on a large scale:

For beyond all the scandals linked with the deflation of the bubble over the past two years lies a more fundamental point: that America’s capital markets have done a pretty good job for the economy, and that the country’s equity culture needs to be revived, not tossed out the window.

(The Economist, 8 June 2002)

This is accompanied by a language or discourse of aberration and irregularity that is common in accounts of corporate misconduct and that serves to reaffirm our basic faith in the naturalness and normalcy of markets—notwithstanding the fact that this faith may not be deserved.

Law and the markets as exogenous and mutually exclusive

A second key point of complementarity hinges on the structuring of debates around legal regulation in terms of a dichotomy between law and the market. Legal regulation is conceived as a foreign influence, an externally mandated set of controls and restrictions imposed on markets from without in order to render them more stable, fair, and transparent. Law and markets are thus of different orders and origins, bound together in a somewhat awkward and invariably acrimonious relationship, it is presumed, for the benefit of the economy as a whole. This understanding of law and the markets informs the positions of both the advocates and critics of regulatory reform: for the former regulation, while intrusive, is a necessary check on the natural excesses of the market, one that enhances the fairness of market transactions:

What the accounting scandals remind us is that the market can also grow irrational, not to say immoral, in its pursuit of profit, and it needs a strong referee to prevent abuse ... Markets need rules. Those rules don’t always
need to be rigid. But government courts anarchy when it relies too much on the markets to police themselves ... Government regulation is often intended to protect markets from their own worst instincts.

(LA Times, 29 July 2002)

Regulation is thus a ‘vital support for the powerful, fertile, but unstable free market’ (LA Times, 25 June 2002), the importance of which is clearly demonstrated by past scandals: ‘The great economic lesson of the 20th century was that to work, a market system needs a little help from the government: regulations to prevent abuses, active monetary policy to fight recessions’ (New York Times, 11 December 2001). For the latter, regulation is understood more in terms of a zero-sum game in which increases in the level or intensity of legal regulation are seen to translate into inevitable losses in fluidity and economic efficiency. The focus is thus on the dangers of regulatory excess, ‘The backlash against corporate malfeasance can sometimes do more damage than the malfeasance itself’ (Washington Post, 23 June 2002). Regulation, to the extent that it is required, must thus be proportionate and reasonable: ‘It’s vital that we don’t introduce more regulation than is needed to assure the public that proper guidelines and safeguards are in place. We should not drive up the cost ... of doing business’ (Globe and Mail, 22 October 2002).

Despite differences in the ultimate message, both accounts neglect the fact that markets cannot exist outside of law and that regulation, while placing limits on market activities, is not simply a negative force and a source of constraint and distortion. It is also a form of juridical authority that is itself constitutive of markets. The corporation is a legal entity. The public offering of stock and its subsequent sale on the secondary markets are likewise informed by law, and corporate mergers and acquisitions are thoroughly legal transactions. Ultimately, the cost of reproducing this conventional view of legal regulation as foreign and exogenous to markets is not simply a misunderstanding of their primordial interdependence, but also a narrow view of regulation that limits the range and scope of policy moves. Any and all regulation must satisfy a high burden of proof and, in the last instance, capitulate to the supposedly natural instincts of the markets. This is true even within the most ‘critical’ pro-regulatory accounts.

Financial versus public frame of reference

These discussions and debates regarding the appropriate balance between legal regulation and market efficiencies are couched in a third form of complementarity. This involves the almost universal invocation of ‘investor confidence’ as a type of imagined community and discursive frame through which the effects of the scandals are gauged and the various legal and regulatory responses are rationalized and legitimated. Throughout the media accounts, the corporate scandals are problematized, first and foremost, on the basis of their negative impact on the confidence of investors:
The change in public attitudes is drastic. Suspicion has replaced adulation. Can the numbers be trusted? CEOs are no longer heroes or heroines. They and their companies are now on the defensive. The loss of confidence is very real, and it’s dangerous.

(Washington Post, 10 July 2002b)

This same reference point is then used by both the promoters and detractors of legal reform as a means of framing and advancing their respective positions. For the former, investors require the additional assurance that legal and regulatory reforms provide in order to regain confidence in their investments: ‘The confidence of individual investors depends on honest, independent gatekeepers. Sadly, the collapse of Enron shows this system urgently needs reform’ (New York Times, 17 January 2002). Thus, ‘Nervous investors long for someone to restore the public’s faith that capital markets are free and fair’ (LA Times, 25 March 2002). In contrast, for the latter, the interests of investors are best served by avoiding unnecessary reforms and maintaining faith in the self-healing properties of markets:

The system has a built-in corrective factor, which kicks in when abuses go too far. Harm to investor confidence harms the market, which harms the ability of corporations to raise the capital they need to grow and be profitable. Eventually, the capitalists’ desire to get investor confidence back wins the day.

(New York Times, 30 June 2002)

Notwithstanding these differences in the interpretation of ‘investor confidence’, what is most significant about this term is its implication that the interests at stake in these events are not those of the general public but rather the ‘investing public’ framed in terms of a much narrower financial community. Moreover, despite the rhetoric of the small investor championed in accounts of the progressive democratization of stock ownership and the popularization of financial markets in the 1990s, it is really the interests of large shareholders and institutional investors that underlie and inform these interpretations of ‘investor confidence’. This point is made nicely by Kuttner et al.:”

One looks in vain today for a serious movement for corporate accountability. Those who champion ‘reform’ of corporate governance focus on shareholder rights—and this means big institutional investors bent on maximizing share value; it doesn’t mean more effective public regulation on behalf of the rights of other corporate stakeholders such as employees and small investors.

(2002: 3)

This is consistent with the more general trend toward financialization and shareholder capitalism (Froud et al., 2000; Lazonick and O’Sullivan, 2000; Williams, 2000) in which the logics of business are geared toward maximizing shareholder value and satisfying the speculative urges of investors rather than investing in long-term economic growth. In the words of a New York Times columnist, this is part of the new clout of finance: ‘In the new
management handbook as rewritten by finance, the concerns of employees, shareholders and even communities could be jettisoned to raise stock prices’ (New York Times, 17 July 2002).

Apart from its invocation of a rather narrow cluster of stakeholder interests, what is most notable about ‘investor confidence’ as a discursive category is its ambiguity. Despite a legion of references to this term, virtually no attempt is made to define it. Moreover, the myriad contexts and ways in which ‘investor confidence’ is used would appear to suggest that there is, in fact, no widely agreed-upon definition of the term. It is thus not only ambiguous but also semantically porous as it is filled with a variety of different and often contradictory meanings and interpretations. The mere fact that ‘investor confidence’ can be bolstered by both the enhancement of regulatory regimes and unguided market self-correction speaks to this duplicity.

Trust, transparency, independence and the inherent regulatability of markets

A further testament to the fluidity and flexibility of ‘investor confidence’ as a discursive vehicle is its coupling with terms such as ‘trust’, ‘transparency’, and ‘independence’. These concepts are framed and mobilized within the media accounts as critical markers for ‘investor confidence’, and thus a means of describing how the corporate scandals have impacted faith in the markets and to what effect. Thus, it is argued that the reason the scandals have led to a deterioration of ‘investor confidence’ is due to their negative impact on trust and related evaluations of transparency and independence: ‘[The scandals] have helped to create an impression among investors that America’s capital markets are in some way fundamentally biased against their interests. The consequence has been a loss of trust that now needs to be won back’ (The Economist, 8 June 2002). Trust in information is especially critical: ‘Investors, as absentee owners, must be able to trust the information public companies report about their businesses. Buying shares in a company cannot simply be an act of faith’ (New York Times, 14 January 2002). Moreover, the primary means of restoring ‘investor confidence’ is alleged to be through the enactment of reforms that will enhance the transparency of corporate operations and the independence of those tasked with its oversight:

Only a restoration of the system of checks and balances that once protected the American investor—and that has seriously deteriorated over the past 10 years—can restore the confidence that makes financial markets work ...

What is at risk is the trust that investors, employees and all Americans have in our markets and, by extension, in the country’s future.

(New York Times, 8 July 2002)

These discursive links are mutually beneficial as ‘investor confidence’ provides a narrow frame of reference through which ‘trust’ may be defined and problematized; the notion of ‘trust’ reinforces the ambiguous and porous
nature of ‘investor confidence’, defining it largely as a matter of faith and establishing specific guidelines as to how this faith might be restored. The two terms may thus be seen to form a type of discursive series, or system of signification, through which the events surrounding the scandals are first made problematized and then linked to narrowly conceived legal and regulatory remedies.

There are two additional features of these discourses of trust that deserve mention here. The first is the extent to which both ‘investor confidence’ and ‘trust’ are reified through the media accounts and thereby lent a certain ontological weight as part of the objective reality of markets. Interestingly, this objectification is facilitated through the use of trust as a lens through which shifts in market activity are interpreted and framed. Thus, the fluctuations in share values that followed the Enron and WorldCom scandals were attributed, on an almost daily basis, to the erosion of ‘trust’ in the capital markets and a resulting loss of ‘investor confidence’: ‘As the public’s confidence in the integrity of financial reporting has plummeted, the markets have continued to sputter, as positive accounting news is greeted with a healthy dose of skepticism’ (Washington Post, 28 May 2002). References to key financial indices, such as the Dow Jones average, helped to gauge these levels of investor anxiety,

Yesterday’s wide fluctuations in the market, when the Dow Jones industrial average veered from loss to gain and back again, closing down 235 points, are the latest evidence of investor distrust of corporate accounting procedures. It also shows that investors are worried about the market’s ability to recover from, or respond to, scandal. (New York Times, 23 July 2002)

It is the quantifiability of these terms, independently of their actual definition, that once again reaffirms their conceptual power as rhetorical devices. A second by-product of this discursive rendering and subsequent reification of trust is the reproduction of a belief in both the possibility and attainability of trust and, by extension, transparency, independence, and good governance, within financial markets. These are invoked, not as vague ideals, but as practical, realistic, and attainable pursuits whose realization depends on the ability to make the right sorts of technical adjustments to market functioning: ‘It will take time and careful consideration to get right the changes needed to make America’s capital markets more transparent, more honest and more efficient’ (The Economist, 8 June 2002). Thus, how ‘trust’ is framed and used in the media accounts signals both an ability to intervene in the operation of markets via specific policy moves and regulatory remedies, and the effectiveness of that intervention. I would argue that this is critical in reproducing a more general faith in the regulatability or governability of markets. Any discussion of the restoration of ‘trust’ and ‘faith’ in the markets presupposes that such a project is in fact possible and that markets are responsive to these types of interventions. This sensibility is evident in accounts of previous scandals and the incremental reforms that followed in their wake:
America has a long record of learning from its excesses to improve the working of its particular brand of capitalism, dating back to the imposition of antitrust controls on the robber barons in the late 1800s and the enhancement of investor protection after the 1929 crash. There is no reason why it should not turn the latest calamities to its advantage too.

(The Economist, 18 May 2002)

Ultimately, the conviction that markets are governable in this way is one of the key products of these media accounts. Their symbolic value persists despite outward disagreements over the actual nature of the reform effort and the desirability of specific regulatory interventions.

Closure strategies: establishing the outer boundaries of the reform effort

A final point of complementarity involves the establishment of a fairly well-defined set of conceptual limits with respect to the nature and scale of the so-called ‘reform effort’. From the discussion thus far, it should be clear that debates on market reform are structured in terms of two distinct poles. On one side are those who favor the status quo or some slight variation thereto. On the other are advocates of more extensive legal and regulatory interventions into the operation and governance of markets. However, what is notable about these debates is that they are endowed with a false sense of diversity. In reality, both positions are articulated within fairly narrow conceptual limits with respect to the range and types of reforms that are viewed as ‘reasonable’ or ‘sensible’. These limits are constituted most profoundly at the outer boundaries of the reform effort where the treatment of measures, such as the expensing of stock options and elimination of conflicts between the auditing and consulting functions of accounting firms, as radical or controversial artificially limits the terms of the debate. This resembles a form of discursive closure: by definition, this excludes or omits a series of far more intensive and systemic reforms that, while detrimental to short-term market performance, may actually function to prevent similar abuses in the future. Examples of these reforms would include the constraint of debt-backed speculation and restrictions on the scale and scope of capital flows and financial transactions. And yet these more radical options are inevitably viewed, when they are viewed at all, as both futile and unrealistic:

Some experts have suggested that the government take broader steps to discourage market bubbles by reducing the amount of borrowing by investors and companies. They have proposed measures like reducing the margin—the amount of stock that can be bought with borrowed money—or more tightly regulating complicated derivatives securities, which would make it harder to bet on a market’s direction with borrowed money. But such measures are thought to have no chance of passage.

The result is that the overall structure, logic, and tenor of the debate assumes, and retains, an inherently conservative quality.

Analyzing the accounts: making markets

Based on the foregoing analysis, what is most noteworthy about the corporate scandals of 2002 is not the fact that they exposed, albeit temporarily, the seedy underbelly of capitalist financial markets but that they did so in a manner resistant to conventional techniques of neutralization (Benson, 1985; Poveda, 1994). Given the sheer scale of the scandals and the active complicity on the part of a variety of institutional players, these were far from ‘isolated episodes’ nor could they easily be reduced to the actions of one or two ‘bad apples’ (Poveda, 1994). Rather, the immunity to standard interpretive frames triggered an interpretive crisis of sorts, one immediately followed by a sustained effort to make sense of the scandals and to restore a measure of intelligibility to markets and their operation:

The most spectacular corporate demise ever cannot remain a befuddling mystery. In order to restore confidence in American capitalism and in the integrity of its financial markets, the public needs to understand what brought Enron down so suddenly last year.


Drawing on previous analyses of the media as an agenda-setter and close friend of business, one might have expected these commentaries to yield, in the last instance, a rather singular and uni-dimensional account of the scandals, one couched in the analytics of de-criminalization and plausible deniability. Instead, a diversity of voices and arguments was observed, many of which are openly contradictory in their accounting for the scandals and their vision of the way forward. Yet, these tensions appear against a common backdrop of taken-for-granted assumptions about markets, laws, and investing. Regardless of the identified attributional frame and discourse of recovery, accounts are thus complementary in their assertion that: (1) market-based capitalism is the preferred mode of economic organization; (2) laws are exogenous to markets and distort natural market efficiencies; (3) investor confidence is a natural barometer of the health of the market and an essential benchmark for all policy moves; (4) trust and transparency are not incommensurate with the logic of markets and may be enhanced through the right sorts of technical adjustments; and (5) proposals for reform must be ‘realistic’ to avoid throwing the baby out with the bathwater.

These points of complementarity lend themselves to a variety of analytical pathways and theoretical interpretations. One way of proceeding would be to emphasize their ideological character and their role in reproducing and legitimating dominant ideologies underlying the capitalist mode of production. Such a stance requires a very short conceptual leap as the media accounts clearly subscribe to a common ideological vision of financial markets, one
firmly embedded within neo-liberal logics and rationalities. Markets are thus lionized as engines of economic growth and cornerstones of financial prosperity; they are presented as sites for the realization of financial value that must be left to their own devices lest their natural efficiencies be sacrificed to unwarranted regulatory incursions. Likewise, we are told that markets are entirely deserving of our trust and that the financial losses associated with the collapse of Enron and WorldCom, while scandalous, are an indication of the perversion of markets under conditions of ‘irrational exuberance’ (Shiller, 2001: xii) rather than a natural feature of normal market functioning. In each of these respects, the media remain invested in a ‘distorted picture of the market that functions to perpetuate and sustain certain beliefs and practices that are critical to the market’s functioning’ (Snow and Parker, 1984: 170; see also Parsons, 1989: 2). Here we find ourselves back in the familiar territory of media studies with an emphasis placed firmly on the ideological effects of media accounts and their existence as representational devices that serve to disguise, distort, and/or selectively represent social, political, and economic realities.

While no doubt containing a grain of truth I would urge caution in pressing this point too far as the form, structure, and effects of the media accounts are less ideological than discursive in nature. Rather than communicating an identifiable cluster of ideological contents and commonsense meanings that may be framed as either instrumental perversions of the real or structures of meaning which indirectly and inadvertently reproduce a narrow band of social, political, and economic interests, the media accounts are more appropriately viewed as points or nodes within a broader discourse of financial markets. They reflect a particular form and logic of expression, a means of speaking about financial markets that is neither bound to an underlying system of meaning nor beholden to specific interests or influences. Adopting a slightly different analytical lens, it may be useful, then, to view the media accounts as discourses or what Foucault (1989) terms ‘discursive formations’. The concept of discursive formation, first mentioned in The Archaeology of Knowledge, follows from Foucault’s earlier engagements with the histories of punishment, psychiatry, and medicine, and his interest in the conditions under which bodies of knowledge are produced and rationalized as ‘true’ or ‘correct’—a process dependent upon limits and rules on what can be said and by whom. For Foucault, a discursive formation is a loosely structured field of intelligibility structured around a common set of discursive objects, such as medicine, which are governed by specific rules of formation. These rules determine the possibilities and limits within which the objects and producers of discourse (as well as concepts and theories) are forged and imagined, thus prefiguring not only that which can be reasonably stated within a given discursive terrain but also what is held to be ‘true’. Here Foucault draws a clear distinction between discourse and ideology. In contrast with ideology (which ‘stands in virtual opposition to something else that is supposed to count as truth’), discursive formations speak to ‘how effects of truth are produced within
discourses, that, in themselves, are neither true nor false’ (Foucault, 2000: 119). In re-framing the media accounts as indicators of, and points within, a broader discursive formation, three key attributes of the discourse of financial markets are brought to light.

The first involves the status of the market as a type of discursive object. In their accounting for the rise and fall of companies such as Enron and WorldCom, the media remain wedded to a view of financial markets as natural and eternal entities with set rules, delimited boundaries, and scientifically derived laws of motion. This imposition of a natural rather than social form emerges in large part from the tendency to conceive of the scandals as departures from the natural state of markets, as aberrations fueled by heated speculation. The purported irrationality of the scandals is significant in that it not only externalizes these moments of crisis, but also presupposes a state of normality under which the market is believed to act rationally. As noted by de Goede, who offers a Foucauldian-inspired archaeology of financial markets, this juxtaposition of normality and aberration is essential to the naturalization and rationalization of markets as ‘it is precisely through the identification of moments of irrationality and madness that the financial sphere can be thought rational at all’ (2005: 42). The naturalization of markets is also tied to the use of calculative devices, such as the Dow Jones Industrial Average, as indicators of market activity. These lend a definitive form and ontological weight to financial markets. They also endow the markets with a regularity and calculability essential to their imagined state as coherent objects possessing their own agency and internal logic (de Goede, 2005). Media commentators are complicit in this dynamic of naturalization as they repeatedly invoke movements in the major market indices as a gauge of the scandal’s effects and a sounding board for contemplated reforms. Through these discursive labours, markets are effectively deprived of their social, political, and economic context as well as their historical contingency. They are essentially de-politicized, and it is in this discursive form that they are most directly implicated in relations of power.

A similar juxtaposition of normality and aberration is at work in the second attribute of financial discourses. However, rather than the status of financial markets as objects of knowledge—that is, as a matter of discursive form—here we are interested in the question of enunciative modalities or, more specifically, the discursive position from which knowledge of financial markets may and must be produced. As noted by Foucault, discourses are governed by rules that dictate and define the ‘limits and forms of the sayable’ (1991a: 59). Not everyone has the ability to speak the truth; rather, the right of speech is heavily circumscribed. It is bound to the possession of qualifications, the occupation of designated institutional sites, and by conformity to accepted modes of enunciation. An important question thus becomes, ‘Who, among the totality of speaking individuals, is accorded the right to use this sort of language (langage)? Who is qualified to do so?’ (Foucault, 1989: 55). Within the financial field, the right to speak is less tied to the possession of formal credentials than to the ability to clothe
one’s statements in the garb of scientific authority and formally designated expertise. Of far greater significance is the ability to speak in the name of the investor, to invoke their interests, to concern oneself with their confidence in the market, and to leverage one’s utterances in terms of the language of shareholder value and return on investment. This invocation of the imagined investor⁷ is a matter of discursive necessity. Statements that lack this primary referent run the risk of being dismissed as irrational, invalid, and undeserving of serious discussion. It is through this discursive policing, and the underlying dynamic of inclusion and exclusion, that the voices of other groups, such as employees and other public stakeholders, are effectively silenced, their viewpoints marginalized and excluded from the discursive terrain. The repeated references to investor confidence in accounts of the scandals, and its near ritualistic invocation as a reference point and conceptual anchor, echoes this discursive closure as it preempts the range of reasonable debate and binds the utterances of both reformers and apologists to the same discursive footings.

Finally, the discourse of financial markets is animated by a certain logic through which market activities are defined, evaluated, and most importantly, problematized. This bears the traces of Foucault’s later work on ‘governmentality’ and his assertion that government is essentially a problematizing activity—that is, it is geared toward the designation of specific practices and areas of social life as problematic and deserving of intervention (Foucault, 1991b). When applied to the domain of finance and financial markets, one of the immediate insights yielded by this understanding of governance as ‘problematization’ is the very specific, and disturbingly narrow, logic that is used to evaluate and problematize market activities. Building upon the naturalization of the market and the privileged position accorded the investor, market activities are typically defined as problematic—that is, as warranting of corrective action—to the extent that they deprive investors of ‘true’ knowledge of companies, their practices, and their prospects. This is the dilemma of asymmetric or imperfect information:

A common thread runs through the corruption fostered by the robber barons in the late 19th century, the stock kiting and fraud of the 1920s and the scandals today. In economics, that common thread is called asymmetric or imperfect information, which means in effect that one party in a transaction knows more than the other party and can take advantage of the second party.


With informational asymmetries as the main threat to fair and efficient markets, the primary regulatory response has been to call for greater levels and forms of disclosure. In fact, the regulatory system is built on a logic of disclosure and the belief that investors can protect themselves as long as they are armed with the right information: ‘Stock markets can allocate capital efficiently only if investors have all the information they need to understand companies. Without proper disclosure, capitalism can’t work properly’ (Washington Post, 10 March 2002). Thus, among contemplated
reforms to America’s capital markets, ‘The most important is to improve standards of disclosure. This means, in part, demanding that more is disclosed: potential conflicts of interest, trading activities, client relationships, market-sensitive news of all kinds’ (The Economist, 8 June 2002).

This is all well and good, but in according a privileged place to disclosure as the gold standard and primary gauge of regulatory action, unnecessary constraints are placed on the range and scope of regulatory action. The only obligation of regulators and legislators is to disclose potential problems in the markets, leaving it to investors to weigh and evaluate this information to the best of their ability. With the primary regulatory burden borne by the investor, more intrusive and potentially remedial forms of regulation are deemed unnecessary. Likewise, more intractable problems remain unexamined and unfixed: for example, accounting standards that permit companies to conceal losses and thus disguise their financial health. This rendering of market activities as problematic is further circumscribed by the view that law and markets are naturally immiscible and that regulation must therefore meet a very high standard of proof—with emphasis placed on avoiding collateral damage rather than necessarily effecting positive change in the market. Moreover, the impact of these measures will invariably be judged in terms of the movement of market indicators, a mode of calculability that is again self-limiting vis-à-vis the design and assessment of regulatory possibilities. In each of these respects, the logic that is brought to bear in framing and evaluating market activities is a decidedly narrow one. Most notably, it excludes broader notions of stakeholdership and responsibility and removes from consideration the impacts of markets on broader constituencies of employees and non-investors. Here, again, a unique dynamic of inclusion and exclusion is at work.

This line of discussion began with an effort to probe beneath the openly ideological character of media accounts and investigate their discursive roots. When viewed through this wider theoretical lens, the immediate resonance of the accounts with the dominant meanings of the market is eclipsed by their more distant affinity with a broader discursive field. It is within this field that financial markets are constituted as objects of knowledge and can be envisioned in particular ways. Such markets are viewed as natural and inevitable, bound to the interests of investors and the vagaries of their confidence, and enmeshed within a narrow range of regulatory possibilities buttressed by a rather tense relationship with law, regulation, and the State. What is at stake here is not simply the positive assertion of a group of qualities or characteristics, but rather a structured system of discursive limits, boundaries, exclusions, and absences. Markets are not simply naturalized, they are de-politicized (de Goede, 2005). There are limits on what can be uttered. Markets are portrayed as bound to a narrow mode within which regulatory possibilities are tightly circumscribed. Moreover, it is through a set of oppositions—nature versus politics, insider versus outsider, rationality versus irrationality—that the discourse of financial markets comes to comprise a regime of enunciation through which the ‘truth’
of the market is produced and outside of which markets are, quite literally, unthinkable.

Returning to the lingering question of ideology, while non-ideological in its form, this discursive formation may nevertheless be viewed as ideological, or more accurately, hegemonic in its effects. Like most good stories, media accounts draw on conventional characters, structure, themes, and commentaries, and are inscribed with rules of performance that invariably accord a privileged place to dominant interests while limiting forms of opposition (Ewick and Silbey, 1995). By de-politicizing markets as natural spaces allegedly affronted by juridical incursions, by raising investors to a privileged position, and by limiting the discursive rights of those who fail to take up stakes in the financial game, financial discourses serve to reproduce existing social, economic, and political relations. It is in this respect that the media accounts may be seen to function as ‘hegemonic modes of discourse’ (Pearce and Tombs, 1999: 273).

Conclusion

At first glance, it would appear that this analysis has drifted rather far afield from its starting point in the province of criminology. Its primary concern is not with the immediate causes and consequences of the corporate scandals, and it has eschewed the traditional criminological task of demonstrating that these forms of corporate and financial wrongdoing rightly qualify as ‘real crimes’ deserving of stiff legal penalties. Yet, when approached from a slightly different vantage point, the implications of the article for criminological inquiry are quickly brought into focus. The underlying message of the analysis is that the conditions of existence for corporate scandal are not limited to the usual suspects of executive greed, distorting incentive structures, conflicts-of-interest, and/or the pressures and strains exerted by the profit motive—although these are no doubt proximate to the collapse of Enron and WorldCom. Rather, corporate scandals also have their roots in a more distal order of discourse, a constellation of rules, logics, and truth claims that are themselves constitutive of financial markets. Within the imputed form of naturalness and inevitability, the privileged position of investors, and a selective logic or node of problematization, we can see the outlines of discourses that (1) endow markets with a permanence and solidity incommensurate with their social and historical origins, (2) bind them to a narrow register of truth, and (3) limit both their visualizability and the epistemic frames through which they may be governed and rendered governable. It is in this much broader sense that neo-liberal market economies may be viewed as criminogenic and consequently prone to the types of scandals that emerged in 2001/2 and are bound to re-appear in the future9. This is an issue not of motives, interests, or influences, but of knowledge and knowledgeability.

There are a number of specific lessons that emerge from this stance on the genesis of corporate criminality. First, it is imperative that we continue to
work on expanding the theoretical depth and range of corporate and white-collar crime scholarship. While significant strides have been made since the pioneering efforts of Sutherland in the 1930s and 1940s, much work remains to be done (Braithwaite, 1985; Stanley, 1994). In particular, corporate and white-collar crime scholars should be encouraged to ‘sweep across the disciplines’ (Braithwaite, 2000: 235) and incorporate insights from related literatures such as socio-legal studies, economic sociology, organizational theory, sociology of the professions, as well as philosophy and political science. These forms of dialogue are particularly relevant, given that the activities of interest to white-collar and corporate criminologists traverse the fields of law, economics, politics, and accounting, thus requiring a theoretical stance that is distinctly interdisciplinary in character.

A second lesson, and an important first step in advancing the scope of the existing literature, is that corporate and white-collar crime scholars need to step outside the ontological box that has long shaped their analyses of corporate criminality. From its inception in the work of Sutherland (1983), the study of corporate crime has been informed by a distinct brand of realism in which researchers have endeavored to penetrate the corporate veneer and peel back the various layers of deception and deniability in the interests of revealing the rot known to lie beneath the surface. The problem with this task of excavating ‘real crimes’ and exposing the substratum of corporate harm is that it embodies a reified view of finance, markets, and the economy as inherently rational and ahistorical domains sustained by the machinations of greed and self-interested calculation. Consequently, scholars have overlooked several broader theoretical questions regarding the ways in which financial markets and corporate activities are themselves constituted and defined. Markets are not only spheres of autonomous calculation, nor are they mere purveyors of economic inequality. They are also cultural and symbolic spaces (Abolafia, 1996; Carruthers, 1996; Carrier, 1997; Lie, 1997) in which considerations of ‘harm’ and ‘wrongdoing’ are tied to complex intersections between legal codes, informational relays, interpersonal networks, and corporate appearances.8 With this in mind, corporate and white-collar crime scholars would do well to move beyond a narrowly realist stance and engage with the discursive and symbolic aspects of markets, corporations, and crimes—including the role of the media as not simply a device for reproducing narrowly hegemonic views of corporate crime, but as an active player that shapes regulatory meanings, moves markets, and encourages the very types of practices (such as the hyping of stocks by financial news personalities) that led to the corporate scandals in the first place.

A final lesson to emerge from this analysis is that we must devote more attention to considerations of knowledge and knowledgeability in the study of corporate and white-collar crime. We need to concern ourselves with the extent to which the power of the corporate and financial sector is maintained and reproduced through the ways in which knowledge of the economy and economic practice is produced and framed. This follows a theoretical tack similar to that of Snider (2000) and Tombs and Whyte (2003) who draw, albeit
loosely, from the sociology of knowledge in arguing that the task of exposing and documenting corporate and white-collar offending is impeded by a crisis of knowledge. That is, scholars are increasingly frustrated in their bid to document corporate crime given the de facto and de jure de-criminalization of many corporate offenses and the ability of corporations to shield themselves from outside scrutiny. Thus, one can argue that a very real epistemological crisis serves to sustain and reproduce corporate power and hinder more critical forms of criminological inquiry. However, drawing upon this article’s results, I would argue that it is not simply an absence or lack of knowledge but more subtle and less visible limits to the intelligibility of corporate activities that need to be brought to bear in judging and evaluating these practices. We need to attend not only to ‘unmasking the crimes of the powerful’ (Tombs, 1999; Snider, 2000, 2003; Tombs and Whyte, 2003; Pearce and Tombs, 2004) but to the boundaries and limits of knowledgeable; we need to come to terms with the limited discursive frames and modes of intelligibility brought to bear on corporate activities. This interest in the production of financial and economic knowledge requires that we transcend the complicity between economic and political economy scholars—each of which remain wedded to a reified understanding of markets and business—and focus instead on the situated contingencies of economic and financial knowledge. It is the recognition of this unique epistemology of corporate power that represents one of the most important lessons of ‘Enron’ and a necessary foundation for future criminological inquiry in this arena.

Notes

I would like to thank Laureen Snider, Chris Andersen, and Randy Lippert, as well as the three anonymous reviewers, for their insightful comments and valuable feedback on earlier drafts of this article.

1. To be fair, this oversight is justified in part by the media’s own silence on matters of corporate criminality, a neglect that is rooted in the low visibility of corporate and white-collar crimes, their poor dramatizability, and their incommensurability with standard communication formats and criteria of newsworthiness (Lynch et al., 2000; Levi, 2001). As noted by Levi, ‘Fraud stories are hard to make televisual and both they and print stories often get killed because they are “not news”’ (2001: 25).

2. While The Economist publishes a US edition, it is based in London and its perspective is distinctly international in nature. The US edition was used in the analysis, given my interest in how these events were relayed to a North American audience.

3. Given multiple mentions of conflicting themes, often within the same article, this analytical process is resistant to straightforward quantification in tabular form. Rather than the number of times each theme was mentioned, I was more interested in general patterns of coverage, discussion, and critique.
4. While some variations were noted in the character and tone of the coverage across the different publications—for example, the daily newspapers provided a more balanced account of the scandals, reflecting a variety of perspectives and interests as well as a populist suspicion of business, while The Economist offered a more nuanced and technical analysis of the scandals as financial events—the sources were nevertheless quite similar in terms of the variations in their coverage and their use of the discourses of attribution and recovery.

5. Foucault no doubt overstates the case here, subscribing to a rather caricatured and somewhat essentialized view of ideology reminiscent of early Marxism rather than the more recent formulations at the hands of the neo-Marxists. While echoing Foucault’s suspicion of ideology, I would opt for a more nuanced approach in which the contrast between discourse and ideology is less clearly drawn and rooted in the question of discursive effects (see Purvis and Hunt, 1993). Nevertheless, the distinction between ideology and discourse remains apposite, particularly for our purposes, as it is essential to think about how financial discourses are constituted through localized technologies, logics, and techniques in a way that is irreducible to broader sets of interests and structural relations—although these discursive formations no doubt resonate with broader forms of power and domination.

6. This is analogous to the functions of modern accounting techniques, which similarly act to impart a visibility and imagined calculability upon the financial and corporate world (Miller, 1994; Miller and Power, 1995; Power, 1997).

7. The ‘investor’ in financial discourse is uniquely disembodied. It is not an active voice but rather a passive caricature, the anthropomorphization of a loosely bundled set of economic and financial interests projected onto a virtual body and soul.

8. I do not want to suggest that corporations do not cause ‘real’ harm. Clearly they do. However, these harms are not pre-given. They are shaped and constituted through a variety of organizational and professional engagements and corporate contingencies and they bear the imprint of discursive logics, struggles, and contests. This observation may be more palatable in the context of financial crime where the nature of loss is far more ambiguous and contestable than is the case in physical crimes against employees, consumers, and the environment. Nevertheless, even in more extreme instances of corporate violence, lines of responsibility, and thus the character of the harm itself, are shaped through a variety of discursive engagements and political plays.

9. We have not had very long to wait as the sub-prime mortgage crisis has already dwarfed the Eron and WorldCom scandals in both scale and losses.

References


JAMES W. WILLIAMS is an Associate Professor in the Division of Social Science at York University in Toronto, Canada. He has published in the areas of private policing, economic crime, and financial governance. His most recent research is on the regulation of financial markets in Canada, the USA, and Britain.