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## **Setting the Conditions of Competition: Repositioning the Neoliberal State in the Fraud Debate**

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### ***Introduction***

Beginning in the late 1970's, the neoliberal period has witnessed the revival of many of the philosophies, policies and practices of classical liberalism. In their attempts to protect the sovereignty of the individual and economic enterprise vis-a-vis what they perceived as unjustified and destructive regulation, the main proponents of the neoliberal shift - principally those comprising the Mont Pelerin Society - were heavily influenced by these earlier ideas. In response to the forces of 'creeping socialism'<sup>1</sup>, neoliberals sought to erect greater protections around individual economic freedoms by returning to the policies and practices of extreme economic liberalisation seen during the classical liberal period. However, under neoliberalism, the role of the state was reconstituted from liberalism's minimalist night-watchman - which was restricted to 'the maintenance of order and the enforcement of contracts'<sup>2</sup> - to one actively involved in the creation and maintenance of free market competition<sup>3</sup>. Consequently, a significant rupture exists between the popular interpretation of neoliberalism as state retraction

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<sup>1</sup> F Hayek *The Road to Serfdom* (Routledge & Kegan Paul 1976)

<sup>2</sup> M Friedman 'Neo-Liberalism and its Prospects' (*Farmand* 1951 February no page)  
[https://miltonfriedman.hoover.org/friedman\\_images/Collections/2016c21/Farmand\\_02\\_17\\_1951.pdf](https://miltonfriedman.hoover.org/friedman_images/Collections/2016c21/Farmand_02_17_1951.pdf)

<sup>3</sup> *ibid*

and retreat and the reality of the active role played by the neoliberal state in the economy in order to further the interests of capital<sup>4</sup>. Within criminology, it is widely recognised that the conditions created by the neoliberal state have led to a significant ‘blurring of the boundaries’ between licit and illicit practice, leading to the proliferation of harmful and criminal corporate practices now endemic throughout the neoliberal economy<sup>5</sup>. Drawing on data collected in interviews with those convicted for the perpetration of high-yield fraudulent investment (Ponzi) schemes, the current chapter seeks to extend the analysis of the state’s responsibility in the creation of harm and criminality by examining the way in which the conditions present within the formal economy also facilitate more individualistic acts of economic predation further down the social scale, primarily through their role in setting the conditions for competition. It will be argued that the conditions present within the mainstream economic landscape mean that the criminal, semi-licit and harmful but legal actions of the powerful are not only tolerated, but often rewarded. The criminogenic potential of these conditions is realised not only through the proliferation of opportunities and rewards for crime, but also indirectly by creating a situation in which economic actors come to perceive the impossibility of competing effectively whilst remaining wedded to moral and legal codes. More particularly, the chapter offers insight into the ways in which these criminogenic currents in our contemporary arrangements facilitate, incentivise and motivate criminality among powerful economic actors, but also those operating further down the economic food chain.

### ***The Neoliberal State***

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<sup>4</sup> K Burdis & S Tombs ‘After the Crisis: New Directions in Theorizing Corporate and White-Collar Crime’ in S Hall & S Winlow (eds) *New Directions in Criminological Theory* (Routledge 2012)

<sup>5</sup> K Burdis & S Tombs ‘After the Crisis: New Directions in Theorizing Corporate and White-Collar Crime’ in S Hall & S Winlow (eds) *New Directions in Criminological Theory* (Routledge 2012); V Ruggiero ‘Networks of Greed’ (2017) 1 (1) *Justice, Power and Resistance*, 3

The ascendancy of neo-liberal thought within the political and economic realm can, in part, be attributed to the careful planning of a particular group of economists and philosophers who comprised the Mont Pelerin Society<sup>6</sup>. The members of this group lamented what they perceived as the creeping influence of socialism and collectivist politics, and the demise of liberal ideas within post-world-war-one society. Hayek, for example, claimed that ‘although we had been warned by some of the greatest political thinkers of the nineteenth century... that socialism means slavery, we have steadily moved in the direction of socialism’<sup>7</sup>. Consequently, Hayek suggested that ‘we have progressively abandoned that freedom in economic affairs without which personal and political freedom has never existed in the past’<sup>8</sup>. In response, the Mont Pelerin Society sought to construct protections around individual economic freedoms principally through the pursuit of a free-market economy using political lobbying and liberal think tanks. However, far from constituting a politically homogenous group, considerable disagreement existed between Mont Pelerin members over the most desirable means of achieving the goal of a free-market-based competitive order. Whilst some sought to maintain fidelity to liberalism’s minimalist night-watchman state, others identified the need to reconfigure liberal philosophy and the role of the state within this<sup>9</sup>. Thus, Friedman, for example, understood the liberal position on the role of the state to be underpinned by a ‘negative philosophy’<sup>10</sup>. He thus questioned the role of laissez-faire, favouring instead a situation in which the state assumes a limited, but active role in order to ‘police the system,

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<sup>6</sup> The Mont Pelerin Society was formed in 1947 and was named after the location in Switzerland where the society first met. The group comprised of like-minded people drawn from numerous fields such as politics, philosophy, economics, business, education etc., who were united in their ambition to re-establish policies of extreme economic liberalisation. For an overview see: D Harvey *A Brief History of Neo-Liberalism* (Oxford University Press 2007)

<sup>7</sup> F Hayek *The Road to Serfdom* (Routledge & Kegan Paul 1976) p10

<sup>8</sup> *ibid*

<sup>9</sup> E Butler ‘Removing Obstacles on the Road to Economic Freedom: 1947-1980’ in J B Taylor (ed) *A Special Meeting The Mont Pelerin Society 1980-2020. From the Past to the Future: Ideas and Actions for a Free Society* (Hoover Institution/ Stanford University 2020)

<sup>10</sup> M Friedman ‘Neo-Liberalism and its Prospects’ (*Farmand* 1951 February)

[https://miltonfriedman.hoover.org/friedman\\_images/Collections/2016c21/Farmand\\_02\\_17\\_1951.pdf](https://miltonfriedman.hoover.org/friedman_images/Collections/2016c21/Farmand_02_17_1951.pdf)

establish conditions favorable to competition and prevent monopoly, provide a stable monetary framework, and relieve acute misery and distress'<sup>11</sup>. The neoliberal state came to be required to 'preserve law and order, to enforce private contracts, to foster competitive markets'<sup>12</sup> and to 'guarantee the quality and integrity of money'<sup>13</sup>. Ultimately, the function of the neo-liberal state can be understood to be the creation and maintenance of the 'conditions for capital accumulation'<sup>14</sup>. From this perspective, neo-liberal economies are understood to be self-regulating according to competitive, market principles with inefficiency and corruption being seen as the inevitable outcomes of *excessive* state intervention<sup>15</sup>. Consequently - in official terms, at least - the state's role is restricted to a few core activities which ensure the requisite conditions for market operations.

However, unlike classical liberalism's view of the market as a natural entity, neo-liberalism understands the market to be a human creation which requires a certain level of human input in order to ensure its existence and order. Crucially, then, state intervention is justifiable only when creating the conditions for free competition and must not be allowed to intervene in, or alter, market outcomes<sup>16</sup>. In order to maximise the effects of competition, therefore, neo-liberalism has sought to extend the reach and scope of market transactions, and thus '[redefined] social and ethical life in accordance with economic criteria and expectations'<sup>17</sup>. Market transactions are of such centrality to the neo-liberal perspective that they come to be seen 'as a guide for all human action'<sup>18</sup>. Operating within competitive free markets which

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<sup>11</sup> *ibid*

<sup>12</sup> M Friedman *Capitalism and Freedom* (40th Anniversary edn University of Chicago Press 2002) p2

<sup>13</sup> D Harvey *A Brief History of Neo-Liberalism* (Oxford University Press 2007) p2

<sup>14</sup> D Harvey *A Brief History of Neo-Liberalism* (Oxford University Press 2007) p7

<sup>15</sup> *ibid* p2

<sup>16</sup> B Amable 'Morals and Politics in the Ideology of Neo-Liberalism' (2011) 9 (1) *Socio-Economic Review*, 3 p6

<sup>17</sup> J Dean *Democracy and Other Neo-liberal Fantasies: Communicative Capitalism and Left Politics* (Duke University Press 2009) p51

<sup>18</sup> *ibid*

provide protection from excessive state regulation, entrepreneurial, creative individuals drive economic progress in a competitive order sustained by state intervention<sup>19</sup>. Despite this somewhat complex reality, the establishment of neo-liberal economics has been accompanied by the language of classic liberalism with a great deal of discussion around state contraction, deregulation, free markets and laissez-faire policy. However, rather than accurately depicting changes between state-market relations, a chasm appears to exist between neo-liberal rhetoric and practice leading some to suggest that the system itself is one based in fraud and deceit<sup>20</sup>. Thus, despite the centrality of the small state, free-markets and free competition to neo-liberal *philosophy*, in reality these things have very little to do with the implementation of neo-liberal *policy*<sup>21</sup>. The use of neo-liberal philosophy within contemporary right-wing political rhetoric has, therefore, served to ‘maintain the fiction of an ontological separation between state and market’ whilst in reality there has been a significant ‘interweaving of state and private capital’<sup>22</sup>. Many commentators have sought to draw attention to the persistence of the state within neo-liberalism and suggest that, rather than indicating a failure, or incomplete development, of neo-liberalism, a strong state is in fact essential to the neo-liberal model. The ideas of state capture<sup>23</sup>, or state occupation by powerful interests<sup>24</sup>, are used to explain the state’s role in the organised transfer of wealth which lies at the heart of the neo-liberal movement. Thus, rather than diminishing the power of the state, neo-liberalism seeks to utilise

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<sup>19</sup> M Friedman ‘Neo-Liberalism and its Prospects’ (*Farmand* 1951 February)

[https://miltonfriedman.hoover.org/friedman\\_images/Collections/2016c21/Farmand\\_02\\_17\\_1951.pdf](https://miltonfriedman.hoover.org/friedman_images/Collections/2016c21/Farmand_02_17_1951.pdf)

<sup>20</sup> D Whyte & J Wiegatz ‘The Moral Economy of Neo-liberal Fraud’ in D Whyte & J Wiegatz (eds) *Neo-liberalism and the Moral Economy of Fraud* (Routledge 2017b)

<sup>21</sup> M Davis & D Bertrand Monk ‘Introduction’ in M Davis & D Bertrand Monk (eds) *Evil Paradises: Dreamworlds of Neo-liberalism* (The New Press 2007) p x

<sup>22</sup> K Burdis & S Tombs ‘After the Crisis: New Directions in Theorizing Corporate and White-Collar Crime’ in S Hall & S Winlow (eds) *New Directions in Criminological Theory* (Routledge 2012) p283

<sup>23</sup> G Monbiot *Captive State: The Corporate Takeover of Britain* (Pan Books 2001)

<sup>24</sup> T Frank *The Wrecking Crew: The American Right and the Lust for Power* (Random House 2008)

political power in order to further the interests of the powerful, as the following excerpt demonstrates:

Since there is no possible moral difference between modes of government, it doesn't matter whether the beast is "big" or "small"; all that matters is whose interests it serves. The object of the political war is not to shrink the state or shut it down; it is to capture the thing and run it for your constituents' benefit<sup>25</sup>

In practice, therefore, neo-liberalism is heavily dependent on 'political alliances'<sup>26</sup> and on the 'use of bureaucratic, legal and security apparatuses of the state in ways that benefit corporate and financial interests'<sup>27</sup>. Central to this process has been the financial sector's 'capture' of government in order to 'enrich' and 'un-tax the banking sector and its major clients', allowing for the development of distinctly 'oligarchic' political arrangements<sup>28</sup>. Similarly, Davis and Bertrand Monk<sup>29</sup> suggest that one of the defining features of neo-liberal policy has been the 'naked application of state power to raise the rate of profit for crony groups, billionaire gangsters, and the rich in general'. Consequently, Harvey<sup>30</sup> draws attention to the way in which state power has been employed in a process of economic restructuring allowing the economy to be 'disembedded' from political and social restraints erected during the post-war social-democratic period. On account of its role in the removal of obstacles to accumulation, both Harvey<sup>31</sup> and Badiou<sup>32</sup> identify the central role played by neo-liberal economic policy in the restoration of unchecked inequalities of the past. Accordingly, Harvey describes neo-liberalism

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<sup>25</sup> *ibid* p39

<sup>26</sup> J Dean *Democracy and Other Neo-liberal Fantasies: Communicative Capitalism and Left Politics* (Duke University Press 2009) p50

<sup>27</sup> *ibid* p49

<sup>28</sup> M Hudson *The Bubble and Beyond: Fictitious Capital, Debt Deflation and Global Crisis* (ISLET, 2012) p408

<sup>29</sup> M Davis & D Bertrand Monk 'Introduction' in M Davis & D Bertrand Monk (eds) *Evil Paradises: Dreamworlds of Neo-liberalism* (The New Press 2007) px

<sup>30</sup> D Harvey *A Brief History of Neo-Liberalism* (Oxford University Press 2007)

<sup>31</sup> *ibid*

<sup>32</sup> A Badiou *The Century* (Polity 2008)

as ‘a *political* project to re-establish the conditions for capital accumulation and restore the power of the economic elites’<sup>33</sup>. Within this process, he is keen to highlight the Janus-faced nature of the neo-liberal project in which a severe disjuncture exists between the espoused ideologies of neo-liberalism on the one hand, and the reality of its implementation on the other. On this subject, he states:

Masked by a lot of rhetoric about individual freedom, liberty, personal responsibility and the virtue of privatisation, the free market and free trade, it [neo-liberalism] legitimised draconian policies designed to restore and consolidate capitalist class power<sup>34</sup>

Both Badiou<sup>35</sup> and Harvey<sup>36</sup> discuss the systematic and wholesale transfer of wealth to the capitalist classes which takes place under the neo-liberal model. However, this unrestrained and deliberate upward transfer of wealth contrasts sharply with the neo-liberal account of the political-economic system in which processes of liberalisation open up the prospect of enrichment to all. Key to this argument is that by liberating economic actors and markets ‘everyone benefits, not just some, *all*’<sup>37</sup>, because the rewards of productivity will filter through the various strata of society in a ‘trickle-down’, or ‘horse and sparrow’ effect. This ‘rising tides raise all boats’ argument posits that the genius and creativity of ‘wealth creators’ can come to benefit society as a whole but in order to be able to do so, ‘the market has to be liberated, freed from constraints, unleashed to realize its and our full potential’<sup>38</sup>. In practice, however, this ideal remains at odds with the reality of the significant acceleration of inequality under

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<sup>33</sup> D Harvey *A Brief History of Neo-Liberalism* (Oxford University Press 2007) p19

<sup>34</sup> D Harvey *The Enigma of Capital: And the Crises of Capitalism* (Profile Books 2010) p10

<sup>35</sup> A Badiou *The Century* (Polity 2008)

<sup>36</sup> D Harvey *The Enigma of Capital: And the Crises of Capitalism* (Profile Books 2010)

<sup>37</sup> J Dean *Democracy and Other Neo-liberal Fantasies: Communicative Capitalism and Left Politics* (Duke University Press 2009) p55

<sup>38</sup> *ibid*

neoliberalism<sup>39</sup>. Rather than representing the outcome of nuances and variations in the neoliberal movement, this disjunction is deeply functional in facilitating processes of selective enrichment whilst simultaneously masking the reality of these arrangements<sup>40</sup>. Liberal philosophy, in this sense, has ‘functioned not as the real ends of neo-liberal policy, but as its guiding myth and ideological alibi’<sup>41</sup>. Rather than being implemented for its own sake, Harvey<sup>42</sup> suggests that neo-liberal ideology has been used as ‘justification and legitimation’ for the means required in order to achieve elite restoration. Many authors have therefore sought to highlight the selective manner in which neoclassical ideas are implemented within the neo-liberal project. Harvey<sup>43</sup>, for example, suggests that ‘when neo-liberal principles clash with the need to restore or sustain elite power, then the principles are either abandoned or become so twisted as to be unrecognizable’<sup>44</sup>. Amidst the lived reality of late-capitalism, therefore, many of the espoused defining principles of neo-liberalism are considered disposable should they conflict with the overall trajectory of capitalism and elite accumulation. Neo-liberal capitalism, therefore, reveals itself to have no allegiances. Rather, it aligns itself flexibly with whichever arrangements allow for capitalist expansion at a given moment. Crucially, for the criminological discipline, these myriad arrangements come to include those which incubate, facilitate and sustain harmful and criminal behaviours of elite financial actors.

Thus, whilst the neo-liberal project has ostensibly set out on a project to establish free markets by reducing and removing regulation, the reality is that the period has witnessed a significant

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<sup>39</sup> D Harvey *A Brief History of Neo-Liberalism* (Oxford University Press 2007)

<sup>40</sup> A Badiou *The Century* (Polity 2008); J Dean *Democracy and Other Neo-liberal Fantasies: Communicative Capitalism and Left Politics* (Duke University Press 2009); D Harvey *The Enigma of Capital: And the Crises of Capitalism* (Profile Books 2010)

<sup>41</sup> M Fisher ‘How To Kill a Zombie: Strategizing the End of Neo-liberalism’ (Open Democracy 2013) [www.opendemocracy.net](http://www.opendemocracy.net)

<sup>42</sup> D Harvey *A Brief History of Neo-Liberalism* (Oxford University Press 2007) p19

<sup>43</sup> *ibid*

<sup>44</sup> *ibid*



amount of re-regulation, aimed at promoting and protecting the interests of finance<sup>45</sup>, whilst surreptitious attempts have been made to undermine *particular* aspects of business regulation. Thus, no simple, overt dismantling of regulation has taken place. Instead, we have witnessed a ‘material and ideological undermining of regulatory bodies, leading to their virtual emasculation, or at least significantly reduced capacity’<sup>46</sup>. Whilst this clandestine attack on regulatory bodies has often involved the restriction of funding, Frank suggests the strategic appointment of personnel is also key to understanding the process. Thus, often, regulatory agencies appoint people who are ‘distinctly hostile to those agencies’ very purpose’<sup>47</sup> and who, therefore, ensure their impotence. Throughout the mainstream economy, therefore, neoliberalisation has systematically worked to create ‘zones of exception’<sup>48</sup>, spaces in which the ‘intelligent deviation’<sup>49</sup> of financial actors can take place without the risk of criminalisation, or at least the likelihood of detection. The creation of such environments is known to have grave consequences in the form of the proliferation of harmful and criminal acts perpetrated by powerful economic actors<sup>50</sup>. In recognition of the expansion of economic criminality which has accompanied the neoliberalisation of the West, Wiegratz<sup>51</sup> suggests that fraud and predation are now inscribed at the heart of mainstream culture to the extent that they have

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<sup>45</sup> K Burdis & S Tombs ‘After the Crisis: New Directions in Theorizing Corporate and White-Collar Crime’ in S Hall & S Winlow (eds) *New Directions in Criminological Theory* (Routledge 2012) p283

<sup>46</sup> P Hillyard & S Tombs ‘Towards a Political Economy of Harm: States, Corporations and the Production of Inequality’ in P Hillyard and others (eds) *Beyond Criminology: Taking Harm Seriously* (Pluto 2004) p52; see also V Cooper & D Whyte ‘Introduction: The Violence of Austerity’ in V Cooper & D Whyte (eds) *The Violence of Austerity* (Pluto 2017) p21

<sup>47</sup> T Frank *The Wrecking Crew: The American Right and the Lust for Power* (Random House 2008) p40

<sup>48</sup> G Agamben *State of Exception* (University of Chicago Press 2005); S Hall *Theorizing Crime and Deviance: A New Perspective* (Sage 2012); R Atkinson & T Rodgers ‘Pleasure Zones and Murder Boxes: Online Pornography and Violent Video Games as Cultural Zones of Exception’ (2015) 56 (6) BJC, 1291

<sup>49</sup> J S Mill *On Liberty and Other Writings* (Cambridge University Press 2006) p60

<sup>50</sup> See for example, C Ferguson *Inside Job: The Financiers Who Pulled off the Heist of the Century* (One World 2012)

<sup>51</sup> J Wiegratz ‘Fake Capitalism? The Dynamics of Neo-liberal Moral Restructuring and Pseudo-Development: The Case of Uganda’ (2010) 37 (124) *Review of African Political Economy*, 123; J Wiegratz ‘The Neo-liberal Harvest: The Proliferation and Normalisation of Economic Fraud in a Market Society’ in S Winlow & R Atkinson (eds) *New Directions in Crime and Deviancy* (Routledge 2012)

become the ‘new normal’<sup>52</sup>. Similarly, for Ruggiero, the routinization of criminality within the mainstream economy is such that he suggests that it ‘constitute[s] neither exceptional [behaviour] nor social pathology[y]’<sup>53</sup>. Given, the quotidian nature of legal violations within mainstream business, Bakan suggests that ‘corporate illegalities are rife throughout the economy’ and that ‘[m]any major corporations engage in unlawful behaviour, and some are habitual offenders with records that would be the envy of even the most prolific human criminals’<sup>54</sup>. Consequently, neoliberal economies are not only characterised by harmful behaviours incorporated within the boundary of legality by processes of deregulation, but also by unimaginable levels of criminality<sup>55</sup>. Moreover, many of these practices have elicited almost no meaningful responses from regulatory bodies and law enforcement agencies<sup>56</sup>, often resulting instead in highly lucrative returns<sup>57</sup>. As a result, their presence in the mainstream economy has been able to exert a significant influence over conditions of competition in contemporary financial markets.

### ***Dirty Economies***

Thus, under contemporary capitalism, both economic structures and cultures have been subject to extensive revision and this has significantly altered the way in which late-capitalist subjects interact with, and think about, economic activity. Criminologists have increasingly recognised

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<sup>52</sup> D Whyte & J Wiegratz (2017a) ‘Neo-liberalism, Moral Economy and Fraud’ in D Whyte & J Wiegratz (eds) *Neo-liberalism and the Moral Economy of Fraud* (Routledge 2017a) p1

<sup>53</sup> V Ruggiero *Organized and Corporate Crime in Europe: Offers that Can’t Be Refused*. (Dartmouth 1996) p155

<sup>54</sup> J Bakan *The Corporation: The Pathological Pursuit of Profit and Power* (Constable, 2005) p75

<sup>55</sup> J Bakan *The Corporation: The Pathological Pursuit of Profit and Power* (Constable, 2005); C Ferguson *Inside Job: The Financiers Who Pulled off the Heist of the Century* (One World 2012); N Shaxson *Treasure Islands: Tax Havens and the Men Who Stole the World* (Random House 2011)

<sup>56</sup> See for example, C Ferguson *Inside Job: The Financiers Who Pulled off the Heist of the Century* (One World 2012)

<sup>57</sup> J Bakan *The Corporation: The Pathological Pursuit of Profit and Power* (Constable, 2005); K Burdis & S Tombs ‘After the Crisis: New Directions in Theorizing Corporate and White-Collar Crime’ in S Hall & S Winlow (eds) *New Directions in Criminological Theory* (Routledge 2012); C Ferguson *Inside Job: The Financiers Who Pulled off the Heist of the Century* (One World 2012)

the ways in which mainstream economic reforms have blurred the boundaries between licit, semi-licit and illicit practice<sup>58</sup> and have drawn attention to the way in which the boundary between these categories is not only blurred, but also arbitrary and subject to constant revision<sup>59</sup>. Rather than representing a judgement on the moral or ethical desirability of a particular form of economic activity, the boundary of legality in the spectrum of enterprise may often simply reflect particular interests which are totally divorced from any consideration of the harmful outcomes of the behaviour under scrutiny<sup>60</sup>. Thus, the period of late-capitalism has witnessed the development of ‘dirty economies’<sup>61</sup> in which the distinction between legal and illegal conduct is unclear. Neoliberal processes of financialisation and de- and re-regulation have played a central role in the development of these distinctly ‘grey’ territories of economic practice. The technical apparatus of financial capital - and in particular the development of Offshore Financial Centres (OFCs) – are also deeply implicated in the ‘greying’ of the economy. Within these spaces, entrepreneurs and business people from across the spectrum of enterprise<sup>62</sup> come to engage in a range of economic practices which include illicit, semi-licit and legal yet harmful behaviours<sup>63</sup>. Crucially, however, rather than requiring state withdrawal,

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<sup>58</sup> D C Smith ‘Paragons, Pariahs, and Pirates: A Spectrum-Based Theory of Enterprise’ (1980) 26 (3) *Crime & Delinquency*, 358; V Ruggiero *Organized and Corporate Crime in Europe: Offers that Can’t Be Refused*. (Dartmouth 1996); V Ruggiero ‘On Liberty and Crime: Adam Smith and John Stuart Mill’ (2008) 51 *Crime, Law and Social Change*, 435; V Ruggiero ‘Networks of Greed’ (2017) 1 (1) *Justice, Power and Resistance*, 3; D Hobbs ‘Criminal Collaboration: Youth Gangs, Subcultures, Professional Criminals and Organized Crime’ in M Maguire and others (eds) *The Oxford Handbook of Criminology* (2<sup>nd</sup> edn Oxford University Press, 1997)

<sup>59</sup> D C Smith ‘Paragons, Pariahs, and Pirates: A Spectrum-Based Theory of Enterprise’ (1980) 26 (3) *Crime & Delinquency*, 358; V Ruggiero ‘Networks of Greed’ (2017) 1 (1) *Justice, Power and Resistance*, 3

<sup>60</sup> *ibid*

<sup>61</sup> V Ruggiero ‘Networks of Greed’ (2017) 1 (1) *Justice, Power and Resistance*, 3

<sup>62</sup> D C Smith ‘Paragons, Pariahs, and Pirates: A Spectrum-Based Theory of Enterprise’ (1980) 26 (3) *Crime & Delinquency*, 358

<sup>63</sup> V Ruggiero ‘Networks of Greed’ (2017) 1 (1) *Justice, Power and Resistance*, 3 p16

active state involvement is necessary for the creation and maintenance of these anomic spaces distributed throughout the global economy.

In establishing these zones of exception<sup>64</sup>, neoliberal restructuring has firmly established harm at the heart of mainstream economic practice. The competitive impulse towards deregulation and impenetrable secrecy which has driven the development of a global network of financial centres (and in the neoliberal period, the creation of a range of financial vehicles for ensuring anonymity) has offered economic actors countless opportunities for acts of regulatory arbitrage<sup>65</sup> leading to the profusion of practices such as tax avoidance and transfer pricing<sup>66</sup>. Whilst harmful, many of the practices which take place here remain technically legal. However, the ‘regulatory blind-spots’ upon which they are dependent are also known to provide fertile ground for the perpetration of illicit financial activity<sup>67</sup>. Thus, within these regulatory black holes sustained by state power, dirty and clean financial revenues come to be entwined to the extent that they can no longer be distinguished from each other<sup>68</sup>. Moreover, the distinction between legal and illegal actors also becomes increasingly confused as illicit entrepreneurs often depend on those working in mainstream institutions to act as intermediaries, or gatekeepers, to financial institutions and products<sup>69</sup>. Within late-capitalist economies then,

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<sup>64</sup> G Agamben *State of Exception* (University of Chicago Press 2005)

<sup>65</sup> R Palan ‘Futurity, Offshore and the International Political Economy of Crime’ in J Beckert & M Dewey (eds) *The Architecture of Illegal Markets: Towards an Economic Sociology of Illegality in the Economy* (Oxford University Press, 2017); V Ruggiero ‘Networks of Greed’ (2017) 1 (1) *Justice, Power and Resistance*, 3; N Lord, and others (2019) ‘Other People’s Dirty Money: Professional Intermediaries, Market Dynamics and the Finances of White-Collar, Corporate and Organised Crimes’ (2019) 59 (5) *BJC*, 1217

<sup>66</sup> N Shaxson *Treasure Islands: Tax Havens and the Men Who Stole the World* (Random House 2011)

<sup>67</sup> R T Naylor *Wages of Crime: Black markets, Illegal Finance and the Underworld Economy* (Cornell University Press 2002); J Robinson *The Sink: Terror, Crime and Dirty Money in the Offshore World* (Constable 2003); N Shaxson *Treasure Islands: Tax Havens and the Men Who Stole the World* (Random House 2011); R Palan ‘Futurity, Offshore and the International Political Economy of Crime’ in J Beckert & M Dewey (eds) *The Architecture of Illegal Markets: Towards an Economic Sociology of Illegality in the Economy* (Oxford University Press, 2017)

<sup>68</sup> R Palan ‘Futurity, Offshore and the International Political Economy of Crime’ in J Beckert & M Dewey (eds) *The Architecture of Illegal Markets: Towards an Economic Sociology of Illegality in the Economy* (Oxford University Press, 2017); V Ruggiero ‘Networks of Greed’ (2017) 1 (1) *Justice, Power and Resistance*, 3 p8

<sup>69</sup> V Ruggiero ‘Networks of Greed’ (2017) 1 (1) *Justice, Power and Resistance*, 3; N Lord, and others (2019) ‘Other People’s Dirty Money: Professional Intermediaries, Market Dynamics and the Finances of White-Collar, Corporate and Organised Crimes’ (2019) 59 (5) *BJC*, 1217

access to financial networks and institutions comes to be dependent on assessments of a person's ability to uphold the cardinal value of secrecy, rather than on an appraisal of their legal or moral legitimacy. Shaxson suggests that within offshore networks:

legal frameworks that distinguish between the criminal and the legitimate have been eroded and replaced by networks of trust... Individuals with sums to launder or invest with minimal taxation want to know they are dealing with people who can be trusted not to have moral qualms<sup>70</sup>

The toleration and facilitation of both harmful and criminal practice are, therefore, integral features of the late-capitalist economy<sup>71</sup>. The 'dirty'<sup>72</sup> or 'gray'<sup>73</sup> economic spaces which this creates are deeply related to the proliferation of fraud for a number of reasons. Firstly, in severing the links between harm and illegality, neoliberal reforms have ensured that numerous practices which closely resemble fraud, and in particular Ponzi fraud, are able to develop outside the ambit of legal prohibition. Many features of the mainstream economy – including, for example, pension funds, the loan-to deposit ratios of banks, the rampant use of rehypothecation using financial instruments such as credit default swaps and collateralized debt obligations - have been identified as following the Ponzi model. Secondly, for those engaged in legally defined financial fraud, the structures and products of contemporary capitalism (created, maintained and supported by state apparatus) offer a means by which to legitimate or launder the proceeds of their crimes, significantly reduce the likelihood of detection and prosecution and, ultimately, considerably increase the profitability of fraud<sup>74</sup>. As a result, both

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<sup>70</sup> N Shaxson *Treasure Islands: Tax Havens and the Men Who Stole the World* (Random House 2011) p220

<sup>71</sup> V Ruggiero 'Networks of Greed' (2017) 1 (1) *Justice, Power and Resistance*, 3 p12

<sup>72</sup> V Ruggiero 'Networks of Greed' (2017) 1 (1) *Justice, Power and Resistance*, 3

<sup>73</sup> R T Naylor *Wages of Crime: Black markets, Illegal Finance and the Underworld Economy* (Cornell University Press 2002)

<sup>74</sup> R Palan 'Futurity, Offshore and the International Political Economy of Crime' in J Beckert & M Dewey (eds) *The Architecture of Illegal Markets: Towards an Economic Sociology of Illegality in the Economy* (Oxford

the institutions and personnel of the mainstream economy interact with fraudsters and their criminal revenues on a daily basis<sup>75</sup>. For this reason, the blurring of legal and moral boundaries within late-capitalist enterprise must be understood to affect actors operating at both ends of the spectrum of enterprise. Thus, just as criminal practices have come to resemble legitimate business more closely, so too have licit practices become analogous to criminality. Crucially, however, the overlap between the two spheres is not restricted to cultures and practices. Rather, the funds of licit and illicit enterprise have also become materially intertwined as they follow the same routes through mainstream financial institutions and actors to the extent that they become inseparable. In seeking to advance the interests of capital, therefore, contemporary economic arrangements not only enable the spread of fraudulent activity but also make its identification increasingly difficult and, ultimately, less relevant. Within late-capitalist economies, the revenues of criminality and fraud, it seems, are welcomed equally with others should they offer the prospect of profitability<sup>76</sup>. In providing discretion and profitability, the financial apparatus of neoliberalism not only facilitates, but also motivates, the ongoing participation of economic elites and corporations in harmful economic practice. Under such circumstances, economic sharp practice and malpractice alike are not only tolerated but rewarded by mainstream economic institutions and increasingly come to be accepted as means of surviving within contemporary capitalism.

### ***On Competition and Constrained Choices: The Experiences of Ponzi Fraudsters***

Within criminology, the anomic forces of mainstream economic culture are understood not only to alter the subjective and behavioural experiences of those occupying positions of power

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University Press, 2017); N Lord, and others (2019) 'Other People's Dirty Money: Professional Intermediaries, Market Dynamics and the Finances of White-Collar, Corporate and Organised Crimes' (2019) 59 (5) BJC, 1217

<sup>75</sup> R T Naylor *Wages of Crime: Black markets, Illegal Finance and the Underworld Economy* (Cornell University Press 2002); J Robinson *The Sink: Terror, Crime and Dirty Money in the Offshore World* (Constable 2003); N Shaxson *Treasure Islands: Tax Havens and the Men Who Stole the World* (Random House 2011)

<sup>76</sup> N Shaxson *Treasure Islands: Tax Havens and the Men Who Stole the World* (Random House 2011)

in the legitimate economy, but also those operating on, or well beyond, its margins<sup>77</sup>. Consequently, criminological analysis has begun to sketch the ways in which the cultural currents of dominant economic arrangements spill over to exert a direct influence over those further down the economic food chain<sup>78</sup>. Thus, dominant economic cultural norms around entrepreneurialism, pursuing profit at any cost, aggressive acquisitiveness, innovation and so on, are all found to be expressed through illegitimate economic practices, often by those who lack strong links to the formal economy<sup>79</sup>. However, the current chapter extends the analysis of the relationship between neoliberalism and criminality by examining the indirect influence of the neoliberal state's programme of economic restructuring over the behaviours of low-level illicit economic actors. It will be argued that, in setting the conditions of competition, the outcomes of these reforms serve to constrain the decision making of those navigating the

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<sup>77</sup> N Passas 'Anomie and Corporate Deviance'(1990) 14 *Contemporary Crises*,157; S Hallsworth *Street Crime* (Willan 2005); Steve Hall and others, *Criminal Identities and Consumer Culture: Crime, Exclusion and the New Culture of Narcissism* (Willan 2008); S Hall *Theorizing Crime and Deviance: A New Perspective* (Sage 2012); K Tudor 'Toxic Sovereignty: Understanding Fraud as the Expression of Special Liberty within Late-Capitalism' (2018) 2 (2) *Journal of Extreme Anthropology*, 7; K Tudor 'Symbolic Survival and Harm: Serious Fraud and Consumer Capitalism's Perversion of the Causa Sui Project' (2019) 59 (5) *BJC*, 1237

<sup>78</sup> K Tudor 'Toxic Sovereignty: Understanding Fraud as the Expression of Special Liberty within Late-Capitalism' (2018) 2 (2) *Journal of Extreme Anthropology*, 7 p8

<sup>79</sup> D Hobbs 'Professional and Organized Crime in Britain' in M Maguire and others (eds) *The Oxford Handbook of Criminology* (Oxford University Press 1994); D Hobbs *Bad Business: Professional Criminals in Modern Britain* (Oxford University Press 1995); D Hobbs *Lush Life: Constructing Organized Crime in the UK* (Oxford University Press 2013); V Ruggiero *Organized and Corporate Crime in Europe: Offers that Can't Be Refused*. (Dartmouth 1996);V Ruggiero 'It's the Economy, Stupid! Classifying Power Crimes' (2003) 35 *International Journal of the Sociology of Law*,163; V Ruggiero 'On Liberty and Crime: Adam Smith and John Stuart Mill' (2008) 51 *Crime, Law and Social Change*, 435; RT Naylor 'Towards a General Theory of Profit-Driven Crimes' (2003) 43 *BJC*, 81; S Hallsworth *Street Crime* (Willan 2005); Steve Hall and others, *Criminal Identities and Consumer Culture: Crime, Exclusion and the New Culture of Narcissism* (Willan 2008); K Tudor *Ponzi Schemes: Illicit Entrepreneurialism in Late-Capitalism*. (Emerald Forthcoming)

vicissitudes of economic enterprise and ultimately facilitate the transition across the boundary of legality in the pursuit of profit.

The data presented below originates from a project in which fourteen men who had been convicted for their perpetration of high-yield fraudulent investment (Ponzi) schemes were interviewed over the period of around eighteen months. The research explored the subjective and motivational aspects of fraud and identified a strong relationship between fraudulent enterprise and many aspects of contemporary capitalism including the dynamics of consumer culture<sup>80</sup> and economic cultures of sovereignty<sup>81</sup>. The issue of competition was also of extreme importance to the men in the study, who repeatedly sought to return to the topic during interviews. Crucially, their preoccupation with the issue of competition extended beyond the immediacy of their own relationships and experiences; they also reflected upon the way in which their interpretations of the wider economic landscape also influenced their decisions to engage in harmful conduct. Respondents regularly sought to draw comparisons between the behaviours for which they were convicted and those routinely taking place within legitimate business. The commonplace nature of fraud, malpractice and harm in the mainstream economy was something of which they were acutely aware and chose to discuss frequently. Richard, for example, worked in the investments industry and he described his revelations as he first entered the sector:

When I first started out, I was quite simply astounded by the levels of deceit and downright fraud that went on within the world of finance. This was, and is,

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<sup>80</sup> K Tudor 'Symbolic Survival and Harm: Serious Fraud and Consumer Capitalism's Perversion of the Causa Sui Project' (2019) 59 (5) BJC, 1237

<sup>81</sup> K Tudor 'Toxic Sovereignty: Understanding Fraud as the Expression of Special Liberty within Late-Capitalism' (2018) 2 (2) Journal of Extreme Anthropology, 7



considered normal practice in that world. I found out what a total racket it was.

Often it is a legal racket, but it is a racket nevertheless. Believe me. **Richard**

Similarly, Pete sought to draw attention to the inequality of treatment between different actors engaged in essentially the same types of behaviours. He was very keen to point out that whilst behaviours might be equally harmful, they might not be perceived as being equally problematic:

Man, we were torn apart for things that happen in banks every day. You see, our government is so stupid. I'll tell you why they're stupid because it's okay if you avoid paying tax legally, yeah? But this person has done it illegally. But it's exactly the same thing. So if you know how to manipulate the law and get around the law, it's okay to not pay tax. But if you just straight up try to avoid it and you don't know how to do it properly, *oooooh* you're a criminal. You've done wrong, you have. That's the difference, but they've both done the same thing. One went via the M25, the other went via the M1. It's as simple as that. At the end of the day, they both ain't paid it. **Pete**

Working in high finance, Cornelius was well acquainted with the reality of day-to-day practice in this industry. Cornelius felt an extreme sense of injustice about his convictions as he believed that the crimes for which he been punished represented normal conduct in the environment in which he worked.

The way the authorities came after me was unbelievable. It was disgraceful... the resources they wasted on my case. They simply had no understanding of business. None whatsoever. I mean the people who work in these [police] departments, they're just policemen, they're not businessmen. They have no knowledge of how finance works. How could they? And let me tell you that was *perfectly* plain when

it came to discussing these issues with them. All they know is the law and they see it from a very black and white perspective. But black and white does not take account of the realities of business, of what is required to make things work. The things they arrested me for... they weren't unusual or outlandish, just everyday business practices and of course, if you intervene at the wrong moment, they constitute a technical violation of the law and, yes, some people lose out, but that's investing! People couldn't win if others didn't lose. It's simple. So, in reality, if they were able to charge me for what might be construed as 'sharp practice', but which essentially constitutes normal business, I mean they could arrest almost every financier on the planet! The whole thing is ridiculous. Anybody...anybody would have made the same decisions. The decisions I made represented nothing more than sensible business strategies in the context of [investments]. **Cornelius**

For many, the excerpts detailed above might be interpreted as representing a form of 'neutralisation' insofar as they offer a 'condemnation of the condemners' and a claim of allegiance to the 'higher loyalties' of business<sup>82</sup>. In so doing, the respondents seek to highlight the normalisation of 'sharp practice', rule breaking and harm within wider economic culture, suggesting that because their conduct is aligned with 'normal' practice in the wider economy, it becomes less problematic. From Cornelius' perspective, it was unfair that he was being singled out and punished for implementing a business model which underpinned a significant number of mainstream practices. In suggesting that fraud and sharp practice were a quotidian element of the wider economic landscape, the respondents' accounts demonstrated the way in which the way in the broader landscape of neoliberal capitalism is characterised by a pervasive

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<sup>82</sup> GM Sykes & D Matza 'Techniques of Neutralization: A Theory of Delinquency' (1957) 22 (6) American Sociological Review, 664; M Benson 'Denying the Guilty Mind: Accounting for Involvement in a White-Collar Crime' (1985) 23 (4) Criminology, 583 p588

culture of moral and legal ambiguity<sup>83</sup> upon which fraudsters can draw in order to frame their own criminality through a lens of normality. Where participants had experience of working in mainstream business and finance, their work allowed them insight into the ‘new normal’ of neoliberal capitalism<sup>84</sup>. However, even when respondents didn’t have direct experience of working in these sectors, they displayed an awareness of the increasing ruthlessness of conduct which characterises economic exchange.

Whilst this wider culture in which fraud has become the ‘new normal’<sup>85</sup> undoubtedly gave the respondents access to some of the rationalisations set out above<sup>86</sup>, given the sapience of their observations, their reference to these wider cultures of immorality and criminality cannot merely be considered attempts to rationalize or excuse their own conduct. Rather, their discussion of these factors indicated that their own conduct decisions were heavily shaped by their assessment of the necessities of the economic landscape in which they operated. Importantly, however, the respondents did not seek to endorse the ‘new normal’ of neoliberalism which they observed, indicating that their engagement in criminal and harmful conduct was not driven by a new form of neoliberal morality as Whyte & Wiegratz<sup>87</sup> suggest. On the contrary, once respondents became more comfortable in discussing the harm that resulted from their actions, they remained committed to the fact that they did not intentionally

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<sup>83</sup> K Burdis & S Tombs ‘After the Crisis: New Directions in Theorizing Corporate and White-Collar Crime’ in S Hall & S Winlow (eds) *New Directions in Criminological Theory* (Routledge 2012)

<sup>84</sup> D Whyte & J Wiegratz ‘Neo-liberalism, Moral Economy and Fraud’ in D Whyte & J Wiegratz (eds) *Neo-liberalism and the Moral Economy of Fraud* (Routledge 2017a)

<sup>85</sup> *ibid*

<sup>86</sup> M Benson ‘Denying the Guilty Mind: Accounting for Involvement in a White-Collar Crime’ (1985) 23 (4) *Criminology*, 583 p588

<sup>87</sup> D Whyte & J Wiegratz ‘Neo-liberalism, Moral Economy and Fraud’ in D Whyte & J Wiegratz (eds) *Neo-liberalism and the Moral Economy of Fraud* (Routledge 2017a); D Whyte & J Wiegratz ‘The Moral Economy of Neo-liberal Fraud’ in D Whyte & J Wiegratz (eds) *Neo-liberalism and the Moral Economy of Fraud* (Routledge 2017b)

seek to harm others, nor was it something from which they derived satisfaction. Without exception, all respondents maintained a commitment to the position that the harmful effects of their crimes were something they found to be regrettable. Thus, their accounts were infused by a form of capitalist realism<sup>88</sup> as they suggested that wider economic cultures came to frame their own behaviours by necessity, rather than choice<sup>89</sup>. From this position, they were able to distance themselves from their actions by occupying a position of resigned cynicism about the nature of the world whilst expressing the belief that they would make different choices in another context<sup>90</sup>. Despite their dissatisfaction with the situation, they continued to participate according to rules with which they disagreed, highlighting late-capitalist subjects' limited capacity to withdraw their participation from systems they know to be harmful and which they deem to be undesirable<sup>91</sup>.

During interviews, the primary way in which these behaviours were explained was with recourse to notions of economic survival. Central to these understandings was the idea that if ruthlessness, harm, and criminality were endemic features of the everyday landscape of business, then to remain wedded to moral codes was to put oneself at a competitive disadvantage. The issue of competition was thus central to the way in which they explained their willingness to harm others. No respondents positively endorsed the predatory conduct they identified in mainstream economic practice, nor did they express support for their own harmful acts. Rather, they appeared to view their engagement in harmful acts of economic predation as a means of avoiding being left behind, an eventuality they appeared unable to

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<sup>88</sup> M Fisher *Capitalist Realism: Is There No Alternative?* (Zero Books 2009)

<sup>89</sup> K Tudor 'Toxic Sovereignty: Understanding Fraud as the Expression of Special Liberty within Late-Capitalism' (2018) 2 (2) *Journal of Extreme Anthropology*, 7

<sup>90</sup> See T Eagleton *On Evil* (Yale University Press 2010) p144

<sup>91</sup> S Winlow & S Hall 'Realist Criminology and its Discontents' (2016) 5 (3) *International Journal for Crime, Justice and Social Democracy*, 80 p88

countenance<sup>92</sup>. Ultimately, it seemed that wider economic conduct norms had the effect of constraining their choices over their own conduct by setting the conditions for competition. Therefore, whilst they acknowledged that they had harmed others in the course of their investment schemes, this was accepted as a necessary evil of being able to succeed in an environment in which the rules of engagement were considered to reduce one's capacity to act as an ethical subject. Thus, the respondents' moral choices need to be framed in the context of Adorno's<sup>93</sup> work which reminds us that the realisation of man's moral capacity is dependent on the creation of conditions in which ethical decision-making can flourish<sup>94</sup>. From this perspective, predation and harm might 'be traceable back not to any corruption of the will, but to the "ill" that society allows no viable course of action that would be moral'<sup>95</sup>. The logic of this position is discernible in the following extract from an interview with Victor:

Look, okay. So you want to know why I did it? **Victor**

Well, yes, but what I am asking is if it bothered you. Were you concerned about the fact that you made people lose money... about the fact that they lost out because of what you did? **Interviewer**

Of course it was unfortunate what happened. I'm not a complete bastard. I'm not impervious to all of this... this mess. But let's be realistic here. What was I supposed to do? Do you think you can get anywhere in this world without being willing to stray into muddy waters? It's like the phrase, you know the one about omelettes and eggs? You can't make an omelette if you don't crack some eggs... Whilst I'm not saying that I wanted to 'crack' the investors, what I'm saying is business can't

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<sup>92</sup> K Tudor 'Symbolic Survival and Harm: Serious Fraud and Consumer Capitalism's Perversion of the Causa Sui Project' (2019) 59 (5) BJC, 1237

<sup>93</sup> T Adorno *Problems of Moral Philosophy* (Polity 2001)

<sup>94</sup> See also T Eagleton *On Evil* (Yale University Press 2010) p147-8

<sup>95</sup> P Dews *The Idea of Evil* (Blackwell 2008) p202

happen without someone losing out and if you aren't willing to take the risk of someone losing out then there is no way you can compete with others who take that risk every day. **Victor**

The logic of the necessity of evil which is present in Victor's account is also mirrored in Cornelius' interpretation of his situation:

Really, I mean really, can you *imagine* the consequences of taking a moral stance in business?! The whole idea is just ludicrous. If you weren't able to take risks, to cut a few corners, to take chances with the money, well what would be the point? Someone else would and they would succeed and you wouldn't. It is quite straightforward. **Cornelius**

The accounts presented above demonstrate the way in which the majority of respondents understood moral choices to be incompatible with economic survival and success. Their narratives were thus indicative of the way that the model of competitive capitalism, which is identified by Bonger<sup>96</sup> as the creative force behind Hobbes'<sup>97</sup> *homo homini lupus*, is fundamentally at odds with moral and ethical regulation:

“Every man for himself” is the principle of success in such an environment. It is evident that the social sentiments must be strongly opposed in their development if the maxim just given is that which dominates. To act morally implies sacrificing one's own advantage for the sake of the general good. He who is compelled always to have his own interests at heart can give very little thought to the interests of others<sup>98</sup>

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<sup>96</sup> W Bonger *Criminality and Economic Conditions* (William Heinemann 1916) p290; 395

<sup>97</sup> T Hobbes *Leviathan* (Hackett 1994)

<sup>98</sup> W Bonger *Criminality and Economic Conditions* (William Heinemann 1916) p600-601

Given competitive capitalism's basis in sublimated violence<sup>99</sup>, egoism, ruthlessness and predation are the inevitable outcomes of unrestrained acquisitive struggle. As the interests of individuals are placed in conflict with one another under this model, Bonger<sup>100</sup> suggests that competitive capitalism serves to '[weaken] the social instincts of man' allowing fraudulent exchange to proliferate. At the core of Bonger's<sup>101</sup> argument is his assessment of the way in which capitalism institutionalises Hobbes' 'war of all against all'. Indeed, Boukli and Kotzé<sup>102</sup> recognise the way in which capitalism has actively sought to abandon notions of distributive justice<sup>103</sup> (see also Muller, 2003) meaning that Aristotelian notions of 'zemia' (loss) and 'kerdos' (gain) come to be inscribed at the heart of society. This internal logic of imbalance arising from the ubiquity of self-interest, and the attendant profusion of insecurity in the capitalist system is something which is identified by Sombart as having a deregulatory effect on conduct norms:

If acquisition is the first consideration, unrestricted competition is a matter of course. You need no longer be bound by considerations of any kind, whether moral, aesthetic or social. Unscrupulous is the adjective for your actions<sup>104</sup>

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<sup>99</sup> See W Bonger *Criminality and Economic Conditions* (William Heinemann 1916) p389; S Hall & S Winlow 'Barbarians at the Gate: Crime and Violence in the Breakdown of the Pseudo-Pacification Process' in J Ferrell and others (eds) *Cultural Criminology Unleashed* (Glasshouse Press 2004)

<sup>100</sup> W Bonger *Criminality and Economic Conditions* (William Heinemann 1916) p 400

<sup>101</sup> W Bonger *Criminality and Economic Conditions* (William Heinemann 1916)

<sup>102</sup> A Boukli & J Kotzé 'Introduction' in A Boukli & J Kotzé (eds) *Zemiology: Reconnecting Crime and Social Harm* (Routledge 2018)

<sup>103</sup> See also J Muller *The Mind and the Market: Capitalism in Western Thought* (Anchor Books 2003)

<sup>104</sup> W Sombart *The Quintessence of Capitalism: A Study of the History and Psychology of the Modern Business Man* (Routledge 1915) p183-5

The insecurity generated by competitive capitalism thus provides the energy upon which ruthless, harmful and often criminal attempts to secure triumph feed. By intervening to provide guarantees between economic actors through the consistent and equitable regulation of economic activity and the enforcement of law, the state is able to reduce levels of insecurity and, by extension minimise the acts of predation to which they give rise. However, under neoliberalism, the state has not only retreated from its role in regulating conduct, it has actively sought to intervene and regulate in a way which routinely supports and rewards the criminal and harmful behaviours of the economic elite. The data outlined above demonstrates that the conditions created by the state under neoliberalism provide fertile terrain not only for the criminality of economic elites, but also of those further down the social scale.

### ***Conclusion***

The chapter has outlined data collected during interviews with those convicted for investment fraud and has explored the way in which the subjective experiences of fraudsters are influenced by the conditions present in the neoliberal economy. The participants in the study all demonstrated an acute awareness of the presence of fraud and sharp practice in the mainstream economy and this exerted significant influence over their perceptions of what was necessary to survive. Their observations of the way in the success of others was underpinned by fraud, malpractice, or those behaviours which whilst technically legal are difficult to differentiate from other legally proscribed conduct, not only provided access to rationalisations for fraud, but also served to restrict their decision making. The fraudsters in the study therefore described feeling constrained by the rules of the game in which those stepping outside of moral and legal boundaries are routinely rewarded for their deviations. In the conversations which I shared with



them, the Ponzi scheme operators in the study demonstrated an awareness of the deregulatory effect this reality exerted over economic conduct norms and expressed the belief that this in turn influenced their decision to participate in fraud. Their accounts were thus infused with the belief that to remain wedded to legal and moral codes was to consign oneself to failure in advance. The wider rules of neoliberal capitalism meant that the men in the study felt that they were unable to compete effectively without stepping outside of the boundaries of legality. It is the contention of this chapter, therefore, that the conditions of competition established by the neoliberal state's rampant programme of de- and re- regulation in order to establish the freedom of capital have created a situation which not only facilitates normative diversification, but which necessitates it. Under such conditions, acts of economic predation come to be understood as a necessary evil of doing business and fraudulent enterprise can be rationalised as a means of self-preservation in an increasingly ruthless and cut-throat market-place. In creating and maintaining conditions in which fraud, malpractice and harmful conduct are tolerated and rewarded, neoliberal states systematically undermine the sustainability of ethical economic practice and facilitate the proliferation of economic predation.

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