UNIVERSITY OF CALIFORNIA

IRVINE

LOCAL IDEOLOGIES AND PUNISHMENT FOR WHITE-COLLAR CRIME: A COMPARISON BETWEEN THE U.S. AND CHINA

DISSERTATION

Submitted in partial satisfaction of the requirements

for the degree of

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by

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2017

DEDICATION

To

my family

in recognition of their worth

TABLE OF CONTENTS

LIST OF FIGURES ..... **ix**

ACKNOWLEDGMENTS ..... **x**

CURRICULUM VITAE ..... **xi**

ABSTRACT OF THE DISSERTATION ..... **xvii**

Chapter 1: Introduction **1**

2003 Penal Turn in the U.S. **3**

2002 Penal Turn in China **6**

Law-on-the-books 6

Law-in-Action 8

Rationale for Current Study **10**

Dissertation Research 10

Previous Research 12

Research Question 14

Chapter 2: Literature Review **17**

Neoliberalism as an Often-Cited Ideology **17**

Deregulation 17

Street Crimes as Distractions 18

Failure to Explain the Fluctuating Back End 20

Neoliberal Impact in China 23

Neo-institutional Analyses **25**

The U.S. Situation 26

The Chinese Situation 27

Penal Field: Applying an Ideological Approach to Current Literature **29**

Neoliberalism is One of Many Ideologies 29

Penal Field 32

Adding an Ideological Layer 33

Ideologies and Players Implied **34**

Ideologies and Players 34

Local Ideologies in the U.S. 35

Players in the U.S. 37

Ideologies and Players in China 40

Chapter 3: Research Method **42**

Data Collection **43**

FCPA and Securities Fraud 43

Archival Documents and Sources 43

Cases Selected 45

Limitations 47

Data Analysis **48**

Chapter 4: The American Media's Framing of FCPA **50**

Introduction **50**
First Era: Before Enron **51**
Overview 51
Crime Description 51
Criticism of Self-regulation 53
Punishment 54
Solution: Enhanced Supervision and Reference of Fighting Crime 56
Ideologies: Neoliberalism and Wilsonians 58
Second Era: After Enron **59**
From Bribe to Fraud 59
Crime Description: Minimization of Corporate Liability 61
It is Their Fault. 63
From Punishment to Investigation 64
Ideologies: Offshore Justice and Privatization of Justice 65
Offshore Justice Highlighting the Wrong Offender. 65
Privatization of Justice. 68
Global Business Ethics and Rule of Law: How the Law is Marginalized 72
Conclusion: Enhanced Neoliberalism 74

Chapter 5: The American Media's Framing of Fraud **77**
Introduction **77**
First Era: Before Enron **78**
Background and Case Selection 78
Two Extremes: Criminalization of Consumer Fraud and Decriminalization of Corporate Fraud 80
Consumer Fraud and Corporate Fraud. 80
In the Middle: Securities (Broker) Fraud 82
Punishment for Consumer Fraud, Corporate Fraud, and Securities Fraud 84
From Criminal to Civil Punishment 85
Legal Debate. 86
Deferred Prosecution Agreement. 87
Players: Experts, NGOs, and Lawyers 89
Ideologies 91
The FTC and the Fall of the Deception Standard. 91
Quality of Life and Small Government. 93
Settlement, Social Harmony and Lighter Punishment. 94
Second Era: After Enron **96**
Background and Cases Selection 96
Crime Description 96
Corporate Fraud. 96
Securities Fraud. 98
Conflict of Interest and Individual Liability. 99
Punishment 99
A Limited Version of Settlement. 99
Legal Debate. 101
Players in the Media 103
Ideologies 105

Distorted Social Harmony and The Disappearance of Adversarial Settings. 105
Normalization of Crime and Risk Management. 106
Rule of Law. 107
The Ideological Change 108

Chapter 6: The Chinese Media's Framing of Bank Fraud 111
Introduction 111
The First Era of Financial Crime and Corruption 114
Case Selection and Background 114
Criminal Framing of Bank Fraud 115
Street Crime Framing. 115
Personality vs. Environment. 116
GuanXi as a Focus. 117
Over-emphasis on Corruption and De-emphasis of Companies. 118
Punishment 119
Party Discipline and Criminal Punishment. 119
Personality and the Removal of GuanXi. 120
Solution: Self-Discipline 121
Players 123
Ideologies 124
Semi-Neoliberalism and Foreign Capital. 124
State-Confucianism and Big Government. 126
Big Brother and The Demise of Rule of Law. 127
Conclusion 129
The Second Era of Financial Crime and Corruption 130
Case Selection and Background 130
Criminal Framing of Bank Fraud 131
Diffusion of the Word "Scandal" and Removal of Personality. 131
GuanXi as Routine. 133
Punishment 136
Retreat of Party Discipline and the CBRC. 137
Solutions: Crackdown and Transparency 138
Players 140
Ideologies 141
Big Government Neoliberalism. 141
Ethical Neoliberalism. 143
The Home Thief and Offshore Justice. 144

Chapter 7: The Chinese Media's Framing of Securities Fraud 148
The First Era of Securities Fraud 148
Introduction 148
Crime Description 149
Fraud is Serious. 149
Nation-Corporate Management and Corporate Liability. 151
Punishment 153
Criminal and Civil Punishment. 153
Corporate Liability and The Big Should Fail. 154

Players 156
Legal Mobilization and Vanishing Big Government. 156
Ideologies 158
Big or Small Government 158
Neoliberal Ideas and Rule of Law. 159
The Second Era of Securities Fraud 161
Introduction 161
Crime Description 161
Victims as Rational Players and the Disappearance of the Nation. 162
The Image of Offenders and the Cause of Crime. 163
A Signal of Self-Regulation. 165
Punishment 166
Administrative Sanctions: Three Strikes and You're Out. 166
From Collusion to Reckless: The Effects of Restitution. 168
Tough on Issuers, Lenient on Brokers. 170
Players 171
Ideologies 172
Weak Supervision: Shifting Responsibility from the Center of Fraud to a Local Context. 172
The Big Should Fail and Individual Restitution. 173
Localized GuanXi. 174
Crippled Neoliberalism 175
Chapter 8: Local Ideologies: the U.S. and China 179
American De-emphasis of Corporate Crime in the 90s 180
The FCPA and Wilsonians 180
Disproportionate Fraud Framing and the Rhetoric of Restitution 182
Reasons for Disproportionate Framing: Four Ideologies and Players 184
American De-emphasis of Corporate Crime in the 2000s 186
From Bribe to Fraud 186
Privatization of Justice and Business Ethics 188
The End: Not Just Neoliberalism 190
The Future 192
Chinese Framing of Fraud in the 90s. 192
Corruption, GuanXi, and Bank Fraud 192
Specifying Enemies: Wilsonians and Confucianism 195
Designating Victims: The Big Should Fail 196
Limited Surveillance and Self-Discipline 198
The End: Semi-Neoliberalism and Two Lawless Spaces 200
Chinese Framing of Fraud in the 2000s 202
No More Ethicality 203
The Role of Deterrence and Shifting Responsibility 204
Crippled Neoliberalism and Investment Confidence 206
The Demise of *The Big Should Fail* 209
The Spectrum of Ideologies 210
Chapter 9: Conclusion 214

Different Ideologies, Similar Results **214**
Weak Law Enforcement in the U.S. 214
Weak Law Enforcement in China 217
Limitations **220**
Policy Implications and Future Studies **221**
Policy Implications. 222
Future Studies. 226
Final Words 226
Reference **228**

LIST OF TABLES AND FIGURES

		Page
Figure 2.1	Penal field	32
Figure 2.2	List of ideologies	35
Table 3.1	Selected cases	47
Figure 5.1	Increased criminalization of fraud before 2001	83
Table 6.1	Selected cases	113
Table 6.2	A general comparison of Wang and Zhang	131
Table 6.2	The outlier	133
Figure 8.1	Increased criminalization of fraud before 2001	183
Figure 8.2	A complete depiction of white-collar punishment ideologies in the 90s	186
Figure 8.3	A complete picture of white-collar punishment ideologies in the 2000s	190
Figure 8.4	Two styles of fraud framing	193
Figure 8.5	The hierarchy of social networks	194
Figure 8.6	A comparison of American (blue) and Chinese (orange) 1990s fraud ideologies	202
Figure 8.7	A comparison of American (blue) and Chinese (orange) 2000s fraud ideologies	208
Figure 8.8	The ideology framework after 2000	212

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ABSTRACT OF THE DISSERTATION

LOCAL IDEOLOGIES AND PUNISHMENT FOR WHITE-COLLAR CRIME:
A COMPARISON BETWEEN THE U.S. AND CHINA

By

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Doctor of Philosophy in Criminology, Law and Society

University of California, Irvine, 2017

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This dissertation is inspired by Garland's *Culture of Control*, which provides an ideological lens through which to understand responses to street crime. The present study aims to utilize the lens, exploring white-collar crime to investigate what I call the *Culture of No Control* in regard to corporate crime. Two economic giants—the United States and China— are utilized in this study, as the prosecution rate for white-collar crime has reached a 20-year low in both nations, and both are deeply influenced by neoliberalism. Although these trading partners possess different local ideologies, their white-collar punishment trajectories look surprisingly similar. As such, comparing different local ideologies and observing how they moderate neoliberalism can provide a holistic understanding of the formulation of *Culture of No Control*. To identify specific ideologies within both the Chinese and American media—the main institutions responsible for

promoting them—this dissertation applies discourse analysis to media reports, comparing 612 American media reports and 404 Chinese media reports from the 1990s to the 2000s. This enables exploration of the ideologies underlying punishment for two specific types of financial crime: fraud and those categorized by the Foreign Corrupt Practices Act (FCPA).

The results reveal that non-issuing of financial crime is accomplished in both countries using different local processes. While the American media justifies non-punishment using the idea of privatized justice, a Hamiltonian approach, and socialized victimization, Chinese media reports marginalize fraud by over-emphasizing State-Confucianism and normalizing *GuanXi*—the personalized social networks of influence. While the two countries' white-collar policies differed in the 90s due to different local ideologies, after corporate scandals in the 2000s—the Enron case in the U.S. and the YinGuangXia case in China, in particular--both countries embraced non-punishment through their own practices and ideologies, the reality of which is reflected broadly in media reports. In sum, though neoliberalism works to shape both societies, the trivialization of financial crime is accomplished in both China and the United States using different local mechanisms.

Chapter 1: Introduction

In 2015, the U.S. Justice Department issued new policies that prioritized prosecution for individuals of large companies in order to assuage rising public resentment and ongoing criticism for the white-collar crime non-punishment standard. White-collar crime is on the public radar and has been since 2008, when the largest financial crisis in history brought increasing attention to the inner workings of Wall Street and large banks generating immense profits while damaging the American housing market and wreaking havoc on the world economy. A major question arises in the aftermath of the Great Recession: are we entering a new era of crime war? One where drug prosecution will be traded for white-collar prosecution?

The war on white-collar crime has also become an international issue. For example, U.S. prosecutors have urged China to pursue hackers that infringe upon U.S. Internet security and investigate unsafe food products imported from China. Transnational corporations become an issue when they violate workers' rights in China and damage the U.S. economy with undervalued currency in China (Navarro & Autry, 2011), which drives U.S. prosecutors to request the transnational companies' compliance with American regulations in China. Simultaneously, the Chinese Communist Party (the Party) has initiated its Strike Hard Campaign against corruption to assuage public antipathy toward government officials since 1999, and has called for American repatriation of corruption fugitives. As a result, preventing white-collar crime is no longer simply a domestic concern (Shover & Hochstetler, 2006), and investigation of white-collar criminal policies can promote understanding of international punishment trends.

The domestic and international wars on white-collar crime, however, might be false promises, based on the history of white-collar punishment. Theoretically, punishment for white-collar crime exists in the law-on-the books, but its practice tells a different story. Despite the 2008

financial crisis, U.S. federal prosecutions of white-collar crime have hit a 20-year low in 2015 (TRAC, 2015); the prosecution rate only went up slightly after 2008, and it has dropped since 2011 even though Obama pledged to hold Wall Street accountable in 2012 (Rushe, 2012). In China, the Party decided to abolish the death penalty for 13 economic crimes in 2011, and while pursuing corruption is a popular idea, the possibility of conviction regarding corruption is low due to a low arrest rate (Pei, 2007; Wedeman, 2008).

To illustrate ongoing non-punishment for white-collar crime, Henry Pontell and Barry Goetz apply the terms *trivialization* and *non-issuing* of white-collar crime, which refer to the failure of recognizing white-collar criminality's and its harm to society (Goetz, 1997; Pontell, 2015). As introduced below, the process of trivialization can be observed for both economic giants, but in different ways. In light of this, this study focuses on two specified penal turns (occurring in 2003 in the U.S. and 2011 in China) to elucidate the process of *non-issuing* white-collar crime. *Why is white-collar crime trivialized in different ways in the U.S. and China under the effects of globalization? What contributes to different kinds of trivialization?* With a better understanding of the process of trivialization, one may predict the trajectory of future policies in light of this.

To accomplish this prediction, this dissertation aims to theorize about the ideologies that work behind the process of trivialization, building upon the ideological approach established by Durkheim, Garland and Wacquant (Garland, 1993; Wacquant, 2009). As this pursuit delves deeper into the effects of globalization on white-collar crime, concepts and theories of neoliberalism from political science and anthropology will also be incorporated, and as a result, this dissertation will answer the question of how governance of white-collar crime is formed in both the U.S. and China under the effects of globalization.

Before beginning the ideological approach, the basic facts of the trajectory of punishment for white-collar crime in the U.S. and China will be discussed below.

2003 Penal Turn in the U.S.

The American history of white-collar crime reveals that the frequency and severity of punishment for white-collar crime has fluctuated since the 1980s, which makes prediction of its trajectory difficult. Deregulation favoring corporations started to be enacted in the 1970s (Tombs, 2001), but then regulations increased corporate liability in the 1980s and 1990s[1]. The U.S. Sentencing Commission's sentencing guidelines in 1987 made jail a more likely consequence for white-collar offenders (Reason, 2000). While only one in thirteen federal criminal prosecutions involved white-collar crimes in 1970, one in four such criminal prosecutions involved white-collar themes in 1980 (Hagan & Palloni, 1986; Payne, 2003).

Likewise, prosecution of environmental crime peaked in the 1990s, and major fraud convictions increased in 2002 because of the corporate and accounting scandals involving Enron, Worldcom, Arthur Andersen, and numerous other companies (Barak, 2012). One of two convicted white-collar criminals was actually incarcerated in 2002 (Higgins, 1999). At the state level, prosecution against fraud reached its height in 2000, when 87 percent of offenders were found guilty (IFB, 2000). At the federal level, the average prison sentence for white-collar criminals also increased from 39 months in 1986 to 54 months in 1997, and starting in 1996, the prosecution rate of white-collar crime remained steady until 2002 (TRAC, 2015).

[1] The legislature has enacted more and more regulations that criminalize unsafe products, pollution, and bribery: the Clean Water Act, Clean Air Act, Resource Conservation and Recovery ACT (RCRA), Toxic Substances Control Act, Foreign Corrupt Practices Act (FCPA), and Occupational Safety and Health Act, to name a few. Regulatory agencies such as the Occupational Safety and Health Administration (OSHA), Environmental Protection Agency (EPA), and FDA are also effective.

However, in 2003, the steady trend of punishing white-collar crime suddenly changed. Prosecution for financial crime has declined dramatically since then (C. R. Alexander & Cohen, 2015; Garrett, 2014). One reason could be the rise of non-prosecution agreements (NPA) and deferred-prosecution agreements (DPA) applied for big companies; when plea agreements were combined with NPAs and DPAs, the average annual number of settlements increased from 19.7 in the pre-DPA/NPA era (1997–2002) to 27.2 from 2003–2006 and 51.8 between 2007 and 2011 (C. R. Alexander & Cohen, 2015).

Among 255 deferred-prosecution and non-prosecution cases from 2001 to 2012, most of them were dominated by the theme of fraud and corruption committed by big corporations (158 out of 255), and only 5 cases were related to environmental crimes, with 7 antitrust cases and 10 immigration cases. Although the average fines and total payments revolving around security fraud have gone up since 2001, more than half of fines occur within non-prosecution and deferred prosecution agreements (Garrett, 2014). Forty-seven percent of the companies that receive deferred or non-prosecution agreements pay no fines at all, and these agreements seldom provide guidelines (Garrett, 2014). Settlements between The U.S. Securities and Exchange Commission (SEC) and corporations have become more and more common, so engaging in civil suits, not criminal prosecutions, has become a general response to securities fraud, which is now treated as a pardonable offense more subject to restitution than imprisonment. Even though fraud cases are sometimes prosecuted, low-status individuals are more likely to be punished than high-status ones (Pontell, 2015).

In stark contrast, with aggressive prosecutions, 501 environmental cases, 167 Antitrust cases, and 107 immigration cases ended in guilty plans during the same period (2001 to 2012). In the case of environmental crime, the average fine and average jail time both increased after 1984

(Cohen, 1992). Even though the 1991 Justice Department Prosecutorial Guidelines discouraged prosecutors from bringing environmental cases to court, charges continued to be brought against corporations, and as a matter of fact, one in three environmental defendants was put behind bars by U.S. federal courts from 1996-2002 (O'Hear, 2004). When prosecution charges for financial crimes (e.g., security fraud) decreased in 2003, criminal charges and administrative actions against environmental crimes continued (300-400 criminal cases and 2500-4000 administrative actions per year), and penalties were often large and frequently included jail time (Gray & Shimshack, 2011). When scholars voiced their concerns about the *de facto* decriminalization of high-level executives on Wall Street, other scholars addressed their concerns about over-criminalization involving environmental violations (Cohen, 1992; Uhlmann, 2014).

That said, 2003 is the year that the punishment for white-collar crime *diverges*. On the one hand, charges brought against corporations—especially regarding financial crimes—have dropped dramatically since 2003, and they did not bounce back after the 2008 economic crisis. On the other hand, other corporate crimes—including crimes against workers (e.g. labor abuse), consumers (e.g., pharmaceuticals, antitrust), the environment (e.g., pollution), and collusion between corporations and governments (e.g., corruption)—tell a different story. Prosecution for financial crimes peaked in 2003 and has declined dramatically since then, while other charges for corporate crimes remain steady. Explanations of this scenario have become a major scholarly concern and inform the basis for this project.

Scholarly communities provide some possible explanations for this scenario. Pontell et al. provide an analysis that can explain decreasing prosecution for financial crimes: lack of evidence, invisibility of offense, and bureaucratic inertia of investigative institutions such as the SEC (Pontell, Black, & Geis, 2014). Garrett suggests that the Supreme Court's reversal of a conviction

against the accounting firm Arthur Andersen in the Enron scandal discouraged prosecutors from charging big companies (Garrett, 2014). Barak attributes the decline of prosecution to a political tactic of damage control by referring to system capacity theory, which indicates that a lack of resources leads to non-punishment; the FBI's instigative power declines when manpower is shifted from white-collar crime to terrorism (Barak, 2012).

However, the reversal of the Anderson case happened later in 2005, not in 2003. Moreover, the FBI's decline of investigative power regarding white-collar crime due to the 9/11 attack happened earlier—in 2001, not 2003—and as a matter of fact, more agents were assigned to the FBI to investigate financial crime after the 2008 financial crisis, but deferred prosecution against big companies still dominates the field of financial crime. In addition, the SEC gained power because of lower prosecutorial standard provided by Consumer Protection Act of 2010 (O'Brien, 2014), but the prosecution rate of financial crime still went down after 2010.

Indeed, lack of evidence and the complex nature of financial crimes contribute to the increasing use of NPAs and DPAs, but more factors need to be considered to explain the whole picture, especially in regard to the diversion after 2003. In light of this, this dissertation aims to broaden these scholarly arguments by exploring ideological effects on the non-punishment of white-collar crime before and after 2003.

2002 Penal Turn in China

Law-on-the-books

There have also been fluctuations in white-collar crime prosecution in China. Since most scholars agree that the Chinese style of punishment is a rather top-down process, different leaders in China often account for different forms of penal policy. Deng's leadership in the 90s, for example, did not focus much on white-collar crime, as capitalism entered China in the 80s.

However, with the advent of the stock market as the idea of finance spread in the late 90s, securities fraud and bank fraud suddenly became concerns. Soon after Hu Jintao took office in 2002, China passed a law regarding financial fraud and established regulating agencies such as the China Banking Regulatory Commission (CBRC) and China Security Regulatory Commission (CSRC). Thus, punishment for fraud gradually entered the public radar in the Hu period (2002-2012).

The death penalty for corruption started in the 1950s, and the death penalty for other white-collar crimes was established in the 1970s. Since the 1980s, the Strike Hard campaigns have fought particular types of crime, including white-collar crime. White-collar criminals can be put on death row, and on average, 3-4 white-collar criminals each year have received the death penalty since 1989 ("Supreme people's procuratorate annual report," 2012). Since most Chinese bank officials are government officials, laws about corruption are relevant when investigators pursue bank fraud; bank officials can face the death penalty if corruption is proven.

Interestingly, in 2011, China abolished the death penalty for 13 economic crimes including fraud, tax avoidance, smuggling, and other offenses (Hogg, 2011). This decision favored white-collar criminals with the exception of one sub-category of white-collar crime: corruption. Prosecution for corruption has increased from 2000 to 2009—mostly in the Hu administration—while punishment for other white-collar crimes has fluctuated. Corruption has remained a salient category after 2012, as this was when Xi Jinping took office; itis still the top prosecuted white-collar crime in China.

Hu's administration (2002-2012) highlighted prosecution for white-collar crime at the very beginning but eventually made financial crime a non-issue when corruption became the only focus. This signals a skewed penal change that is similar to the 2003 event in the U.S. whereby some kinds of white-collar crime were heavily prosecuted while others were not.

Law-in-Action

When it comes to law enforcement, China also has NPAs and DPAs, but since the United States' prosecution of Chinese companies is not yet a common occurrence, China is immune to American extraterritorial expansion[2]. Furthermore, Chinese criminal law and procedure resemble Germany's 1980s version of them—a version which did not follow the American neoliberal pattern. Under the so-called "Capitalism of Chinese characteristics" (Y. Huang, 2008), China initiated its own method for prosecuting white-collar crime: the death penalty. In the 1980s and 90s, per the propaganda of the Socialist Economic Order, China issued 16 white-collar death penalty rulings for corruption and fraud—rare for a developed country (Cheng & Ma, 2009)[3]. Judging by law-on-the-books, white-collar criminals could be put on death row. However, in China, the real practice of punishment depends not on law, but on the central or local government's interests and its response to public opinion (Beyer, 2006; Chow, 2003; Van Rooij, 2006; Van Rooij & Lo, 2010; Wang & Wan, 2001). One of the main aspects of punishment is a project called Stability Maintenance Innovation (SMI), which is introduced below.

In response to the rising public opinion against the government due to an increasing wealth gap since the 1990s, the Chinese government (the Party) initiated an immense government project—Stability Maintenance Innovation (SMI)—which created mass surveillance and punishment for those who threatened the so-called general interest of [the] public (Sapio, 2014). In the late 1990s and early 2000s, the growth of the middle class and the media suddenly brought change in public opinion to China. The growing middle class—including lawyers, teachers and technicians—started to question the worsening wealth gap, and the media began to challenge local

[2] The U.S. extraterritorial expansion happened in other countries like U.K., when the U.S. prosecution of BAE (British companies) forced the United Kingdom to revise its corporate criminal law in 2011 and adopt guidelines that mirror DOJ's guidelines for prosecution (Garrett, 2014).

[3] Nonetheless, there is no real death penalty for corporations (e.g., suspension or debarment) in Chinese criminal codes, which makes it easy for individuals to commit crime while using a corporate disguise.

corruption, pollution, unsafe food products, and economic policies (Wu, 2015). Public opinion about policy was strengthened during this period, and due to Beijing's winning bid for the 2008 Olympics in 2001, the public could voice its opinions during the so-called Golden Age of Media Reports (1998-2008). The SMI, which started in 1998, should be understood as a government's response to public opinion, and aligned with that, fighting against crime became imperative in assuaging public resentment (Trevaskes, Nesossi, Sapio, & Biddulph, 2014).

With SMI, which started in 1998, China began its "Strike Hard" programs that aim to control crime. This represents the first penal turn in China. Overall, various campaigns produce more strict means of enforcement in their attempts to "Strike Hard" (Hualing, 2013; Wanhong & Peng, 2014). This includes efforts against both white-collar crime and street crime. Due to the Chinese legacy of communism, campaigns that aim to fight white-collar crime are not rare. In fact, for example, instances of prosecution for environmental crime and corruption have been documented since the 1990s (Sapio, 2014).

Nevertheless, even though certain white-collar crimes are often prosecuted, most high-status individuals (the so-called 'blue-blooded' in China) are only investigated administratively, while low-status individuals are severely punished (Cheng, 2012). This scenario resembles the one we see in the U.S., which applies NPA and DPA policies to high-level companies and individuals.

In 2011, thirteen years after the aforementioned Strike Hard campaign, China revised its criminal law, abolishing the death penalty for 13 economic crimes. On the one hand, this meant that low-status individuals would not be placed on death row, but on the other, the revision delivered a message that the government would treat economic crimes more leniently. This lenient attitude included only one exception—corruption.

Beginning in 2000, the SMI and Strike Hard programs have focused on corruption issues and have treated them as the most heinous white-collar crimes[4]. While punishment for white-collar crime with other themes remains steady, the occurrence of prosecution for corruption-based cases increases every year ("Supreme people's procuratorate annual report," 2012). Although the possibility of conviction regarding corruption is low due to a low arrest rate (Pei, 2007; Wedeman, 2005), the War on Corruption is no doubt one of the main Strike Hard programs in modern China.

This top-down penal turn, beginning in the 2000s, signaled a penal change in modern China, and its aggressive focus on certain types of white-collar crime resembles the United States' focus. Most scholars attribute the Chinese situation to top-down political control of prosecution (Cheng, 2008; Gong, 2006) and also blame the fact that there are agents other than prosecutors able to pursue white-collar crime simultaneously (e.g., the Party Disciplinary Inspection), which limits the power of prosecutors (Z. Huang & Tian, 2008; Wedeman, 2008). Some refer to local protectionism that prevents prosecutors from charging big companies (Chow, 2003), and similar to explanations for the U.S. problems, a lack of resources for prosecutions is also mentioned by the Chinese scholarly community (Bian, 2004; Broughton & Walker, 2010; Cheng, 2008; Ferris & Zhang, 2003). This research aims to focus on the penal and identify other ideological explanations for these shifts.

Rationale for Current Study

Dissertation Research

A lack of resources, system capacity issues, the complex nature of white-collar crime—all these arguments are able to explain punishment for white-collar crime, especially in regard to

[4] About 32,567 corruption cases were filed in 2011 alone. Additionally, in 2011, government agencies such as the Central Commission for Discipline Inspection (CCDI) took disciplinary or administrative action against 146,517 Party members (officials) who may have been involved in corruption ("Supreme people's procuratorate annual report," 2012).

decreased ambition to pursue financial crime in the U.S. after 2003. However, judging by the diversion that occurred in 2003, why didn't this happen for environmental and Antitrust cases? Moreover, compared to China, why do similar system restraints (lack of resources and the complex nature of cases) produce different avenues for pursuing white-collar crime in China? Why didn't China trivialize corruption in the 2000s in the same way as the U.S. trivialized financial crime in 2003? What else motivates the penal turns regarding the *trivialization* or *non-issuing* of white-collar crime?

In an attempt to address this question, this dissertation utilizes classical punishment theories regarding street crime. In supplementing institutional analyses, punishment theories also stress the importance of *ideological approaches* (Garland, 1993; Lynch, 2012; Wacquant, Eick, & Winkler, 2011) that examine the relationship between ideologies and punishment. For example, in the case of hate crime, the behavior of police has been shown to be restricted by its organizational structure and limits (Grattet & Jenness, 2005), but ideological approaches argue that ideological values also play an important role regarding punishment (Phillips & Grattet, 2000). In the case of the death penalty, although bureaucracy may be a factor in execution, ideologies such as racism are shown to be a large factor in death penalty decisions (Garland, 2010; Lynch & Haney, 2011; Messner, Baller, & Zevenbergen, 2005). Through the lens of an ideological approach, the research question now becomes: *what ideologies have prompted these fluctuations in the United States and China?*

An ideological approach is proven be beneficial by using comparative methods, especially for countries with different cultural standards and political structures (Gottschalk, 2009; Kaplan, 2006; Lappi-Seppälä, 2007; Whitman, 2005, 2011; Zimring, 2003; Zimring, Hawkins, & Kamin, 2001). The U.S. and China are two economic giants that are mostly influenced by capitalism and

connected by transnational companies, but they have very different political and social structures (Navarro & Autry, 2011). Thus, in examining the way ideology motivates penal turns, it is crucial to consider how different forms of political and social power shape the context of ideological change. This comparative method has been applied to penology (Johnson & Zimring, 2009; Miethe, Lu, & Deibert, 2005), generating insights that inform this paper. I will further integrate this comparative method into the field of penal study, creating the first attempt at a comparative look at punishment for white-collar crime by incorporating prevalent neoliberal studies, introduced below.

Previous Research

Scholars often assume *neoliberalism* is the ideology that accounts for the recent trivialization of white-collar crime (Barak, 2012; Garrett, 2014; Snider, 2000; Tombs, 2001). Neoliberalism, or capitalism 3.0 (Kaletsky, 2011), in its advocating deregulations in the 1970s (Friedrichs, 2009) and promoting consumerism presently, is deemed an ideology that favors white-collar criminality (Garland, 1993, 2001). A neoliberal state tends to punish the poor by building a skewed penal system, which largely ignores the punishment of white-collar crime (Garland, 2001; Gilmore, 2007; Wacquant, 2009) and only focuses on low-status white-collar criminals (Savelsberg & Brühl, 1994). Since white-collar crime is not dramatized enough to attract public attention (Pontell, 2015), financial crime is destined to be trivialized given consumerism, as crime events become products consumed through a neoliberal structure. As a result, in white-collar crime literature, the term *neoliberalism* is often mentioned on at least one or two pages as an ideology that explains the current process of trivialization (Barak, 2012; Garrett, 2014; Snider, 2000).

However, some public opinion surveys indicate a desire to punish white-collar offenders (Clinard & Yeager, 1980; Kane & Wall, 2006; Katz, 1980). When facing counteraction, such as

in the form of populism, neoliberalism does not remain intact at all. In the early 1970s, when neoliberalism had just emerged, scholars found that white-collar criminals did not receive preferential sentencing compared to those who committed street-level offenses (Nagel & Hagan, 1982). It has also been proven that today's white-collar criminals are more likely to be incarcerated than those of decades past because of how publicized modern white-collar scandals, such as the Enron case in 2001 (Van Slyke & Bales, 2012), are. The ideologies that offset neoliberalism, such as the social movement against white-collar crime in the 1980s (Katz, 1980) and Occupy Wall Street in the 2010s, should not be ignored.

The sentencing issue is just the tip of the iceberg. Considering the specified penal turns in the U.S. and China, neoliberalism, by itself, explains neither what happened in China nor the division of penal policy that occurred in the U.S. Not all white-collar crimes in the U.S. are ignored through neoliberalism, and moreover, death sentences for white-collar crime were enacted after neoliberalism entered China in the 1980s. *If neoliberalism is a global ideology, why are there different penal policies for white-collar crime in different countries?* For example, why do prosecutors in the U.S. focus on environmental crime while prosecutors in China focus on corruption?

In sum, although neoliberalism is an often-mentioned term in literature and an overarching idea that certainly affects attitudes regarding white-collar crime, it explains neither the different directions of punishment for white-collar crime nor the difference in trivialization effects between two economic giants. To expand on and complicate the neoliberal argument, and to explore the trajectory of white-collar crime in each country—as well as the differences between countries—a framework more comprehensive than that offered by other studies is needed.

Research Question

Building upon current literature, the goal of the dissertation is to address what ideologies, in addition to neoliberalism, are aligned with different penal turns in the U.S. and China. Both countries are deemed neoliberal states (Garland, 2001; Trevaskes et al., 2014), but they have different white-collar policies. To analyze how neoliberalism is generated, as well as the ways in which it differs from one country to another, this research aims to acknowledge the *local ideologies* in both countries' media reports that are for and against the idea of neoliberalism. Observing ideological change makes it possible to explore what ideologies motivated the American penal turn in 2003 and the Chinese one in 2002.

This paper will explore the idea of *the penal field* and employ comparative historical methods to structure the investigation (Miethe et al., 2005; Page, 2013); further, discourse analysis of media reports will be used to identify ideological changes that align with penal changes (Schreier, 2012). A penal field may face an abundance of ideologies and knowledge regarding punishment during the modern era of economic growth, and since a penal policy is created by *multiple players* in the field, it is hard to say to what extent neoliberalism is accepted as a norm that regulates both white-collar and street crime. In other words, it is nearly impossible that one piece of ideology or one very broad perspective (e.g., neoliberalism) can explain all situations in a penal field, and there are always competing ideologies and perspectives with which players in the field substantiate their opinions.[5]

[5] For example, a prosecutor may believe in the idea of deregulation under neoliberalism and trivialize white-collar crimes, while legislators are forced by the public to further penalize white-collar crimes due to condemnation of financial crises. A police officer, under the influence of racism, may arrest the marginalized more than the privileged, while a judge may impose harsher penalties on white-collar criminals because of his belief in socialism. The interactions between these players become more complex when neoliberalism is exported to other countries, which brings more players into the game.

In investigating ideologies in addition to neoliberalism before and after penal turns, the media is the main platform that provides a space for all players to create and re-create ideologies, and it determines whether an issue is publicly visible (Cavender, 2004). An ideological approach, with the application of media analysis, has been utilized for white-collar crime recently (Levi, 2001, 2006, 2008, 2009; Williams, 2008), and it is time for us to complicate this approach by incorporating the analyses of neoliberal arguments. *How do multiple players—such as prosecutors, judges, politicians, American lawyers, the Chamber of Commerce, to name a few—invest their capital in producing media reports, thereby constituting ideologies that align with current penal policy? As the trivialization of white-collar crime is ongoing, how do neoliberal ideas conflict or align with other local ideologies in the public eye through the media?*

In sum, although a neoliberal government has an agenda to diminish the importance of white-collar crime, this occurs in different ways in the U.S. and China. A myriad of local ideologies may enhance or counteract the idea of neoliberalism, which leads to the creation of different penal policies. Though the importance of white-collar crime has been de-emphasized, economic criminals are still being punished; however, the fact that the U.S. and China focus on different groups of white-collar criminals might be due to the impact of local ideologies. For example, American neoliberal ideas could be intertwined with racism, individualism, and human rights issues (Garland, 2001; Wacquant et al., 2011; Whitman, 2011), while the Chinese neoliberal approach is likely to be intertwined with the Communist Party values through assertion of neo-Confucianism (Sapio, 2014). These different localized ideologies may respectively produce *different patterns* of punishment for white-collar crime.

As a result, my research question is*: how is neoliberalism tailored by the local government through local ideologies, and how does it contribute to different penal policies in the U.S. and*

China? Below I will apply neo-liberal justifications and neo-institutional analysis to the concept of non-punishment for white-collar crime. Then a framework of penal field analysis will be introduced in order to provide a comprehensive perspective about punishment for white-collar crime.

Chapter 2: Literature Review

When it comes to the ideology that is associated with punishment for white-collar crime, the word *neoliberalism* is believed to be the major factor that limits said punishment (Barak, 2012; Chang, 2007; Garland, 2001; Garrett, 2014; Harvey, 2005; Klein, 2007; Wacquant, 2009). Other scholars argue that a shortage of resources limits institutional power to prosecute white-collar crime (Barak, 2012; Pontell, 1982). Both explanations based on neoliberalism and institutional approaches will be presented below. In order to combine these two approaches and broaden their arguments, the idea of the penal field will in turn be reviewed. The end of this chapter will sort out possible local ideologies and players that are crucial to collect data from for further research.

Neoliberalism as an Often-Cited Ideology

There are several reasons why scholars often refer to neoliberalism in their discussion of white-collar crime. First, neoliberalism promotes deregulations. Second, neoliberalism focuses on punishment for street crime (Garland, 2001; Wacquant, 2009).

Deregulation

The first neoliberal explanation for white-collar crime is that neoliberalism contributes to widespread deregulation exculpating corporations (Chang, 2007). Indeed, this is the most popular explanation for the non-punishment of corporate crime. When Keynes's concept of economics (high taxation and social spending) was challenged in the 1960s, due to the start of the Vietnam War (Dezalay & Garth, 2006) and War on Property (Barak, 2012), neoliberalism soon found its way into popular culture and thrived in the 1970s (Chang, 2007; Harvey, 2005). As an updated version of liberal economics, neoliberalism is an approach that emphasizes (1) unlimited competition in the free market; (2) non-interference and deregulation that can foster the accumulation of profits; (3) privatization and the selling of state assets that move infrastructure

from the public to the private sector, especially in the form of pension funds, schools, and prisons; and (4) lower taxes for the rich (Chang, 2007).

Neoliberalism literature describes the legislative end of the neo-liberalist impact regarding white-collar crime, especially for financial crime.[6] In America, for example, the process of deregulation began by knocking down usury laws in 1970. The Depository Institutions Deregulation and Monetary Control Act of 1980 opened the doors to fraud by allowing for wild investments with no effective oversights, which in turn resulted in the so-called savings and loan crisis (Calavita & Pontell, 1990). In 1990, the passage of the Federal Deposit Insurance Corporation Improvement Act and following regulations made it easier for banks to expand their business, and in 1998, the same deregulation approach was extended to nonbank entities. In 1999, The Gramm–Leach–Bliley Act (GLBA) removed the barriers that prevented commercial banks from investing more widely in securities and insurance, which allowed investment banks, security firms, and insurance companies to consolidate into *meta-banks* (Mamun, Hassan, & Maroney, 2005). In 2003, the Office of the Comptroller of the Currency (OCC) exempted national banks from state regulations, and in 2004, the SEC gave investment banks permission to calculate their own net capital with their own prediction models (Barak, 2012). Additionally, lower tax and tax-deductible expenses motivated these banks to spend millions on lobbying against financial reform (Knottnerus, Ulsperger, Cummins, & Osteen, 2006).

Street Crimes as Distractions

Another reason why scholars mention neoliberalism in their discussion of punishment for white-collar crime is that neoliberalism contributes to the skewed nature of the penal system that operates to control street crime. David Garland, who coined the term *neoliberal state,* emphasizes

[6] Including mortgage fraud, security fraud, insider trading, Antitrust, Ponzi scheme, etc.

how a neoliberal state retrenches the welfare system and simultaneously labels street criminals to assuage *criminal insecurity* (Garland, 2001), all of which he refers to as the *culture of control*. Loic Wacquant, on the other hand, argues that neoliberalism instead creates *economic insecurity (social insecurity)*, which makes for a proactive penal system punishing the poor. He also indicates that racism, another prevalent ideology, works hand-in-hand with neoliberalism (Wacquant, 2009).

Garland's approach is considered Durkheimian (Garland, 2008), emphasizing the relationship between culture and punishment; neoliberalism is just part of the culture he describes, aligning it with racism and civilization. Similar cultural explanations of harsh punishment can also be traced back to Alfred Blumstein's works concerning the way punishment reflects public tolerance of crime (Blumstein & Cohen, 1973); such cultural explanations can also be observed in James Whitman's work, which discusses the way American culture—the generalization of low-status treatment—drives the nation toward harsh punishment (Whitman, 2005). Neoliberalism, in these kinds of cultural arguments, is one of the ideologies that permeates American culture (Whitman, 2011).

In contrast, Wacquant's approach is more top-down than bottom-up. It is similar to the materialist approach, developed by Marxists, that uses class conflict to interpret social change. For example, Georg Rusche and Otto Kirchheimer explicitly discuss the history of the penal system as a class struggle between the rich and the poor and indicate that when labor was no longer needed, imprisonment became a rational system of deterrence that reflected the concept of *less eligibility* (Rusche & Kirchheimer, 2003). Wacquant extends this point of view to explain the way punishment controls, disciplines, and deters the surplus population—the poor. This also resonates with Ruth Gilmore's explanation about the prison boom in California as the result of surplus land, capital, and labor (Gilmore, 2007). Prison, instead of a response to crime, has become the solution

for economic insecurity. Michelle Alexander, following Thorsten Sellin's perspective on slavery, further delineates the way top-down politics formulate the idea of "the New Jim Crow" (M. Alexander, 2012). Neoliberalism, in these kinds of top-down explanations, is an economic-political ideology promoted by the state.

Although these discussions about neoliberalism's impact on street crime are persuasive, we still need to face the question of why not every white-collar crime is de-emphasized—like Antitrust cases and environmental crimes in the penal system. *Can neoliberal ideas fully explain the U.S. trajectory of white-collar punishment?*

Failure to Explain the Fluctuating Back End

Although the trivialization of white-collar crime—keeping white-collar crime a nonissue and focusing enforcement efforts downward to lesser offending—is documented (Pontell et al., 2014), it is too soon to conclude that neoliberalism *causes* a state of non-punishment for white-collar crime. Instead, a very comprehensive review is necessary to explore the ways in which ideologies affect the penal system. In developing a general theme of non-punishment, the application of front end vs. back end perspectives in law and society literature is helpful (Schoenfeld, 2010); the front end represents the legislative structure that creates the structures of deregulation and privatization, and the back end refers to law enforcers, like prosecutors, who implement non-punishment tactics. This is to say that when law-on-the-book and law-in-action are both suffused with neoliberalism, the relationship between neoliberalism and non-punishment can be rather clear-cut.

Deregulation—the means by which neoliberalism affects non-punishment for white-collar crime—focuses solely on the front end, or legislature. It is true that the front end of the legal system is directly connected to neoliberalism since deregulation is one of the main components of

neoliberal ideas. However, this does not mean the back end of legal structure lacks the necessary weapons to fight against financial crime. The quality of the back-end, however, depends upon the budget and legal resources it has (Pontell et al., 2014).

When regulatory agencies such as the SEC have been underfunded and understaffed by Congress, these agencies lack the power to discover financial crimes (Barak, 2012). On the contrary, with enough budgets and advocacy from politicians, law enforcers on the back end may maintain their enthusiasm about pursuing white-collar criminals, uninfluenced by neoliberal ideas. For example, after the savings and loans crisis in the 1980s, 800 bankers were sent to prison; the Corporate Fraud Task Force (CFTF) was devised in 2002 due to the infamous Enron case, and it resulted in 1,236 fraud convictions (Barak, 2012). In 2009, the former NASDAQ Chairman Bernard Madoff was sentenced to 150 years in prison due to the private Ponzi theme and Operation Stolen Dreams, a crackdown against mortgage fraud initiated by the FBI, led to 1,517 arrests in less than 4 months in 2010 (*Coinciding with one-year anniversary of "operation stolen dreams," three loan officers and a title agent charged in $2.5 million reverse mortgage and loan modification scheme*, 2011). In contrast to deregulations on the front end that relaxed punishment for white-collar criminality, the back-end tells a different story that can be partially explained by system capacity.

However, neoliberalism is still influential, as a de-emphasis on financial crime is still ongoing on the back-end. There was a lack of legal resources in 2001 due to the terrorist attacks of 9/11 (Lichtblau, Johnston, & Nixon, 2008), but prosecutors suddenly preferred a non-punishment agreement (NPA) and deferred prosecution agreement (DPA) for corporations starting in 2003 (C. R. Alexander & Cohen, 2015). As a result, after enormous fraud convictions in 2002 were triggered by the CFTF, the trajectory of conviction went down year by year (Garrett, 2014).

The scenario may be partially explained by system capacity, but how prosecutors made up the NPA and DPA decision is still noteworthy; for example, even with limited resources and the complex nature of cases, the NPA and DPA are less applicable to labor abuse, pollution, pharmaceuticals, antitrust issues, and corruption (Garrett, 2014). Among 255 deferred-prosecution and non-prosecution cases taking place between 2001 and 2012, only 5 are environmental cases, 7 are antitrust cases, and 10 are immigration cases. Most of them, however, are fraud and FCPA violation cases.

In addition, even though in 2010 myriad offenders were prosecuted due to the crackdown by Operation Stolen Dreams, focus was placed on low-level offenders who committed mortgage fraud or insider trading, not security fraud—the real cause of the 2008 financial crisis (Pontell et al., 2014). Even though security fraud cases were prosecuted, prosecutors tended to focus downward, pursuing low-status employees (Pontell, 2015), so the high-status executives known as the wolves of Wall Street still stayed in their comfort zone after 2008 (Rakoff, 2014). As a matter of fact, no senior executives from any major financial institutions were prosecuted for security fraud after 2008 (Barak 2012).

In sum, before 2003, punishment for financial crimes was not stopped by a prevalence of neoliberal ideas, and it hinged partially on system capacity. Since 2003, punishment for white-collar crime has not completely followed a neoliberal path either. Non-prosecution instances mainly apply to financial crimes but not other white-collar crimes. These changes certainly cannot be explained solely by neoliberalism.

Neoliberal Impact in China

Thus, the idea that neoliberalism can explain America's punishment for white-collar crime is questionable, so we shift our inquiry to China's situation. Can neoliberalism explain the Chinese trajectory of white-collar punishment?

Neoliberalism is powerful internationally. Neo-liberals have promoted the broadening of international trade through the International Monetary Fund (IMF), WTO, and World Bank (WB) since the 1970s, which reveals neoliberalism as an international trend working hand-in-hand with multinational corporations' developments (Chang, 2007; Dezalay & Garth, 2006; Harvey, 2005). A perfect model of neoliberalism's spread is the idea of richer countries, such as America and England, using aid budgets to compel developing countries to adopt neoliberalism. This model was enacted at the same time that IMF and WB ensured these countries adopted neoliberalism by attaching conditions to their loans (Klein, 2007). Since richer countries substantially control the majority of votes in international institutions, an extraterritorial expansion of neoliberalism occurs worldwide, and scenarios of neoliberalism diffusion are well-documented in countries such as Chile, Argentina, El Salvador, India, and Korea (Harvey, 2005).

However, this neoliberal impact is unclear in the case of China. China—unlike Latin America, which was forced by America to adopt neoliberalism during the Cold War—proactively embraced the spirit of neoliberalism. In 1978, when Deng Xiaoping became the leader in China, his economic pragmatism induced neoliberalism, which relocated part of the center of the global financial market to Asia in the 1980s (Kaletsky, 2011). Under the idea of Chinese politic-economic structure, neoliberalism is wrapped up in political interests (Trevaskes et al., 2014). Thus, when Chinese scholars mention neoliberal impact on the penal field, the discussion is always intertwined with discussion of the top-down campaign initiated by the government.

For example, scholars suggest that SMI (Stability Maintenance Innovation) is a type of Chinese social control that embraces neoliberalism (Sapio, 2014). SMI started in 1998 when China applied the concept of rule of law in a different way than Deng Xiaoping did in the 1980s (Nesossi, 2014): establishing the rule of law for the market and gradually separating the Party (politics) and the market (economics), which was a very neoliberal maneuver (Trevaskes et al., 2014). In other words, the era (1970s-1980s) signified the first appearance of neoliberalism in China, but SMI in the 1990s somewhat distorted the idea of neoliberalism.

Former party leader Hu Jintao, however, brought "law" back to politics in the late 1990s. In response to growing social discord due to an increasing wealth gap, Hu exerted political control over his people, via the law, in the name of the "general interest of people." This application of law substitutes the due process of law for aggressive mediations (similar to civil agreement in the U.S.) (Hualing, 2013), which disadvantages the underprivileged in Chinese society (Trevaskes et al., 2014). In other words, instead of urging the local government to prosecute white-collar criminals who are responsible for the wealth gap, Hu chose to suppress resentment towards inequality in the name of the law, which asked citizens to not go against the government in order to achieve social harmony (Zheng & Tok, 2007). Stability Maintenance Innovation inherits the spirit of suppression from the legacy of Hu's politico-legal regime (Sapio, 2014). In 2010, the Party spent 823 billion dollars on SMI to maintain social order; the spending included programs that solve inequality issues, establish a surveillance system (e.g., internal security apparatus, early warning mechanism), and build moral standards. In the end, when SMI operates under the idea of rule of law, the terminology of transparency, supervision, accountability, and public participation is gradually integrated into SMI's agenda (Newman, 1972), in turn strengthening neoliberal ideas with Chinese characteristics.

Using the ideas of SMI, the Strike Hard agenda was designed in the 1990s in order to provide a framework that could maintain economic growth, threatening harsh punishment for those who threatened the social order (Tanner, 2012). If we integrate scholarly arguments about SMI into analysis of the Strike Hard program, it is logical to conclude that neoliberal ideas, which were embedded in the SMI, will affect punishment for white-collar crime. That said, a neoliberal impact becomes evident when Strike Hard is exercised to fight crime.

However, the path of punishment does not follow a neoliberal path. China pursues punishment for white-collar crime just as the U.S. does, and due to the impact of communism, white-collar crime is less tolerated in China than in America. Neoliberalism can explain neither Chinese enthusiasm for pursuing white-collar crime and the associated death penalty nor its aggressiveness in fighting corruption. The only thing that may indicate a neoliberal impact is the movement of the Chinese government to abolish the death penalty for 13 economic crimes in 2011. This change, however, is believed to be the result of the impact of international human rights movements (Miao, 2013). Thus, the question remains—if neoliberal ideas are so embedded in Chinese politics, how does this explain the penal turn in white-collar punishment?

Neo-institutional Analyses

In addition to neoliberalism, some scholars apply neo-institutional analysis to white-collar crime discussion to explain American and Chinese punishment. This so-called neo-institutionalism in sociology is applied by punishment studies that emphasize the way institutions construct organizational behaviors, in turn constructing the meaning of punishment (Grattet & Jenness, 2005). Even though these works seldom mention neoliberalism, it is implied that external ideologies outside an institution, such as in the form of neoliberalism, may not be the main factor

influencing the daily practice of police, prosecutors, or parole officers. Instead, these agents are more subject to inner traditional habitus and the resources they have.

The U.S. Situation

For example, Pontell et al. provide an *institutional* analysis that can explain decreasing prosecution for financial crimes; this analysis includes lack of evidence, visibility of offense, and bureaucratic inertia of institutions such as the SEC (Pontell et al., 2014). This is to say that, with the help of deregulations, institutions such as the Department of Justice and the SEC develop their own inertia when dealing with large companies. This argument echoes neo-institutional analysis regarding the way agents are circumscribed by the law and institutional boundaries, and it explains the absence of prosecution in a systematic way. However, the question is: *what leads to inertia, and how did this inertia first emerge*?

As an explanation, some scholars suggest the Supreme Court's reversal of a conviction against the accounting firm Arthur Andersen in the Enron scandal, but this reversal happened in 2005, not 2003 (Garrett, 2014). Barak attributes the decline of prosecution to a political tactic of damage control by referring to system capacity theory, which indicates that a lack of resources leads to non-punishment (Barak, 2012). However, the FBI's decline of investigative power regarding white-collar crime happened earlier—in 2001, not 2003—due to the 9/11 attack, and as a matter of fact, more agents were assigned to the FBI to investigate financial crime after the 2008 financial crisis. However, deferred prosecution against big companies still dominates the field of financial crime. In stark contrast, even though the 1991 Justice Department Prosecutorial Guidelines discouraged prosecutors from bringing environmental cases to court, charges continued to be brought against corporations. *If prosecutors are so restrained by institutions, how can we explain the different paths of prosecution for different crimes?*

The Chinese Situation

In truth, institutional analysis has dominated Chinese penal literature. Scholars often blame certain institutions for the skewed penal system, and indeed there are two reasons why institutional analysis is the norm; first, local protectionism is serious in China, preventing high-status individuals from indictment, and second, there is always more than one institution responsible for law enforcement, which in fact makes punishment less probable.

First of all, the wealth gap in China is still widening, and 50% of China's labor is employed in the informal sector (Park & Cai, 2011). Economic liberalization has not really occurred, and social contradictions have emerged between groups (Tian & Ren 2005). The decentralization that came with neoliberalism in the 1970s delegated power to local governments, and the tension between local government and central government became worse when local government colluded with local companies and made local industries immune to state law enforcement (Chow, 2003). So-called local/regional protectionism hinders the prosecution of white-collar criminals, and minority shareholders are also victimized under the rapid development of the economy (Sun & Zhang, 2006). In this regard, most workers, consumers, and investors suffer due to economic growth, when blue-blooded individuals and government officials enjoy the fruit of neoliberalism (Cheng, 2012).

Second, law enforcement against white-collar criminals is difficult in China, as multiple departments and enforcers complicate the scenario. For example, in order to fight fraud, China employs the Chinese Banking Regulatory Commission (CBRC, which resembles the U.S. SEC), the Economic Crimes Investigation Department (ECID) in the Ministry of Public Security, procuratorates (Chinese prosecutors), and the Central Commission of Disciplinary Inspection (CCDI, the Party's discipline inspection branch). The multi-stage process of fighting fraud results

in considerable reduction of cases through initial accusation, investigatory stages, and final prosecution (Wedeman, 2005). Also, although there are a total of 2,489 companies listed for the two major stock exchanges in China, only 15% percent of CSRC enforcers (about 78 individuals) handle corporate fraud cases (CSRC, 2015), indicating system capacity issue. Last but not least, the division of labor between these departments is unclear (Cheng, 2008; Chenglin, 2010), and the CCDI will often take on high-profile cases without notifying procuratorates, which means high-status individuals and powerful organizations are usually off procuratorates' radar.

Although legal enforcement in China and the U.S. are similar, the reasons that led them to trivialization of white-collar crime may differ. The legal system in China is heavily controlled by politicians. In interviews of Chinese law enforcers, they explicitly admit that investigations were biased toward low-status individuals because powerful defendants are protected by political connection networks and they would be fired if they charged the 'blue-blooded' (Cheng, 2012). When high-status individuals are prosecuted, it is because other leaders in the Party want to use prosecution as a tool to eliminate their rivals or business partners (Cheng, 2008). On the other hand, U.S. prosecutors are not experiencing this kind of political control—although they sometimes consider political reasons while making decisions (O'Brien, 2014).

Second, even though there is always a political reason to prosecute or not prosecute, U.S. prosecutors only follow orders in terms of rule of law. Chinese procuratorates, on the other hand, still suffer as a result of rule *by* law. Their decisions are highly scrutinized by the Chinese Communist Party (Gong, 2008), and their resources are limited. Even though a case may be brought to court, when a prosecutor accuses a corporation of certain illegalities because of the priority of Chinese Criminal Law, there is no guarantee that government officials will charge the corporation and impose other types of sanctions. The loose relationship between judicial and

administrative departments makes the punishment system even more problematic (Z. Huang & Tian, 2008). In this regard, the road to prosecution for high-level white-collar criminals is filled with thistles and thorns.

Indeed, neo-institutional analysis seems plausible in China. However, this analysis still introduces the same question as neoliberal explanations does: *When the government invested an enormous budget in the Strike Hard program and SMI, which directed prosecutors' behaviors, why did the government aim to target certain kinds of white-collar crime, such as corruption? Why did the Chinese government decide to abolish the death penalty for 13 economic crimes in 2011?*

Penal Field: Applying an Ideological Approach to Current Literature

In fact, neoliberal explanations and neo-institutional analyses do not contradict each other. White-collar punishment is indeed affected by neoliberal ideas, and current bureaucratic inertia can be partially explained by institutional boundaries too. This study is not going to deemphasize these basic arguments. *The goal of this study, rather, is to focus on adding an ideological layer to current literature,* just as punishment theories about street crimes suggest. That said, while drawing on traditional punishment theories on street crimes, this study wants to establish a framework that can blend neoliberal arguments and neo-institutional analyses.

Neoliberalism is One of Many Ideologies

If neoliberalism is a widely accepted ideology, why doesn't it thoroughly affect the whole process of punishment for white-collar crime? Although the term 'neoliberalism' is often seen in white-collar crime literature, in-depth research about neoliberal influences on punishment is unclear. To lay out a roadmap exploring the impact of ideologies like neoliberalism, this paper goes back to the origin of punishment theory—street crime.

"How does an ideology affect punishment?" is a frequently asked question in street crime literature, in which neoliberalism is an often-cited concept. Neoliberalism can be defined both from the perspective of top-down politics and bottom-up culture. However, as Neo-Marxists will argue, it is not about top-down or bottom-up perspectives, but the *hegemony* that is created by moral entrepreneurs (Calavita, 2010; Gramsci, 1995; Quinney, 1980). For example, patriarchy is a form of hegemony that has developed as a result of sexism, and chauvinism can be seen both in politics and in our daily lives; it is everywhere (Conley & O'Barr, 2005; Smart, 1989; Suk, 2009). Neoliberalism, as a form of neo-capitalism, also pervades politics, as well as our society on the whole, and in turn affects the legal field. Therefore, the question we need to ask is not about which direction neoliberal ideas come from, but *how* neoliberal ideas are formulated in the criminal justice system. Do neoliberal ideas really affect the penal system? If so, how?

This query hardly comes out of nowhere. In fact, some scholars indicate that there is no clear-cut relationship between ideology and punishment (Feeley & Simon, 1992; Rhodes, 2004; Zimring & Hawkins, 1994). This is to say that a penal institution sometimes develops its own ideology different from that of the outside world (Lynch, 1998; Simon, 2007; Stuntz, 2011). Examples of this are derived from Michael Foucault and Max Weber's works, which point to the idea of *institutional practices and rationalities* (Foucault, 1977; Weber, 1978). Their arguments focus on *management* and its impact on discipline and governance. For example, Rosemary Gartner & Candace Kruttschnitt argue that ideologies outside prison do not change inmates' experience inside prison (Gartner & Kruttschnitt, 2004). Lynne Haney's research about parole agents also shows how state objectives can be dismantled when official workers pursue immediate individual and organizational ends (Haney, 1996). Additionally, Simon's work about new penology indicates the way the penal system establishes its own risk and accountability standards

(Feeley & Simon, 1992), and Bibas' works conclude that the American criminal justice system is machine-like and dehumanized—operated by its own instructional ideology (Bibas, 2012).

However, people in these institutions are not passive objects. They have emotions that affect their routines. In this regard, scholars have put forth the idea that institutional practices are still subject to external ideologies, but the degree of impact depends on the social structure in which an institution is situated. For example, Regina Kunzel argues that although prison practice forms its own sexuality standards, it is still affected by outside-world sexism and racism (Kunzel, 2008). Also, in analyzing harsh punishment in Arizona, Moan Lynch indicates that the influence of populist pressure depends on the degree of citizen participation in politics, which is not strong enough in Arizona (Lynch, 2009, 2011). Lynn Miller also emphasizes that federalism is one main factor that limits local knowledge mobilization, which benefits single-issue interest groups with robust resources from top-down (Miller, 2010). In contrast, Zimring indicates that the ballot system in California transforms culture—in the form of mistrust of the government and vigilantism—into the penal system (Zimring et al., 2001). Last but not least, Heather Schoenfeld also observes the way politicians in Florida mobilize popular ideas that lead to mass incarceration through the media (Schoenfeld, 2010). All these scholarly works combined tell us that ideologies do affect the penal system either from top-down or bottom-up, depending on the social or political structure in question (see Figure 2.1).

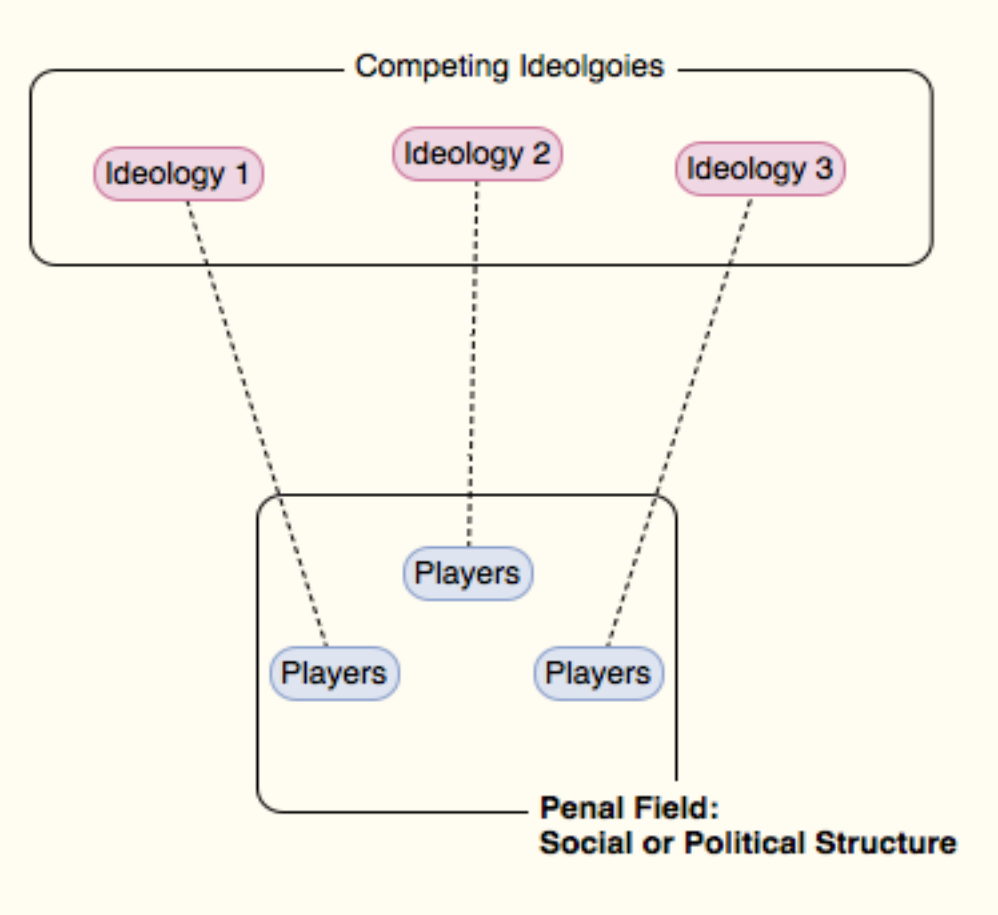


Figure 2.1

Penal Field

Pierre Bourdieu's concept of *field* further illustrates this dynamic relationship between ideologies and the penal system, where the term *field* is substituted for *institution.* In his concept of field, the ideology that permeates the field is called *habitus*. Important players, who are either individuals or institutions, bring certain forms of habitus to the social field. In this regard, it is crucial to identify *who* brings the ideology of habitus into the field and who fights against it. For example, by applying Bourdieu's concept of field (Bourdieu, 1998b), Joshua Page describes how the California Correctional Peace Officers Association (CCPOA), the most influential agent in California's penal field, transformed the *get-tough* ideology from an abstract concept into a practical application by both allying with and opposing other actors in the field (Page, 2011).

Although mass incarceration had uncertain public support, the main player, CCPOA, successfully utilized "tough on crime" slogans to appeal to the public—a strategy that ultimately led California to a trend of mass incarceration. This analytical tool of "field' is helpful in avoiding a direct focus on general institutional practices, and it has recently been applied to research about the international legal field (Dezalay & Garth, 1995, 2006, 2011).

In sum, in investigating whether certain ideologies influence the practices of certain fields, punishment theories suggest that influence hinges on *social mechanisms* and *players* within the field. To probe into this, one needs to locate the main *players* who create and promote certain ideologies, determining whether other ideologies are brought into the field to compete with them. In applying this framework to neoliberal effects on white-collar crimes, one should investigate the way neoliberalism is constructed in the penal field by the main players and the *forces* (other ideologies) that resist it. Institutional analyses are still embedded in the concept of the penal field since the institutions limit players' behaviors, and neoliberal arguments are also inserted, as neoliberalism is a significantly defined ideology.

Adding an Ideological Layer

When Barak argues that the current American trivialization of white-collar criminals is "neither by accident nor conspiracy but mostly by consensus or collusion" (Barak, 2012), it is clear that an urgent question arises: *what ideologies, in addition to neoliberalism, lie behind the so-called consensus?*

A call for investigating ideologies behind the scenes in white-collar crime has already emerged; Mick Moran points to the fact of "naturalization of markets" as the ideological hegemony that needs to be denaturalized in order to avert future disaster (Moran, 2010), and Tombs asserts that ideology matters since an academic focus on regulations and technical amelioration inversely

reconstructs neoliberal ideas, which in turn produce a more effective form of capitalism (Tombs, 2015). As a matter of fact, some literature already discusses the impact of ideology in punishment for white-collar crime; Goetz's study of arson cases in Boston, for example, demonstrates that class bias covers white-collar criminality (Goetz 1997), and Pontell also introduces ideologies such as "fraud minimalists" (Pontell, 2005) as well as indicates that the social movement against white-collar crime 30 years ago "has now all but disappeared" (Pontell & Geis, 2014). This change in ideology can certainly affect punishment for white-collar crime. By incorporating ideology analysis into an interpretation of white-collar literature, we may be able to delineate fluctuating penalties in different kinds of white-collar crime from the 1990s to 2000s[7].

Ideologies and Players Implied

Ideologies and Players

What specific ideologies might be involved in mediating the role of neoliberalism? What players might be included in the development of neoliberalism? Both questions are important in establishing the framework suggested by the idea of penal field. To address the first question, political scientists and anthropologists have proposed several ideologies, such as individualism (1970s), social egalitarianism (1980s), rule of law and democracy (1990s), and commodification and consumerism (2000s) (Figure 2.2), to name a few. As suggested by punishment theories, other ideologies like racism and class conflict also confront neoliberalism and produce different penal attitudes (Wacquant, 2009; Williams, 2008). To answer the second question, scholars argue that scholars, NGOs, and lawyers play an important role of the development of neoliberalism.

[7] To reiterate the importance of an ideology approach, players in the American penal field are more subject to the influence of ideologies than those in other developed countries. Judges and prosecutors are generally elected in the U.S., and the job of a prosecutor is often utilized as a "stepping stone to higher office" (Whitman, 2011). The ideal of democracy makes American institutions fertile environments for an ideological impact. Neoliberalism, as a particular factor in establishing modern states, is a definite ideology that needs to be incorporated into current studies, whether in the form of moral entrepreneurship or neoliberal hegemony (Hickel & Khan, 2012).

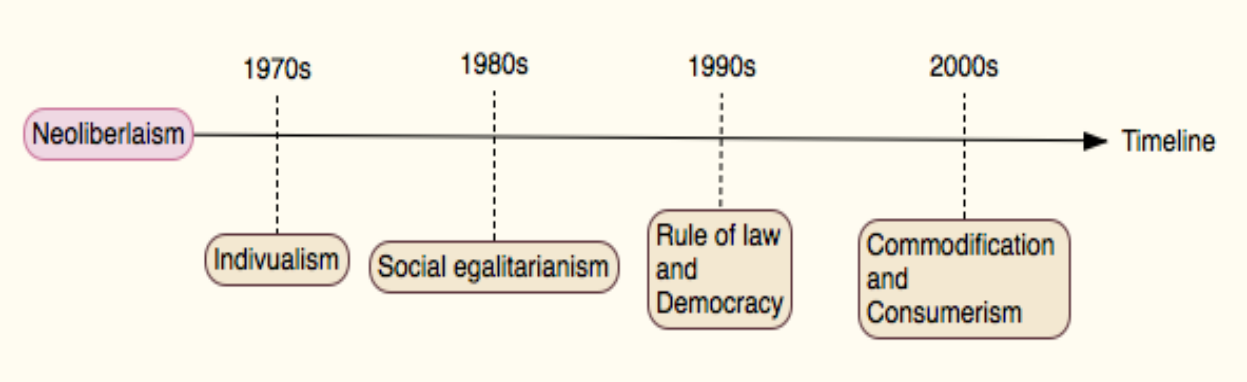


Figure 2.2

Local Ideologies in the U.S.

A sketch of neoliberalism and its enemies can be devised by revisiting history, and in the center of this image is American individualism. As Alexis de Tocqueville (1835) notes, *imaginary equality,* including the idea of freedom to make decisions, is entrenched in American culture. If applied to criminal law, freedom to make decisions can be equal to taking responsibility for violations of the law. As a result, this belief in egalitarianism may explain why there was enthusiastic prosecution for high-status white-collar criminality in past decades (Whitman, 2011). In other words, when neoliberal states strengthened sentencing for street criminals, they also exacerbated the risk for high-status offenders. As Whitman proposes, "the cultural commitment to equality in the USA contributes to punishment both for street criminals and white-collar ones" (2011). This idea also influenced public intolerance for white-collar crime in the 1980s when victim rights movements called for harsher punishment for white-collar offenders (Friedrichs, 2009).

However, in addition to working against neoliberalism, the notion of egalitarianism also works *for* neoliberalism. Since social movements in the 1960s mainly defended individual liberties, such as rights regarding divorce and abortion, neoliberalism was careful not to attack individualism in the 1970s. Neoliberalists in turn embraced individualism and questioned any state

intervention by denying elitism. The same scenario can be observed in current times; for example, the right wing criticizes Obamacare by saying it denies "individuals' right" to "choose" their healthcare (Hickel & Khan, 2012). In this regard, neoliberalism is promoting social good by "heroizing the market as an autonomous space of freedom and choice, demonizing the state as an intruder in this autonomous space" (Frank, 1998). Additionally, as corporations share the same legal status as individuals, they are also entitled to individual rights and freedoms.

To extend the idea of individual free choice, the culture of consumption (for which Jean Baudrillard uses the term *consumerism*) was created by—and has been promoted by—neoliberalism since the late 1990s, which is when the corporation became the dominant institution in the U.S. (Baker, 2009; Hickel & Khan, 2012) and the public became enthusiastic consumers (Carroll & Jarvis, 2015). This argument is supported by the prevalence of several think tanks subsidized by Wall Street, such as the Mont Pelerin Society, the Heritage Foundation, and the Business Roundtable. They have promoted individual liberty for forty years and have suggested that individual liberty can only be achieved through freedom of the market (Hickel & Khan, 2012). Shamir further articulates that this promotion of neoliberalism is a form of *responsibilization*, which refers to the art of cooperation in self-governance (Shamir, 2008).

Ideologies mentioned above (individualism, egalitarianism and consumerism) are just the tip of the iceberg that mediated and shaped neoliberalism in past decades, but they are still relevant today as potential important factors that contribute to punishment for white-collar crime. Before the 2000s, social egalitarianism and public intolerance may have explained the start of prosecution for corporations in the 1980s, and when the idea of rule of law came about in the 1990s, white-collar crime was still aggressively prosecuted and punished. However, in the 2000s, neoliberalism integrated rule of law into its own beliefs, which may have, in turn, generated the concept of

"corporate self-regulation" that eschews punishment (Shamir, 2008). Therefore, through integrating these ideologies implied by other fields of literature, it is discovered that ideological change aligns with punishment for white-collar crime—a concept which, however, still needs to be substantiated by future research.

It is now relevant for us to investigate more ideologies and players that have affected the penal system before and after 2003. If a neoliberal state is limited to penalizing only true moral wrongs, what are truly moral wrongs before and after 2003? Why did the number of charges against Antitrust and environmental crimes increase when the frequency of charges against corruption (FCPA) and big company fraud decreased?

Players in the U.S.

At the very beginning, neoliberalism was supported by several think tanks such as the Mont Pelerin Society, the Heritage Foundation, and the Business Roundtable, which have promoted neoliberal ideas for forty years (Hickel & Khan, 2012; Mirowski & Plehwe, 2009). To date, more and more business lobbyists, such as the Association of Corporate Counsel, the Chamber of Commerce, and the National Association of Manufacturers, join the side of neoliberalism (Harvey, 2005), bringing the idea of deregulation and positive images of white-collar crime to the media and in turn building up neoliberal hegemony (Snider, 2000; Williams, 2008).

These players, however, do not constitute the whole picture of neoliberal hegemony. Other players like politicians, NGOs, and human rights lawyers cannot be ignored. Although these players are opponents of neoliberalism, they contribute to the neoliberal hegemony in a different way (Lang, 2012). James Petras precisely summarizes the impact of NGOs in asserting that NGO funding by large corporations and international institutions not only diverts focus away from neoliberalism, but also draws talented activists from the Left (Petras, 1999). In other words, he

believes the neoliberal ideology has succeeded because of its opponents working as *distractions*. This theory is not new. In her book *The Shock Doctrine,* Naomi Klein suggests that neoliberalism was often promoted when citizens were emotionally and physically distracted by disasters and man-made crises (Klein, 2007). Barak also suggests that the relatively progressive prosecution of insider trading was a force that diverted attention away from Wall Street crime (Barak, 2012).

NGOs and human rights lawyers thrived during the war against neoliberalism due to the failure of the political Left (Dezalay & Garth, 2006). When the Left faded away because of the Cold War in the 1970s, human rights associations such as the International Commission of Jurists (ICJ) and Amnesty International (AI) situated themselves within American civil rights movements, successfully staying away from the label of communism and the political Left and eventually receiving funding from the Ford Foundation (Cummings & Trubek, 2008; Gardner, 1980; Wilkins & Papa, 2013). In the 1980s, while neoconservatives exported neoliberal ideas through conditional lending to Latin America, NGOs such as Human Rights Watch (HRW) shifted their war against neo-conservatism from the U.S. to Chile, in which the military government was supported by the Reagan administration (Dezalay & Garth, 2006). In addition to the war against neoliberalism and neo-conservatism domestically, U.S.-based human rights associations started to challenge neoliberalism internationally, signaling the period when human rights rhetoric replaced political leftist rhetoric (Vecchioli, 2011).

The war against neoliberalism reached its height in the 1990s internationally; it was at this time that civil society activism targeted multilateral developmental organizations and the Washington Consensus. Russia's failure to implement neoliberal ideas put up red flags, and the legitimacy of neoliberalism was questioned by the general public (Carroll & Jarvis, 2015). In this era of post-Washington Consensus, international neo-liberalists such as the World Bank and IMF

tacitly internalized civil society approaches to overcome domestic resistance in South America and Asia, supporting environmental and education programs (Davis, 2004). They also attributed the past failure of neoliberalism to crony-capitalism at the international level and in turn proposed "stronger institutional oversight," replacing their original idea of deregulation with transparent regulation (Carroll & Jarvis, 2015). To further assuage worldwide anger, neo-liberalists also promoted democracy—emphasizing the language of "participation"—which enabled NGOs to participate in neoliberal projects and supervise neo-liberalists' transparency and accountability (Lang, 2012). As a result, instead of confronting NGOs, neo-liberalists make NGOs part of their projects and praise democratic participation as *good governance*.

The assimilation of neoliberalism and NGOs can be attributed to the work of lawyers. In the 1980s, when neoliberalism was challenged, global corporate lawyers needed a human face, and the field of public interest law provided the legitimacy to grant them exactly that (Wilkins & Papa, 2013). This assimilation also happened internationally as elite law schools in the U.S. started to provide public interest law programs for foreign lawyers from Chile and Argentina (Montoya, 2009). Corporate lawyers began to study human rights and public interests law (Cummings & Trubek, 2008), and instead of supporting deregulation, neoliberal institutions were enthusiastic about establishing *rule of law* that was designed by these lawyers. For example, the World Bank established the Inspection Panel in 1993, while USAID began to invest in AIDS research as well as children and women's rights programs. Wall Street lawyers started to provide *pro bono* service; big law firms showed their concern towards environmental consequences regarding global outsourcing, the economic insecurity of immigrants, and the displacement of indigenous populations resulting from modern development (Vieira, 2008). The concept *rule of law* perfectly blended neoliberalism and public interest (Gardner, 1980), and it empowered the minority while

simultaneously enabling big companies to govern themselves through self-regulation, or "corporate social responsibility." As Carroll and Jarvis put it, "proponents of neoliberalism have increasingly focused on citizens and civil society…as a reactive strategy to protect the legitimacy and hegemony of the neoliberal project" (Carroll & Jarvis, 2015).

Balancing a human rights approach and extreme free market ideas, neoliberalism found a way to survive after the 1990s. This post-Washington Consensus' neo-liberalism serves to "marginalize and delegitimize conflict, denying any potential for truly alternative politics" (Jackson, 2011) and preserves the core idea of capitalism. As discussed above, NGOs and lawyers are significant players that mediate neoliberalism, and these players' ideologies should be investigated further to expand upon previous studies of local ideologies.

Ideologies and Players in China

Unlike with American policies, NGOs and lawyers' associations are not powerful enough in China to challenge neoliberalism (Jia, 2003), and the power of the media shrank after 2008, at which time it failed to become neoliberalism's enemy (Wu, 2015). Also, with the fall of the New Left led by Bo Xilai in 2011, the neoliberal government covered by SMI remains strong to this day. China indeed felt some pressure from international human rights groups, but the way it responded to them was to abolish the death penalty in regard to white-collar crime—which, inversely, made neoliberalism stronger. In this regard, the Communist Party is the dominant player in the Chinese penal field.

However, neoliberalism has not remained intact in China since the 1990s. Public opinion is able to influence the Party's policy and judges' decisions (Miao, 2013). With the development of the Internet, even the SMI could not entirely put an end to public unrest. Scholars also express their concerns about China losing public trust due to weak regulations and skewed enforcement

when the idea of rule of law is under-developed (Van Rooij, 2014). In addition, China is now experiencing an ideological crisis (China Culture Forum, 2015) because neoliberal ideas deeply challenge Marxism and communism—the roots of the Communist Party of China. In confronting this crisis, some argue that China should trace its roots back to Confucianism. Current leader Xi Jingping seems to accept this argument in embracing Confucius, saying, "Confucianism can offer beneficial insights for governance and wise rule" during his speech in the Great Hall of the People in 2014. Now it seems that neoliberalism has new company in China in the form of this ideology, which could become either a friend or enemy in the near future. When scholars doubt that SMI damages the legitimacy of law (Trevaskes et al., 2014), they tend to ignore that this legitimacy could be based on moral standards that tradition offers, especially in Eastern countries.

In summary, Chinese neoliberalism was indeed under attack in the late 1990s, but given the involvement of the SMI in the 2000s, neoliberal ideas became well-protected from public resentment toward the income inequality resulting from economic growth.

What motivated China to initiate the Strike Hard program in the 1990s even given the impact of neoliberalism? Why did China focus on financial crime but then abolish the death penalty for white-collar crime in 2011? When the U.S. used deferred and non-prosecution methods to combat corruption, why did China aggressively strike corruption? In order to compare the different neoliberal approaches to punishment for white-collar crime in different cultural contexts (the U.S. and China), I will introduce my methods in the next chapter.

Chapter 3: Research Method

In describing the issues between neoliberalism and punishment for white-collar crime, several penal turns are selected to explore neoliberal effects. The first effect is the 2003 penal turn in the U.S., which occurred at a time when deferred punishment and non-prosecution for big companies became prevalent in the field of financial fraud and foreign corruption. The second effect is the 2002 penal turn in China, which set the regulating agencies and Strike Hard program against financial crime; it later marked by 13 death penalty economic offenses abolished except in the case of corruption. In the literature review above, it is widely assumed that neoliberalism should be understood through an ideological lens and specific local context. However, when neoliberalism faces allies and enemies in different countries, its effect on the penal system varies. By comparing two economic giants who are deeply influenced by neoliberalism in very different ways, researchers might be able to construct proper explanations of each penal turn.

The ideological framework suggested by this study is inspired by Garland's work *Culture of Control*, which provides an ideological lens to understand responses to crime. However, the book focuses much on street crime, while this study uses a somewhat similar lens to analyze the trajectory of white-collar crime. To develop a comprehensive framework concerning ideologies, this dissertation will apply the idea of penal field (Bourdieu, 1987; Page, 2013), which emphasizes ideologies and players that construct the meaning of punishment. First, to investigate popular ideologies that mitigate neoliberalism, this dissertation will utilize open coding and thematic content analysis on archival documents, developed from Glaser and Strauss' (1967) grounded theory approach. It is a systematic methodology that can analyze economic, social, and political change (Frankfort-Nachmias & Nachmias, 2008). Second, this dissertation will conduct interviews

with important players (as the literature review above suggests) that bring ideologies into the field, and these interviews can strengthen my argument of local ideologies.

Data Collection

FCPA and Securities Fraud

This dissertation particularly aims to explore the ideologies underlying punishment for two types of financial crime: those categorized by the Foreign Corrupt Practices Act (FCPA) and fraud. Fraud is the most reported type of white-collar crime in the U.S. and China—and probably the one that is most influenced by neoliberalism. Since my dissertation focuses on how *corporate* liability is established in modern society, I use issuer's and broker's fraud as my case studies instead of focusing on individual securities fraud topics such as embezzlement, Ponzi scheme, and insider-trading.

In addition, since corruption cannot be ignored in the discussion of Chinese fraud, I use the Foreign Corrupt Practices Act as a proxy through which to observe different local ideologies. The investigation of FCPA punishment is significant for two reasons. First, violation of the FCPA constitutes an international crime that may involve the U.S. and China, which are my research subjects. Second, fraud framing can only be made salient by comparing it to other forms of white-collar crime punishment, and the FCPA can serve the comparing purpose due to the fact that it is very different from fraud in terms of elements of crime. Thus, I selected U.S. FCPA cases so they could be to compared *domestically* to fraud cases in order to highlight different white-collar crime ideologies in America. These cases can then be compared *internationally* to corruption cases in China to feature different ideologies in China.

Archival Documents and Sources

My data will exist in the form of archival documents, introduced below.

The proposed study chooses media reports as the main material since the media provides the most crucial platform allowing ideologies to persist (Bourdieu, 1998a; Cavender, 2004; Gamson, Croteau, Hoynes, & Sasson, 1992; Herman & Chomsky, 2010), and it is also a platform that the public uses to consume knowledge (Nash, 2006). More importantly, media is the platform on which neoliberalism and its enemies attack each other and on which prosecutors and regulatory agencies tend to attract media attention when making decisions (O'Brien, 2014). This media framework has been widely applied to street crime literature (Altheide, 2002; Cavender, 2004; Doyle, 2003; Garland, 2010; Schlesinger & Tumber, 1992), and now it is time to integrate a white-collar aspect into it (Williams, 2008).

For the U.S. side of the proposed study, articles are collected by the *Factiva* database and involve 7 core publications: (1) *The New York Times; (2) The Washington Post; (3) The Globe and Mail;(5) The Wall Street Journal; (6) Forbes; (7) The New Yorker,* which are selections made based on prestige and circulation. *The New York Times, The Washington Post* and *The Wall Street Journal* are top newspapers in the U.S. with wide circulation, and *The Globe and Mail* provides non-American perspectives that are widely circulated in the U.S. *Forbes* and *The New Yorker* are top magazines that can provide useful perspectives regarding white-collar crime. Media reports concerning FCPA and fraud before and after each penal turn will be collected, and these will include different forms of white-collar crime punishment data that illustrate the clarity and intensity of this punishment when compared to the punishment for street crime. By coding these documents, the proposed study aims to reveal certain principles, patterns and themes (Schreier, 2012), analyzing them by comparing patterns and penal trends.

For the Chinese side of the proposed investigation, media reports are also selected based on prestige, circulation, and local and national newspapers that can exemplify different patterns of

ideologies. All media reports are reports that can be accessed online via *Baidu*, including (1) *Southern Daily;* (2) *Fachi Daily;* (3) *China Daily (China News);* (4) *People's Daily; (5) China Youth Daily;* (6) *People's Courts Daily; (7) Beijing Daily;* (8) *Xinhua Daily*; and (9) *Southern Weekly*. Media reports in the 1990s and 2000s will be compared using criteria like the size of cases, neoliberal ideas, Confucianism, and white-collar crime. The same coding process will be used for Chinese media reports as for American media reports in order to observe local ideologies about punishment for white-collar crime.

Cases Selected

According to 54 media reports collected via *Factiva*, General Electronics is the most-reported FCPA case before the 2000 Enron case and the 2003 penal turn. Since Enron is the most well-known corporate fraud crisis and prosecution for financial fraud decreased after 2003, the General Electronic case is a good example of FCPA framing in the 90s.

From 2003-2010, FCPA reports skyrocketed, with the top five most-reported cases including the fraudulent actions of Lockhead Martin, Siemens, Exxon, Halliburton, and Titan. A total of 153 reports about these cases were collected. All of them were coded and analyzed to provide a complete picture of FCPA framing after 2003. Cases occurring from 2000 to 2002 were not selected because trends in media reports typically change gradually instead of over a brief period of time. Because the corporate crisis (e.g., the collapse of Enron and WorldCom) lasted from the early 2000s to mid-2002, it is ideal to observe cases happening after 2002 in order to compare them to cases in the 90s, thus highlighting any significant change in media reports.

This same selection process was applied to my selection of fraud cases. The top 10 most reported fraud cases I selected that occurred prior to 2000 were first categorized into three groups: broker's fraud, issuer's fraud, and consumer fraud. A representative case was chosen in each

category, with the following cases as the result: Prudential, Phar-mar, and Altria; 144 media reports in this pre-2000 era concern these three cases. No consumer fraud cases made the top 10 list from 2002 to 2010, and three representative cases of broker's and issuer's fraud were chosen respectively given their high level of circulation: AIG, Tyco, and Citi Bank. There are a total of 120 reports concerning these cases.

The two most-reported Chinese bank fraud and corruption cases of the 90s are those of CITIC Bank and People's Bank of China; these cases are mentioned in 49 reports. The banks' chief directors, Xuebing Wang and XiaoHau Xu, were sentenced to 12 and 15 years in prison, respectively. After 2002, another CITIC Bank case dominated the scene, so 140 reports concern this instance of fraud. All 3 cases were compared and analyzed to see how China treats fraud when bank officials are also government officials. The second CITIC Bank case also speaks to FCPA framing since CITIC's chief director accepted bribes from the U.S.

Chinese securities cases in the 90s are represented by QiongMinYuag and HongGuang Inc. The YiGuangXia case, also termed "the Chinese version of Enron," took place in 2000, becoming the quintessential corporate crisis in China. After YiGuangXia, the cases of LVDadi and WangFu Co Ltd dominated media reports from 2002 to 2010. This dissertation will analyze 51 reports pertaining to QiongMinYuag and HongGuang Inc. (pre-2002) and 146 reports pertaining to LVDadi and WangFu Co Ltd (post-2002) to address significant differences in how the media treats fraud in each era.

Table 3.1: Selected Cases (1,089 total)

	The 90s	The 2000s
U.S. FCPA Cases	General Electronics	Lockhead Martin Siemens Exxon Halliburton Titan
U.S. Fraud Cases	Altria (consumer fraud)	None
	Phar-mar (issuer's fraud)	AIG, Tyco (issuer's fraud)
	Prudential (broker's fraud)	Citi (broker's fraud)
Chinese Corruption and Fraud	CITIC Bank People's Bank of China	CITIC Bank
Chinese Securities Fraud	Qiong MinYuan Inc HongGuang Inc	LVDadi Inc WangFu Co Ltd

Limitations

Although the cases referenced in the table are particularly representative of fraud, reports associated with these cases only drew public attention during a short span of time. Because a certain time span is therefore not indicative of the media's impact, instead of analyzing ideologies within a certain period of time, my study focuses on the *transitions* and *differences* between these reports. In this regard, my study extracts ideological differences by comparing media reports

domestically and internationally, therefore producing an incomplete but salient ideological understanding of white-collar punishment.

Another limitation of the study is that only the newspaper is used as a research instrument; the newspaper cannot depict all aspects of local ideologies. Since politicians are also important players, governmental documents—such as public hearings, memorandums, and legislative records—are also an appropriate means for understanding ideological trends and are absent from this study.

Interviews are not a major source of material for this dissertation because they often do not provide evidence of ideologies that *cross* a period of time. Instead, content analysis of newspaper is a better way to look at what ideologies come into play; it is also the best means by which to examine whether there is a change in an ideology over time. However, since a qualitative study's validity is a concern, my research uses triangulation to strengthen validity by incorporating interviews, collected from books and journal articles, after coding is done; this allows for analysis of interviews and trends using Bourdieu's concept of *field.*

Data Analysis

After collecting media reports7, any competing ideologies that ally or conflict with the idea of neoliberalism will be investigated. Rather than coding specific words and considering their appearance, the proposed project will apply discourse analysis that aims at revealing the forms of rationality and ideology that exist behind the context (Fairclough & Wodak, 2005; Foucault, 1975). This method is particularly popular in the field of media analysis, and it fits my research agenda best since it focuses on ideologies.

Although open-coding is the main strategy used for this research, pre-existing codes will be applied in order to identify the values and symbols that permeate these documents. For U.S. cases, ideologies such as individualism, consumerism, laissez-faire, egalitarianism, rule of law (e.g., freedom to contract), and theological ideas will be coded; Chinese, Soviet-socialism, Confucianism, social order management, communist religion, and Feudalism-oriented ideas will be analyzed in a fashion similar to that of the analysis present in the previous literature review. Moreover, since all Chinese media reports are in Chinese, I will code these reports in Chinese and translate the code into English.

The codes produced using the open-coding process are categorized into descriptive codes and interpretive codes. Descriptive codes represent the exact wording of media reports, representing such terms as "scandal," "criminal," and "cooperation." Interpretive codes represent concepts interpreted by the researcher; examples include *neoliberalism*, *Confucianism*, and *Big Government*. In order to differentiate this categorization while comparing codes from different eras and countries, quotation marks are used for the descriptive terms and *italicized* terms are used for interpretive codes developed by the researcher.

Chapter 4: The American Media's Framing of FCPA

Introduction

From 1990 onward, it has been widely accepted that justice should be served in regard to corporate fraud, especially given the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) in 1989. Populism may contribute to punishment for white-collar crime, and whether the media is responsible for punitive attitudes toward white-collar criminals is currently unknown, as such a notion is not addressed by existing literature. On the other hand, neoliberalism, which may trivialize white-collar punishment, gained significance after 1990 because Ronald Reagan promoted neoliberal ideas for quite some time. How did populism and neoliberalism operate behind the scenes of punishment for financial crime? This has become a salient question that should be asked in the context of white-collar punishment.

In this chapter, my research first contributes to the analysis of media reports regarding foreign corruption practices in big companies in order to observe the media's general attitude toward big, trans-national companies. The Foreign Corruption Practice Act (FCPA) was established to make it unlawful for entities to make payments to foreign government officials in order to obtain or retain business. In 1998, the FCPA extended its prohibition of bribery from all U.S. companies to foreign companies. The media has constantly reported FCPA issues since 1990; about 200 to 220 articles can be collected annually from the docket of this research[8]. Whether the prevalence of FCPA issues in the media is consistent with populism is unknown, and a thorough content analysis is needed to probe into the values the media conveys.

[8] Including *The New York Times, The Washington Post, The Wall Street Journal, Financial Times, The Globe and Mail,* and *The New Yorker*.

Since my research focuses on ideology-altering crises ideologies, two eras are selected and divided into categories corresponding to prominent scandals. The time period from 1990 to 2001 represents an era of post-savings and loan crisis, as this is directly after FIRREA was enacted. The second category is characterized by the infamous Enron case and 9/11; this period stretches from 2001 until 2008. As this chapter reveals, FCPA-related reports generated a friendly attitude toward trans-national companies in the 90s, and this framing was further enhanced in the second era (the 2000s), fueled by ideologies such as Hamiltonian ideas, Wilsonian ideas, and neoliberalism.

First Era: Before Enron

Overview

Before Enron, FCPA cases did not have much of a presence in the media. Companies involved in foreign corruption practices were seldom reported (there are usually less than 10 reports for each company from 1990-2001). One company, however, caught the media's attention in violating FCPA at least two times in 10 years: General Electric.

In 1990, GE was investigated first by a Japanese prosecutor who indicted GE for providing a bribe to a public university in order to win a medical equipment bid. In 1991, GE was involved in the Dotan scandal; Dotan, an Israeli General, took a bribe from GE and embezzled millions from American military aid with GE's help. These high-profile cases made GE a media target, and as such, it became a "model case" for this period.

Crime Description

Although foreign bribery has been defined as a crime since 1977, in describing GE's criminality from 1990 to 2001, the American media seldom used the word "crime." This word only shows up 4 times in 54 media reports from this era. When the media used the word "criminal," they used it only to refer to foreign corrupt officials (45 times), and GE and its employees are

rarely referred to as *criminals* even though they pleaded guilty in 1993. Instead, the media preferred to use the word "scandal" (44 times) or "wrongdoing" (35 times)—less strong language for white collar criminality--when discussing the GE case. In contrast to street crime descriptions, FCPA crime descriptions were clearly deemphasized in this period.

A distinct contrast between bribe takers (foreign officials) and bribe givers (GE) is also salient when looking into the media's description of each. As bribe takers, foreign officers' names appear on almost on every media report from this era, and the media provides a perfect explanation for their corruption: protectionism and a corrupt environment. The media never blamed the bribe taker's greed and instead denounced over-protection of local business:

"American negotiators have long complained that Japanese universities and government installations resist buying the highest-tech American equipment, particularly supercomputers, in an effort to promote Japan's own companies. And industry officials say that at least some of G.E.'s actions that led to the arrests are common practice in Japan, though little discussed" (The New York times, Feb. 21, 1991).

"Analysts say deep discounting and practices bordering on bribery are common in the highly competitive medical equipment field in Japan" (The New York Times, March 8, 1991).

It was therefore implied that over-protection was the cause of corrupt practice, and the foreign corrupt environment made competition unfair and therefore in need of a remedy. The common practice of bribery was initiated only when neoliberalism was not enforced, so American companies like GE felt they needed to propose bribes to "get even" (*The New York Times*, Feb 21, 1991). In this regard, foreign bribery practice was the necessary result of a corrupt foreign environment, and American companies were talked about as victims sacrificed in this environment. They were just involved in a foreign corruption scandal, to use the lax phrasing of the media, and were not main agents of corruption.

In contrast to the denunciation of bribe-takers and their environment, the bribe giver, GE, vanished in media reports from this era. The individuals who provided bribes were only mentioned

when they were arrested or prosecuted, and the public did not even know who furnished the bribes in the referenced Japanese case. Although the company constantly blamed individuals (12 times in 54 reports), the media did not frame GE's issues as bad apple instances, and it concerned itself with reporting a particular GE executive, Welsh, who was a whistleblower in the GE scandal. The coverage of Welsh's story shifted focus from crime itself to critique of *why* an individual reported his own company to the justice department.

Criticism of Self-regulation

Since individuals who initiated bribes were seen as victims of unfair competition, the media was reluctant to frame them as bad apples. Instead, Welsh became the focus of the GE scandal when the media started to probe into his intentions. In this regard, Welsh was not a hero who brought justice to light, but a questionable figure that whistle-blew his own company. Subsequently, the criticism of self-regulation began.

On one hand, GE loathed the idea of whistleblowing, asserting that anything rewarding the whistleblower would harm the company's self-regulation policy. That said, it was asserted that Welsh should have reported the case to the Company Compliance Program first and should only have brought the case to the justice department if GE could not handle the case itself. This idea of "self-regulation first" appeared 6 times in media reports and was mostly discussed by a GE spokesman.

On the other hand, the media also showed concern about the effectiveness of self-regulation, and this concern appeared more than the aforementioned idea of self-regulation. *The Wall Street Journal* ran many stories that showed the failure of self-regulation when its chilling effects on whistleblowing were made clear. GE's assertion was then countered by numerous self-regulation failure stories, and the media doubted whether self-regulation could prevent foreign

bribery practice from happening when "making money and integrity [were] not compatible" (*The Wall Street Journal,* July 22, 1992).

Although the fight regarding self-regulation represented an "attack" on neoliberal ideas, it indeed de-emphasized foreign bribery practice since *crime* is not a main concept in regard to either neoliberalism or the media's descriptions of foreign bribery. What the criticism of self-regulation implies is that whenever self-regulation is improved, the efforts of the Company Compliance Program are an ideal reaction to fighting corporate *crime*. This idea of improving self-regulation became more salient when the media started to report on subsequent punishment for GE.

Punishment

To establish corporate liability, the media may either blame the individual (bad-apple framing) or corporations. In the 90s, the media was reluctant to focus on individuals, except in the case of whistleblowers. Three individuals from GE were indicted in 1994, but of 19 media reports that mention punishment for GE, only one report mentions indictments, and details about convictions are not even reported. In the era of a post-savings-and-loan crisis, the media seemed to focus only on the company, not the individual responsible for wrongdoing.

The punishment for the company, however, barely existed in the GE case. Suspension of its business only lasted for four days, and the media did not even show concern about this fact. According to the media, GE pleaded guilty and thereby ended the government's investigation. In addition, none of the reports specified the crime that GE confessed to, and the word "bribe" only shows up once in the all paragraphs that mention GE's confession. The media not only trivialized GE's commitment to crime, but also ignored the lenient punishment for GE's criminality. Thus, even though GE's decision to plead guilty appeared in several articles (8 out of 19), the media did not acknowledge the seriousness of the FCPA violation.

To justify the extraordinarily short suspension of GE's business, the media provided justification using a magic concept: "cooperation."

"Congressional investigators working on the case also said that General Electric had been forthcoming and cooperative since the case became public 18 months ago" (The New York Times, June 6, 1992).

"The Pentagon's Defense Logistics Agency said General Electric had responded quickly to the Government's concerns about the management of the engine division" (The New York Times, June 6, 1992).

"GE, in fact, is arguing that its extensive cooperation with the Justice Department should preclude the company from criminal charges" (The Wall Street Journal, June 8, 1992).

Given extensive "cooperation," GE looked pardonable because of its quick response to governmental investigation. This echoes the self-regulation theme the company continued to propose: the notion that the company can deal with wrongdoing itself, and if something bad happens, its quick response can make it immune to punishment, therefore effectively indicating that justice is negotiable. The trading of justice is not a new concept in the U.S. since the common practice of plea-bargaining has long embraced this very idea (Friedman, 1978). Indeed, in a normal street crime scenario, defendants provide a testimony in exchange for a reduced sentence, thereby trading justice for efficiency. However, in GE's case, the prosecutor had no difficulty obtaining evidence associated with the crime, which meant that charges against the company could still be made without GE's cooperation. Despite this, GE's cooperation generated an example of lenient punishment.

The theme that the media portrayed in this instance was *cooperation*, and even opposing forces regarding lenient punishment continued arguing the same point when some investigators responded that GE "didn't voluntarily disclose the improprieties and only began cooperating after a civil suit was filed" (*The Wall Street Journal*, June 8, 1992). As a result, the contending point is

whether the company's cooperation was *quick enough*, and the media never challenged the prerequisite to this idea: how and why can cooperation impact the application of justice?

The logic behind this question, though not explicitly stated, is that a settlement could constitute a form of punishment. Different from street criminals, who seldom pay millions of dollars to the justice department, a company often settles with the justice department for billions of dollars. This is to say that not only cooperation—but also a settlement—can have a significant impact on criminal charges. Since the money involved in the settlement is a large sum, criminal charges against big companies being dropped or modified appear to be justified. In this way, the impression of lenient punishment for GE was neutralized when the media revealed the nature of the settlement, and feelings associated with punishment were enhanced when the company agreed to spend more money to prevent further crime. As a result, depiction of the case came down to the aforementioned *level and speed of cooperation*, and the actual criminality of the company was then ignored.

Solution: Enhanced Supervision and Reference of Fighting Crime

The concept of cooperation is important since it serves as a segue into a further argument regarding self-regulation: enhanced supervision. To avoid any litigated risk, GE agreed to pay the U.S. justice department 70 million dollars and promised to devise a better self-regulation program that could prevent *wrongdoing*. This illustrates that *cooperation* does not happen only during investigation, but also *after* punishment.

The implied cooperation between the justice department and companies ensures they are on the same *side*. In other words, companies are portrayed as victims that suffer as a result of wrongdoing although they are the entities that commit crimes. According to media reports from the pre-2001 era, companies were willing to fight crimes such as those related to the FCPA, and

they only committed crime due to unfair competition overseas. 19 articles mention the punishment for GE; six articles explicitly introduce the enhanced internal supervision program GE designed afterwards that helped to prevent corruption[9]. Although the media sometimes questioned the effectiveness of a self-reporting program[10], it never questioned the very existence of self-regulation. This is to say that critics only aimed to propose a *better* internal self-report system; they never questioned why the law was notably absent in a company-supervision scenario.

The media's focus on self-regulation and supervision can be observed explicitly when the media mentions GE after the punishment. There are 9 articles referring to GE that discuss foreign corruption practices. However, most articles depict the case in such a way as to make it seem that GE was facing corruption in foreign countries and therefore just wanted to make money. The story then became an inspirational one; GE finally overcame its troubles and gained an excellent internal-policing program. In an article presenting the banning of corporate bribery, GE became an exemplar of anti-bribery, and its internal codes of conduct became the standard for fighting corruption (*The Wall Street Journal*, Sep. 23, 1997). This "modeling" resonates with the theme that *companies are victims* that want to fight corruption instead of exemplify it. In the media's perspective, since bribe-giving only happens when foreign countries are corrupt, the bribe-giver—the company—is ignored, and the war against foreign corruption practices becomes the war against countries who are not *liberal* or *civilized* enough. It becomes clear that it is the goal of the media to deemphasize focus on American companies committing crime and instead shine a spotlight on undeveloped countries that make companies corrupt. In the pre-2001 era, the media further

[9] The program included seminars, videos for employees, and pop quizzes for employees consisting of questions such as "What are the three ways to report wrongdoing?" A coffee mug was rewarded to workers who provided the correct answers.
[10] Only one article criticized the program—*The Wall Street Journal*'s piece from July 22, 1992.

delineated that the remedy was to establish business ethics devised by a company's internal-policing program.

Ideologies: Neoliberalism and Wilsonians

The aforementioned themes—including self-regulation, enhanced supervision, and business ethics—are all connected to neoliberalism. However, unlike neoliberalism in the 70s that emphasized deregulation, big companies in the 90s did not oppose all regulations. In fact, GE even lobbied Congress to enforce and extend FCPA enforcement that punished foreign corruption practices. What big companies opposed were not regulations themselves, but the process by which regulations were enforced. Instead of denying the criminality of foreign corruption practices, companies acknowledged the essence of crime, asserting that they could deal with their problems themselves. This new type of neoliberalism embraced *more* regulations (Vogel, 1996) but somehow prevented enforcement of these regulations.

The ideology behind the emphasis on self-regulation, corporations, and supervision could be the foreign policy the U.S. adopted in the 90s—the Wilsonian approach, which asserted that America has a moral obligation to spread American democratic and social values to the world. Since Wilsonians did not oppose Hamiltonians—who support the alliance between corporations and the government—it was logical for Wilsonians to ask the government to work with corporations in order to establish the rule of law internationally. Thus, fueled by neoliberal and Wilsonian ideas, the pre-2001 media started to see corporations as friends, not enemies, which constituted a friendly attitude toward trans-national companies.

It is not surprising that companies want to escape punishment and blame the foreign environment. However, why did the media of the 90s support companies' arguments as they attempted to evade blame? One possible explanation is that most of these reports are interviews

with the GE spokesman instead of interviews with relevant outsiders, such as professors and members of NGOs. While the GE spokesman was quoted 14 times in 46 pre-2001-era reports, professors were only quoted two times, and they all agreed with self-regulations. If the role of the media is to provide a platform for debate and discussion, the debate about FCPA enforcement is certainly an unfair game.

A relevant NGO founded in 1993, Transparency International (TI), gained importance in the debate about foreign corruption practices after the 2000s. If a powerful NGO such as TI could provide useful information to the media—which is the case—it seemed the unfair game of media reporting might change. However, in the section concerning the next era (2001-2008), we will examine how TI adversely enhanced neoliberal themes, weakened the rule of law, and trivialized crimes that violated the FCPA.

Second Era: After Enron

From Bribe to Fraud

From 2001 onward, there were more FCPA cases (153 reports) than in the first era (34 reports), and the DOJ and SEC investigated more companies in the post-2001 era than in the pre-2001 era. The Enron case alerted the public to the idea that big companies could commit crime and fail, and in the post-2001 era, the media reported more FCPA cases than it did before 2001. From 1990 to 2006, six companies showed up more than 30 times on the media docket concerning foreign corruption, and five of them showed up after 2001; coincidentally, instances of FCPA prosecution rose only after 2001, reaching their height in 2008 (Garrett, 2011) and thus mirroring said quantitative change in media reports.

An increase of media reports addressing FCPA cases, however, does not represent a punitive attitude toward big companies. What accounts for this attitude, instead, is *how* the media

communicates it, not how *often* the media discusses it. Although more cases were reported from 2001-2008, the media changed its approach to framing FCPA cases. The case of Enron played a large role in changing the media's depiction of FCPA cases in particular.

Enron's 2001 bankruptcy caused a $60 billion loss for employees and shareholders, and Enron's accounting auditor, Arthur Andersen, was indicted for his audit failure. The Sarbanes-Oxley Act was then passed to increase the responsibility of auditing firms, and focus shifted to accounting issues despite the other types of fraud that were involved in the Enron scandal. Consequently, when the media referred to the Enron case, it often emphasized the accounting or tax issues, and this form of issue-framing was duplicated for FCPA cases. For example, when Exxon and Mobil were suspected of bribing Kazakhstan's president, the crime was framed as a situation where "a company tried to avoid taxes," or "the accounting unit failed to suspect wrongdoing." The same thing happened in the Siemens bribery case, whereby companies that provided bribes were "suspected tax evaders" (*The New York Times*, February 19, 2008). For the media, it is not important at all whether these companies provided bribes overseas; what is far more important is consideration of whether these companies' auditing reports were flawless, which all comes down to the concept of investor confidence. As a result, the government will "penalize companies for false or misleading public statements about foreign payments, particularly in materials distributed during mergers and acquisitions" (*The Wall Street Journal*, March 2, 2005). From this perspective, these companies did something wrong not because of giving bribes, but because of not being transparent enough in their auditing reports, which affected the revenue of shareholders and investors. In this way, although bribing issues were reported a great deal after 2001, the issue of *accounting fraud* outweighs the problem of overseas bribing in post-2001 era reports.

More importantly, when bribing issues were marginalized in the media reports from this era, companies were actually praised as pioneers of foreign economic reform. For example, Exxon and Mobil cases were often mentioned alongside the World Bank (WB) and International Monetary Fund (IMF)—both institutions that were depicted as facilitating the growth of third world economies. Compared to the first era of media reports, the second era of media reports *never* mentions the conflict between local protectionism and neoliberalism, and it is taken for granted that American companies could enter other countries to do business without restraint. The only concern in the media reports regards whether these companies cooperated with WB and IMF and were transparent in their financial reports—as well as whether these companies were punished because of defrauding WB and IMF. Again, the framing of these issues resonates with the idea of *transparency*.

Real foreign bribing practices, however, did not fall into the "fraud" category created by the media. Thus, reports about bribing practices were then marginalized. Fraud framing became prevalent, and in big cases, such as the Siemens case, companies even pleaded guilty to accounting violations instead of FCPA violations. Also, the harm that neoliberalism did to Third World countries—in other words, the foreign bribing that caused citizens' suffering—was not reported in crime reports in the post-2001 era. The only crime that big companies committed, according to media reports, was violating the business ethics created by international organizations and corporate lawyers. The linguistic framing of this violation will be analyzed later.

Crime Description: Minimization of Corporate Liability

"To some extent, Siemens is a victim of a shift in the ethical climate of corporate Germany" (The New York Times, April 26, 2007).

Unlike in the first era (1990-2001), the media started to use the word "criminal" more often (96 times) in the second era (2001-2008). Meanwhile, the words "scandal" and "wrongdoing" were used less than they were in the first era (47 times and 33 times, respectively, in 151 media reports). This pattern resonates with the point that the media was not afraid of using the word "criminal" to describe big companies after the infamous Enron case. It is important to examine, now, how these and other terms were communicated by the media.

Although "scandal" and "wrongdoing" were used less as time progressed, more terms that never appeared before 2001, such as *improper payments* (used 57 times) and *controversial activities* (17 times), were invented for FCPA cases. Even when a corporation was involved in a street-crime-type case, such as one involving prisoner abuse[11], for example, the media tended to use a word such as *unethical* or *suspicious* to describe certain criminal activities.

The word "criminal", however, was applied to FCPA cases in a different way than the it was used in street crimes. In most cases, the word "criminal" was used only to refer to the DOJ's criminal investigation, and media reports mentioned *civil sanctions* or settlements along with criminal investigation, thus implying that civil sanction or settlement is a legitimate alternative to a criminal penalty. This linguistic pattern makes a company look less criminal since it gives consumers of the media the notion that a criminal penalty is just an *option*. Moreover, in the second era, the term "criminal" was sometimes even used, interestingly, in favor of big companies. For example, when Mikhail B. Khodorkovsky, Russia's richest businessman, was poised to sell his oil company to ExxonMobil—a U.S. company involved in foreign bribery practices—a possible criminal investigation against Khodorkovsky was described by the media as a barrier that stood in the way of implementing neoliberal economics. Khodorkovsky, as a result, was seen as a

[11] Titan Co. was involved in a prisoner abuse case in 2003.

man who did not retreat from the threat of criminal investigation and insisted on employing foreign investment policies even though he was involved in criminal activities such as fraud, price fixing, tax evasion, and corruption.

It is Their Fault. In terms of white-collar crime's trivialization, a bad apple theory is a common framing technique consisting of the idea that the employee who violates the law is blamed, therefore allowing his/her company to purify itself after he or she is fired. Common as this idea is, however, it is not usually present in reports for FCPA cases. In 10 quotes extracted from my post-2001-era collected data, all of them blame individuals *outside* their companies, not those who work *within* the companies. These outside individuals are usually lawyers—sometimes consultants—who helped companies negotiate with foreign local governments to win a bid. These lawyers often served as cover-ups, and it was first investigated by the DOJ when a company severed ties with middlemen, claiming that they no longer cooperated with each other because they violated "companies' code of ethics" (*The Washington Post,* June 21, 2004).

The concept of blaming the middleman is derived from the idea that foreign local governments are too corrupt to do business with. Similar to in the first era (1990-2001), the second era (2001-2008) kept implying the idea that Third World countries were not capable of executing fair business practices. In order to do business, big companies were compelled to hire middlemen, thus ending the bribing of foreign officials. These companies were "overwhelmed by corruption and red tape" (*The Globe and Mail*, December 13, 2001), and the media also noted that "it's not uncommon for any business to encounter these kinds of charges, especially in the developing world" (*The Wall Street Journal*, August 5, 2002), which is "typical of an oil state's boom before the bust" (*The Wall Street Journal*, November 21, 2003). Thus, unlawful payments from companies to middlemen and foreign governments were deemed necessary, and as "Anyone who

does business knows" (*The Wall Street journal*, June 14, 2004), "bribery remains common in parts of Africa and Latin America, and in many oil-producing nations" (*The Globe and Mail*, August 5, 2005). As a result, the media depicted the issue of companies' bribery as a "personnel-related" problem (*The New York Times*, October 24, 2004). This kind of framing, as a result, blamed the foreign environment more than just an individual (a bad apple), and further framed foreign countries as "enemies."

From Punishment to Investigation

Before 2001, the result of punishment for companies who violated the FCPA (e.g., GE) was well-advertised in the media. However, from 2001 to 2008, most media reports only published one to two sentences mentioning punishment (a certain fine) or settlements. Some cases even had no follow-up reports, and results were only mentioned in non-related reports. The media focused on investigations from 2001-2008. Different forms of the word "investigate" appear 119 times in 34 documents before 2001 (3.5 times per document), but from 2001 to 2008, they show up 864 times in 153 documents, appearing an average of 5.6 times per document. This change in reporting the investigational aspects of criminal procedure resembled the change in street crime reports that David Garland explores; the media tends to focus on the court instead of prison in crime reports (Garland, 2001). Given that most FCPA offenders did not go to jail in this era and did not even enter court, a focus on investigation became prevalent. Companies became concerned about how much money to spend on compliance programs and internal investigation; investors cared about whether investigation would affect the stock market, and the media even joined the investigation, playing the role of detective in examining the stories of middlemen and the flow of money in regard to bribery.

As a result, it was common for reports of investigation to lead nowhere. The fines paid to the Justice Department were usually the end of the story, and prosecution of individuals was mentioned as "possible" in media reports there was no follow-up. Scandals' sensationalism died down at the end of investigations and thus began to escape the media's radar; further, public anger did not persist when news stories no longer focused on the media.

This skewed style of reporting white-collar crime gave players (lawyers, NGOs, and analysts) plenty of opportunity with which to deliver their opinions of business ethics. When the linguistics of business ethics created a certain tone for investigative reports, the Justice Department only passively respected with ethical explanations even though there were 12 prosecutors, assisted by a new team of FBI agents, dedicated to these cases (before 2007, there were only two agents assigned to FCPA cases). Consequently, the media *never* challenged the settlement and non-prosecution agreements in this era (2001-2008) even though DPA and NPA had become popular. While mentioning a settlement, the media usually justified it with reasoning regarding a company's cooperation, which recalls business ethics framing.

Ideologies: Offshore Justice and Privatization of Justice

The aforementioned minimization of corporate liability in this era, proved by a tendency to make foreign countries enemies as well as the inertia of DOJ and the media, could be explained by the ideologies of offshore justice and the privatization of justice.

Offshore Justice Highlighting the Wrong Offender. Blaming developing countries and middlemen instead of companies or executives might be a consequence of a neoliberal agenda, which favors big companies in general. In addition, as the analysis of the 90s shows, Wilsonians tended to treat foreign countries that were too corrupt to do business with as uncivilized. This pre-2001 framing was further enhanced by an important event in the 2000s: 9/11. Terrorism changed

the way America viewed justice, in turn enhancing the perspective that justice should be served *offshore* for America to have the best possible advantage. Combined with the previous framing reflecting Wilsonian ideas, the effects of terrorism only became more apparent, in turn further affecting the media's framing of FCPA cases. The below change in media reports reflects the way offshore justice emerged.

In media reports from the first era, emphasis of developing countries' wrongdoing is present in 5 quotes from 34 reports; further, most of these quotes focus on business over-protection in foreign countries as well as the fact that U.S. companies were at a disadvantage because other countries did not have laws such as the FCPA yet. In the second era, 27 quotes from 164 reports still emphasized the corrupt nature of developing countries, but in a completely different way. Over-protection became a non-issue; none of the reports mention the conflict between neoliberalism and local protectionism, which was indeed mentioned more in the 1990s. In addition, these reports saw FCPA as a weapon that could be used to change the corrupt nature of developing countries. With this change reflected in media reports, trans-national corporations were still friends of the DOJ, as foreign countries were demonized severely after the 9/11 attack, which highlighted the "offender" in FCPA cases. The real offenders—the trans-national corporations—therefore vanished in the demonization process.

In the 1990s, big American companies were fighting corruption *with* the DOJ. In other words, they were depicted as victims of crime and friends of the DOJ who were cooperating with its self-regulation programs. In the 2000s, more foreign companies, such as DaimlerChrysler AG and Siemens, were investigated to "reduce graft and bribery in the Third World" or "fight global corruption, [which] is the single largest obstacle to economic growth in poor countries" (*The Washington Post*, November 15, 2005). The companies that were investigated became a weapon

that the U.S. wanted to utilize to make things right. This sudden change in the depiction of American purpose—from fighting crime (the 1990s) to fighting global corruption (the 2000s)—could be the combined result of terrorism and neoliberalism, as the media delivered a message that indicated offshore justice was taken for granted:

"[We have] established such extraterritorial jurisdiction when it comes to air piracy, the sexual exploitation of children, terrorist acts, offences against internationally protected persons, the protection of nuclear material, torture, war crimes, murder and bigamy. Why will it not do the same for corruption?" (The Globe and Mail, January 24, 2008).

The idea of offshore justice is not new in the study of human rights issues (children's rights, torture, etc.). Developing countries are often punished due to violations of Western-oriented human rights, representing an idea that Wilsonians promoted in the 90s (Mead, 2013). Offshore justice seems to apply to FCPA cases, notably. When the Enron scandal occurred, the 2002 Sarbanes-Oxley legislation designed to prevent future incidents of this nature gave the SEC and DOJ the power to investigate foreign corruption in the name of accounting fraud. Combined with the aforementioned point about bribing being reframed to be about lack of transparency and defrauding), Sarbanes-Oxley legislation has become a weapon that targets foreign corruption. As a result, the American mission is now not only to punish American companies, but also to remedy global corruption that stands in the way of neoliberalism since "corruption destroys confidence in markets" (*The Washington Post*, November 15, 2005).

Terrorism in turn combines with a Wilsonian approach when both concepts operate *globally*. This is apparent in the instance of the DOJ investigating European banks for possible foreign corruption involvement; it also accused the banks of being "involv[ed] in terrorism or other illegal activity" (*The Wall Street Journal*, January 31, 2006). Moreover, when non-American companies were investigated, the media even mentioned that the white-collar crime rate was

increasing in developed countries, with the exclusion of the U.S.; further, it accused Japan, England, Canada, and Germany of not investigating FCPA cases with the countries' respective justice departments, which helped develop the notion that the U.S. is a leader in fighting global issues. With the aftermath of 9/11, America strengthened its resolve to promote American values worldwide, therefore attempting to fix any foreign issues associated with American interests[12].

However, while the Wilsonian approach emphasized the idea of rule of law, the rule of law became blurred when the *privatization of justice* ideology came in.

Privatization of Justice. Per Bourdieu's theory, players who promote their ideas are important in the concept of field. Thus, when the idea of punishment for foreign bribery practice is identified, *who* is involved in bribery is an equally important point.

Before 2001, most reports cited spokesmen's statements regarding big companies, and relevant outsiders were seldom interviewed. This setting changed dramatically after 2001. In 153 reports collected from 2001 to 2008, when companies were quoted 81 times, *experts* were cited 108 times by the media; these experts included analysts (appearing 44 times); non-governmental organizations (29 times); lawyers, not including defense lawyers (18 times); and professors (17 times). Official sources including politicians (15 times), American officials (23 times), and foreign investigators (19 times) were also present in these media reports.

At first glance, from 2001 to 2008, spokesman statements were not as prevalent as in the previous era. However, company statements, relayed by the media, were usually the *start* of a series of reports. Due to the idea of self-regulation that has been promoted since the 1990s, known

[12] Surprisingly, this idea of human-rights-oriented, offshore justice may have emerged *earlier* than the focus on human rights. In March 2006, Bill Gates suggested that the U.S. government pass a law, similar to the FCPA, that can outlaw behaviors abroad while allowing officials to monitor human rights violation overseas. In this regard, the FCPA was a model of offshore justice, and the world was "under U.S. leadership" (*The Globe and Mail*, March 3, 2006).

crimes were always reported to the public by a company itself. That said, the media was always passively *notified* by a company that it was subject to criminal investigation. Companies also were the main source of information regarding investigations on their behalf. Media reports often began their news stories by citing a company and saying that an investigation started or ended; only *after* this would the media look to the Justice Department to confirm the company's statements[13].

This apparent retreat from the Justice Department in media reports signals the *privatization* of criminal justice, and the increasing citation of *experts* further proves this theory. These experts entered the radar of the media in a sudden fashion, becoming a primary source of FCPA-related information. Their emergence can be traced back to the establishment of the Organization for Economic Cooperation and Development (OECD), an intergovernmental Paris-based group that called for a change in foreign bribery law in 1997 and 1999. This change was necessitated when American companies complained about unfair policies they were dealing with in developing countries, as other countries did not outlaw foreign officials' bribery during this time. Non-governmental organizations such as Transparency International (TI) subsequently began to have a say within the OECD framework.

Although the mission of TI is to fight corruption, it is well-situated within the mission of executing neoliberalism. First of all, its founder, Peter Eigen, is a former director of East African programs for the World Bank, the institution that is infamous for its structural adjustment toward developing countries during the 1990s. As a matter of fact, TI's founders include many aid specialists with World Bank who were "disgusted by greedy Third World officials" (*The Wall Street Journal*, May 21, 1993) and were in turn supported by American companies such as GE. After 1999, TI appeared in media reports often, discussing developing countries that were corrupt

[13] All cases from 2001 to 2008 follow this pattern except for Siemens.

or developed countries that tended to provide bribes. In order to create a better environment for multinational business, TI's mission was to help big companies establish business ethics in the developing world before and after these companies committed crimes. With the retreat of the Justice Department in media reports, TI and other experts became the main entity that criticized and evaluated big companies' self-regulation programs; in fact, some of these experts were even hired by big companies to execute internal vigilance or compliance programs. As a result, media reports were full of terms like *anticorruption activists*, *anticorruption experts*, and *anticorruption specialists*.

Since experts on corporate governance became popular, corporate lawyers who excelled at "contending with white-collar crime" suddenly found a niche. Cooperating with accounting firms, forensic computer specialists, and risk managers, law firms started to promote themselves as compliance counselors and private investigators. As a result, experts were not only involved before and after criminal investigations, but also *during* investigations. Prosecutors relied on private law firms to dig into FCPA violation evidence, and the Justice Department even encouraged business to work with law firms so they could demonstrate their determination to fight corruption (*The Wall Street Journal*, November 6, 2008). For example, in the infamous Siemens case, the company first hired Michael Hershman from TI, designed a system for training employees in compliance with anticorruption laws, and then hired the law firm Debevoise & Plimpton LLP to conduct an internal investigation and work with federal investigators in 2006. Prosecutors noted that their relationship with the law firm was "pleasant and good" (*The Wall Street Journal*, December, 16, 2008). *More FCPA cases within this timeframe (2001-2008), ironically, led to less government involvement.*

Hypothetically, consider applying this type of framework to street crime. A thief could tell the media that he was under investigation for stealing jewelry, but the investigation could be led

by a private detective he hired. Then the thief could tell the media that the investigation was completed and that no charges would be brought against him because he already proved his worth through his efforts to investigate himself. As absurd as it sounds, in the end, the model of practice in this illustration became praised by both NGOs and the Justice Department.

Cooperation between NGOs, law firms, and the Justice Department existed even before the Justice Department recruited a five-member F.B.I team dedicated to examining possible FCPA violations in 2007, which might indicate that privatization of justice did not happen because of a lack of personnel. The ideology of privatization that connects multiple people and institutions formed gradually before 2001, when self-regulation became the norm, and was enhanced after 2001, when NGOs and corporate lawyers entered the conversation about white-collar crime. As a result, the line between the public (state) and private (companies) sector became blurred, and a new type of corporate governance was both demonstrated by the media and taken for granted.

The enhanced network was improved further when federal prosecutors became corporate lawyers after years of practice (an example can be found in *The Wall Street Journal*, January 23, 2008) and were hired by big companies; these companies, such as BAE and DaimlerChrysler, hired the former FBI to supervise their compliance programs and execute internal investigations with support from professors, NGOs, and American officials (*The New York Times*, February 15, 2007). These players understood each other and exchanged their opinions in such various settings as the American Bar Association corporate bribery conference and OECD anti-corruption meetings (*Forbes*, December 25, 2006; *The New York Times*, November 25, 2007). The rise of "global justice" did not make the DOJ a main player, but other experts who dominated the conference became the spotlight of the show, and the group of experts grew; in 1998, there were

only about 30 audience members at the conference, participating the corporate bribery panel, but in 2008, more than 400 people attended.

In the previous section, we learned that Wilsonian approaches were enhanced after 9/11. However, while Wilsonians focused on establishing rule of law internationally, it conflicted with the ideologies of privatized justice and self-regulation introduced in this section. The result of this conflict generated a new form of rule of law that was established "privately"— so-called business ethics.

Global Business Ethics and Rule of Law: How the Law is Marginalized

"[Siemens] has failed to reconcile its old ways of doing business with a new code of corporate ethics evolving here" (The New York Times, February 28, 2007).

It is true that Siemens violated the FCPA and paid an enormous amount in its settlement with the Justice Department. However, this is not how the media framed these events. While the term *law* (including Sarbanes-Oxley legislation and the Foreign Corruption Practice Act) was mentioned 27 times in the discussion of said violation, another term was mentioned 49 times: *business ethics*.

The term appeared only once before 2001, but it soon became popular after the media discussed whether a company's wrongdoing was "ethical or not" (*The Wall Street Journal*, April 2, 2003). Although companies may have violated the law, they were instead repeatedly depicted as violating *business ethics*. For example, BAE provided bribes because it did not "pay attention to ethics" (*The New York Times*, May 7, 2008); Siemens fired employees and board members who did not comply with *business ethics*. According to media reports, Siemens aimed to be a "Harvard Business case on how to do it right" by building *corporate ethics*; it withdrew its business from

certain countries because of concerns about human rights abuses that violated *business ethics* (*The New York Times*, February 28, 2007), and it stated that it would like to build *global business norms and ethics* around the world, especially in places where bribery "[is] *culturally accepted, if not perfectly legal*" (*The Washington Post*, April 25, 2008).

The term *business ethics*, as used by the media in the post-2001 era, certainly established corporate liability that was not connected to the idea of rule of law. In other words, while Wilsonians wanted to establish a global, Americanized rule of law, corporations were trying to establish their own legal space by using their own language. As the privatization of justice was promoted by the media, the idea of rule of law *was marginalized* in the discussion of corporate liability. In other words, when a company was depicted as violating business ethics, it meant that it was legal and only immoral—implicating the idea that bribery was just a business issue, not a legal problem.

As the privatization of justice prevailed, the Justice Department started to consider non-legal factors such as business ethics while making decisions from 2001 to 2008. It often passively followed business standards that were developed by organizations such as the Ethics Association of Business and Transparency International that communicated the notion bribery is just *a kind of business cost*. That said, with the growth of privatization of justice and the idea of business ethics, the formal legal system even chose to defer the non-legal, self-regulated system established by trans-national companies. As a matter of fact, the Justice Department allowed Siemens to plead guilty to accounting violations because it cooperated with the investigation, which means there was no violation of the FCPA at all in the final verdict. The rule of law—FCPA—simply vanished in media reports.

The term *global business ethics* became even more prominent given the media's perspective on Third World countries: they were portrayed as too corrupt to do business with. In this regard, since the corrupt nature in developing countries is "culturally accepted" (*The Washington Post*, April 25, 2008), in post-2001-era reports, the media declared that what the U.S. needed to do was to alter its cultural ideas by emphasizing *ethics*. In-keeping with the idea of *post-colonialism*, ethics are produced, exported, and promoted in an effort to *civilize* other countries because corruption "does harm to democracy, human rights, and the rule of law" (*The Globe and Mail*, January 24, 2008). Here the idea of deregulation (part of neoliberalism) is redefined: law-on-the-book still exists, but the content of it is replaced by non-legal, poorly-defined *ethics*, which have been designed and promoted by multinational companies, international NGOs, and corporate lawyers. The law itself has been marginalized, and the function of the Justice Department has been downgraded to that of a rubber stamp. This is similar to Edelman's description of legal endogeneity: when the formal legal system legitimates deference to organizational structures and market rationality is developed by both the court and the compliance programs of various industries (Edelman, Uggen, & Erlanger, 1999).

With the effects of 9/11, an American system of justice has expanded worldwide. However, the justice system was executed by private companies, which established a non-legal system that was deferred and respected by the formal legal system.

Conclusion: Enhanced Neoliberalism

Many media reports viewed 2001-2008 as a time of FCPA crackdowns. My findings, however, appear to reveal the opposite. Although there were more FCPA cases brought to light during this time, the privatization of justice made the law—through its execution—marginalized. The Wilsonian ideas enhanced by terrorism created a legacy of "international rule of law," but

with the ideology of privatized justice, the rule of law was replaced by a private, non-legal system that emphasized global ethics established by private companies and NGOs. The concept of deregulation became "regulation that defers ethics" when global business ethics became the norm. Companies that violated the FCPA, in the end, became the *model* of anti-corruption--just like GE in the 1990s—praised by professors and the OECD for "setting a pretty good example that other companies could learn from" (*The New York Times*, May 27, 2008).

Before 2001, there were several articles arguing the pros and cons of self-regulation, but after Enron, *no* reports challenged the concept of self-regulation, and they in fact took it for-granted. The concept of neoliberalism was expanded, and its enemy—local protectionism—was *never* reported in FCPA cases even though more human rights groups and NGOs were present in this era. Instead, these players helped neoliberalism to establish a new framework that replaced rule of law with ethics, which eventually led to the minimization and decriminalization of FCPA violations.

The very essence of foreign corruption practices and neoliberalism, as a result, was not discussed by the media during this era. The skewed focus on investigation only highlighted bribery as a kind of business cost, not as a means of harm for the third world economy. The media's concern about business itself only underscored economic insecurity caused by FCPA violations, while social insecurity in developing countries was disconnected. Corruption was deemed the obstacle of neoliberalism, not the obstacle of Third World developments. It became clear that anti-corruption was for business, not the public good[14].

[14] There is only one article that discusses the role of the United Nations in supervising business; it failed to regulate the global business model with real regulations (*The Wall Street Journal*, August 18, 2005).

As FCPA-related reports depicted a general picture of the media's attitude toward trans-national companies, the next chapter explores how FCPA framing was enhanced and modified in domestic fraud cases before and after Enron in regard to consumer fraud, corporate fraud, and securities fraud.

Chapter 5: The American Media's Framing of Fraud

Introduction

As chapter 4 explained, the media exhibited a generally friendly attitude towards big companies. Fueled by Wilsonian ideas enhanced by 9/11, foreign countries, rather than trans-national companies, became the enemy in FCPA cases. In addition, with the help of the idea of privatization of justice and the rhetoric of settlement, the rule of law was replaced by the idea of business ethics that was generated by the non-legal private system, which in turn minimized the criminality of foreign corruption practices in the 2000s.

This international trend of minimization also had an effect domestically, as the DOJ and FBI were also players in the discussion of domestic financial fraud. By observing domestic financial fraud in the U.S., this chapter elaborates on other local forces and ideologies in the U.S. that moderated the trend of white-collar punishment minimization.

I focus on three kinds of financial fraud in the following chapter: consumer fraud, issuer fraud, and broker fraud. Consumer fraud is the most common and well-known type of fraud in U.S. history and occurs when a company provides a service or product that does not perform as advertised. Investors, as a type of consumer, use their money for a financial scheme, expecting profits generated by corporate finance; they can easily be defrauded by the entity that issues securities (issuer) or the entity that sells securities (broker). As such, this research identifies these two kinds of fraud as issuer's fraud and broker's fraud.

It is easy to attribute consumer's loss to a company, but it is difficult to make the same connection for investor's loss. Does the media blame the company or the broker where investor's loss is concerned? Does the media treat issuers and brokers differently in securities fraud cases?

This chapter investigates how media framing changed before and after Enron, the most well-known corporate fraud in the U.S. history.

As the following sections reveal, the decriminalization of corporate fraud emerged in the media early in the 90s, and in the 2000s, America experienced further de-criminalization of securities fraud. Several factors contribute to this normalization of crime. First, the privatization of justice ruins the nature of the American adversarial legal system. Second, the idea of restitution and investment confidence blurs the depiction of victims. Beginning in the 90s, the role of the government became merely to impose punishment, and even though corporations entered the penal radar at this time, the formal legal system tended to quote the semi-legal system—business ethics—that the privatization of justice shaped.

First Era: Before Enron

Background and Case Selection

During the mid-1970s, the term *corporate crime* became widely used (Machin & Mayr, 2011), but its definition was not particularly clear. Populism did exist in regard to corporations, especially after the savings and loan scandal of the 1980s and the passing of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. This kind of scandal was given heavy media coverage (e.g., Liar's Loan Crisis of 1990-1992 in Orange County, California), and scholars even utilized the term *control fraud* to indicate high-level employers destabilizing a company for personal gain (Black, 2005).

Although punishment for fraud still existed in the 1990s, this was the time neoliberalism entered the financial scene and new financial products appeared. These financial products, such as SWAPS, were not regulated, and with the help of deregulation ideas from policy-planning groups such as the Chamber of Commerce, investors were not fully protected in the 90s. The deregulation

process reached its height during the Clinton era (1993-2001) when President Clinton repealed the Glass-Steagall Act in 1999. With the rise of deregulation benefitting big companies, the idea of neoliberalism reached its climax when deputy U.S. attorney general Eric Holder drafted the infamous memo stating that big companies were *too big to fail*. The media's response to investors' loss, therefore, is worth investigating.

This era's rising populism, which was opposed to big companies and deregulation led by politicians, indicates that it is crucial to examine the media's response to these two contradicting themes. By searching Festiva using the years 1990 to 2000 and the keywords *fraud*, *company, corporation, Inc,* and *Co.*—and by grouping cases with the aforementioned criteria using the categories *consumer fraud, issuer fraud,* and *broker fraud*—I discovered that broker fraud and consumer fraud were the most commonly reported types of fraud during this time, whereas issuer fraud was marginalized. Of the top 10 fraud cases, only two concerned issuer fraud, and one case (the Bre-X scandal) only appeared in Canada's newspaper *The Globe and Mail*[15]. The other issuer fraud case, the Phar-mar scandal, was mentioned only in 33 media reports over the course of ten years[16]. A company itself lying to investors was apparently not a common theme in the 90s, but the Enron scandal of 2001—a typical issuer fraud case—emerged suddenly and powerfully.

In sum, consumer fraud and broker fraud dominate pre-2001 data. Consumer fraud appears extensively in the media reports from this era, especially in regard to tobacco cases (e.g., Altria Group) and vehicles (e.g., General Motors). Since General Motors reports were mainly about an

[15] In 108 articles of Bre-X, only 6 are from the U.S. (NYT and WSJ), and 102 are from Canada (The Globe and Mail).
[16] Surprisingly, famous textbook cases such as Sunbeam (now American Household Inc.) and Dunlap are found in less than 20 reports in the 90s.

individual responsible for defrauding the company, the Altria case was chosen for the following analysis about consumer fraud.

Securities fraud committed by brokers (financial institutions or individuals) was also widely reported and is evident in media reports for companies like Prudential Financial Inc. and Merrill Lynch; it is also evident for individuals such as Michael Milken and Ivan Boesky. Since my research focuses on fraud committed by big companies instead of by individuals who committed insider-trading, I use Prudential Financial, Inc. as my case study for securities fraud in the 90s.

Two Extremes: Criminalization of Consumer Fraud and Decriminalization of Corporate Fraud

Consumer Fraud and Corporate Fraud. The framing of consumer fraud is more effective than that for other kinds of white-collar crime. In 36 collected documents about Altria Group, the media used the word "fraud" 108 times and "crime" 43 times. The usage of the term "crime" in this era is even more frequent than in FCPA reports after 2001. Unlike the frequent usage of the term "scandal" in FCPA violations, "scandal" only appears once in consumer fraud reports from the pre-2001 era. This instance of framing represents the strong criminalization of consumer fraud, as tobacco companies lie to their consumers about the risk of smoking. All the terms and elements that establish a comprehensive image of fraud are present in media reports: "mislead/misrepresent" (108 times), "damage" (59 times), "health" (35 times), and "danger" (20 times). In other words, the media revealed that when a tobacco company concealed the health risks associated with smoking, this was a *crime*.

During the Clinton administration, prosecutors were eager to expand consumer fraud framing to the area of corporate fraud using proof that the tobacco industry lied not only to its consumers, but also to its shareholders and investors, the IRS, and Congress. With the influence

of top-down efforts to equalize consumer fraud and corporate fraud before 2001, the media had the ability to treat both crimes seriously.

In the early 1990s, the media indeed depicted investors as victims of corporate fraud. As with consumer fraud, the term "scandal" only appeared once in 33 collected reports regarding corporate fraud. However, unlike the repeated usage of the word "crime" in consumer fraud reports, this term only appeared 6 times in corporate fraud reports, and terms such as "lie", "mislead", and "misrepresent" all disappeared in corporate fraud cases. Although damage and harm were mentioned in corporate fraud cases, the verbs that connected corporate liability and investors' loss were totally absent. As a result, the media failed to treat corporate fraud as seriously as it did consumer fraud.

This biased framing could also be seen in the discussion of victims. The media tended to define "victim" broadly when a case first emerged, but made its meaning more specific as the case processed. Investors, employees, and the public were all depicted as victims when an instance of corporate fraud came to light, but when a trial began, it was more common for media reports to refer to a company as a collection of victims (10 reports)—including employees and employers—than as investors (5 reports). The frequency of co-occurrence of *punishment* and *company as victim* is 20%, and the co-occurrence of *punishment* and *investors as victims* is 0%.

On the contrary, there is no single report concerning consumer fraud that describes a company itself as a victim. In corporate fraud, companies are the victim because of "declines in oil and gas prices" (*The New York Times*, January 21, 1994). A company has also been called a victim from which "the individual who looted millions of dollars" (*The New York Times*, June 25, 1994), and another report says that "[a] financial officer colluded to hide company's loss by altering the companies' books" (*The New York Times*, May 26, 1995). These reports represent bad

apple framing, attributing corporate fraud to certain individuals (e.g., Michael Monus in the Phar-mor case), not a whole company.

Bad apple framing did not stand out in this era's consumer fraud cases, whereby the media treated the whole tobacco industry as an offender. However, in corporate fraud cases, the criminality of the company was marginalized by particular individuals who were responsible for investors' loss. Corporate criminality was therefore neutralized by the media depicting corporations as victims; individuals' criminality became salient.

Although some scholars mention that accounting firms (e.g., Coopers & Lybrand in the Phar-mor case) supervising the financial statement should have been considered responsible for fraud, the media never mentioned the systematic cover-up of illegal activities in the form of, for example, creation of a fictitious inventory, bucket accounting, and overbilling. Instead, the media focused on individuals who embezzled company funds, and it treated these individuals as outliers in the financial market. When the U.S. Securities and Exchange Commission (SEC) requested more regulations and power to regulate corporate fraud in 1992, the media did not respond with a strong statement about fighting systematic corporate fraud. In fact, while a DOJ investigation was mentioned 10 times in consumer fraud cases, the media never cited governmental investigation in corporate fraud cases in the pre-2001 era.

In the Middle: Securities (Broker) Fraud

The media's framing of securities fraud lies in the middle of the spectrum regarding the criminalization of consumer fraud and marginalization of corporate fraud (see Figure 5.1). Similar to how it dealt with corporate fraud framing, in the pre-2001 era, the media tended to apply bad apple framing that attributed financial loss to individuals. However, unlike with corporate fraud reports, in securities fraud reports, the media focused on the systematic practice of fraud and

expressed its concerns about corporate culture. This trend echoes what we saw in FCPA cases in the early 90s, when the media criticized the idea of self-regulation.

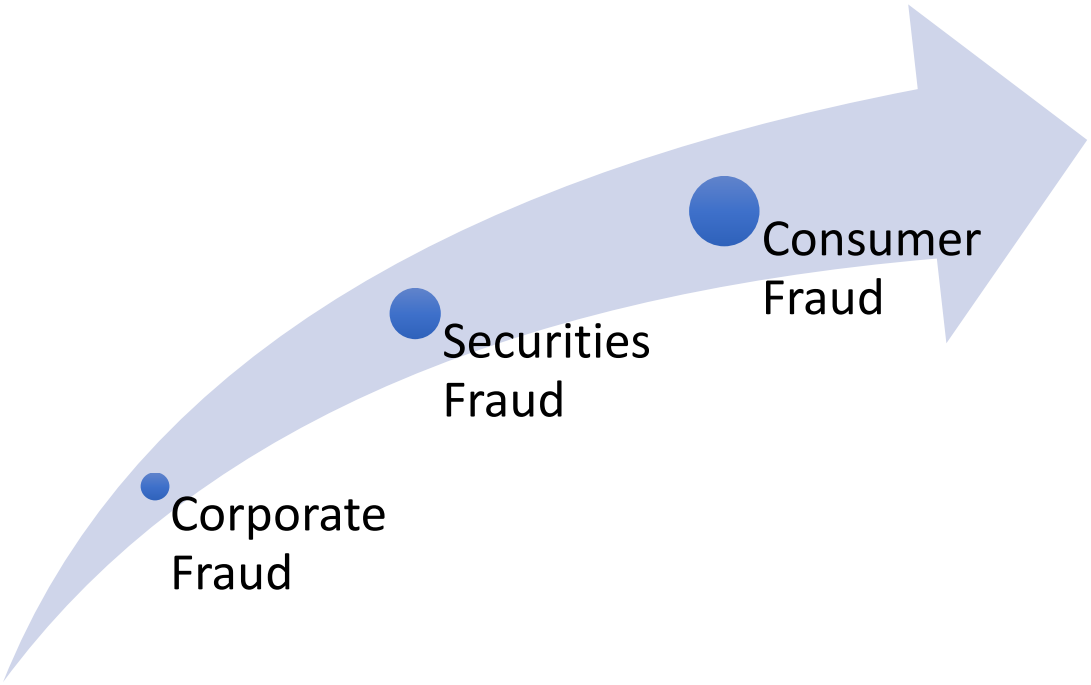


Figure 5.1: Increased criminalization of fraud before 2001

The media cited various sources—including government officials, experts, and investors—to stress the importance of fighting securities fraud. Investors were interviewed several times and were identified as victims 51 times in 75 reports (68%). This percentage is much higher than the same statistic for corporate fraud (27%). In contrast to the media's reluctance to report corporate fraud, the media repeatedly put emphasis on the way brokers' companies lied to their investors (securities fraud). Like with consumer fraud framing, the media also connected companies' liability to investors' loss, as the verb *lie* and its synonyms were regularly used (52 times). Variations of the word "crime" appeared 68 times in 75 reports, and the word "fraud" even appeared 228 times, illustrating the media's attitude toward securities law violations.

However, the stern attitude toward securities fraud did not persist. In the process of naming, blaming, and framing (Felstiner, Abel, & Sarat, 1981), the media certainly *named* the issue, but did not put the *blame* on corporations, thus failing to establish criminality again.

For example, the media blamed the individuals responsible for fraud but seldom revealed their names (only three reports had the individual brokers' info) and only occasionally mentioned the investigation of high-level executives. Although bad apple framing could be seen in reports, the media was not afraid of indicating that someone was more responsible than low-level brokers (60% reports regarding individual responsibility mention high-level executives). In addition, the media also blamed brokers' company culture, which accounted for illegal activities like wrongful training programs, skewed bonus programs, and stressful work environment. The concept of blaming companies, however, *never* appeared in corporate fraud reports.

Although the media saw securities fraud as a serious problem in the 90s, the semi-bad apple framing in securities fraud reports that followed indicates oscillation between criminalization and decriminalization. The media did not portray companies as victims in the same way it did for corporate fraud; instead, it often depicted investors as victims of crime. However, the media also hesitated to demonize companies. The result of this, accordingly, affected the media's portrayal of corporate punishment.

Punishment for Consumer Fraud, Corporate Fraud, and Securities Fraud

For media reports that emphasized individual (bad apple) liability, the reports about punishment are expected. The form of fraud for which there was the most bad apple framing—corporate fraud—also was responsible for the most quotations regarding individual jail or prison sentences (81%). The media showed more concern about corporate liability in consumer fraud

cases and never revealed worries about non-punishment for corporate fraud, the attitude of which aligns with the criminalization spectrum identified in Figure 1.

Since the media already set the tone for decriminalization of corporate fraud and criminalization of consumer fraud in 2001, it is worth noting how the media unsettlingly portrayed punishment for securities fraud before this time.

From Criminal to Civil Punishment. In securities fraud reports, the media presented numerous options for corporate punishment: individual sentences (3%), settlements (27%), restitutions (50%), suspension of business (6%), and deferred prosecution (14%).

Although the media mentioned high-level executives regularly when securities fraud occurred, it seems like individual sentences did not draw the media's attention. In contrast, the media focused on *settlements* between companies and the justice department and *restitutions* brought by class action lawsuits. Although these were not actually forms of punishment implemented by the courts, they were forms of punishment *per se* when the media mentioned how settlements and restitutions affect big companies' business and reputation. The more serious types of punishment, such as suspension (e.g., Prudential Inc. was suspended from doing business for 5 days), only claimed a small portion of media coverage, and the media never questioned light penalties.

Instead of questioning light punishment, the media tended to focus on whether victims received *just compensation*. Victims became the main theme in the reporting of securities fraud, but this theme did not establish a company's criminality. Rather, it came down to whether victims were civilly reimbursed. In 51 reports that mention settlements and restitution, 20 discuss whether

victims—including both individual and institutional investors—were satisfied[17], while the other 31 reports only passively mention restitution.

The media also discussed the public's reaction after a settlement was made, and 31 in 51 reports regarding settlement and restitution discussed whether a fine or payment was *fair* enough. Ultimately, the media implied that civil punishment is more *just* punishment than criminal punishment. The criminality of securities fraud was therefore minimized. In the end, the settlement between the SEC and Prudential Inc. ruled out punitive damage, and the media never challenged this fact.

Legal Debate. The observed decriminalization process of securities fraud in media reports can be affirmed through discussion of *risk*. Since restitutions and settlements dominate media reports during this era, there are voices asserting that investors should have taken risks when dealing with brokers, which is a common argument in civil lawsuits. This victim-blaming voice, however, is unique in securities fraud cases because the media never asks consumers to take risks in consumer fraud cases. The unique argument of risk therefore contributes to the decriminalization process of securities fraud in this era.

The legal debate that stands in the way of criminalizing fraud is also noticeable in the corporate fraud reports from this era. For example, when tobacco companies committed consumer fraud, some lawyers argued that the false marketing also violated securities law, which means that investors—not just consumers—were also victims. However, the media discussed numerous constitutional rights that protected companies from being convicted of corporate fraud—rights that were never previously introduced in the discussion of consumer fraud. For example, the false

[17] In contrast, consumers were never asked about satisfaction in consumer fraud punishment or settlement instances. This indicates that the criminalization of certain types of fraud does not require victim framing.

statements of tobacco companies could be a form of freedom of speech, and attorney-client privilege or the Fifth Amendment could prohibit access to industry-funded tobacco research about health risks. These constitutional rights, presented by the media, limited investors' right to recovery, and the legal debate, again, restricted readers' view of corporate criminality. The framing of corporate fraud diverges from consumer fraud, as the legal debate was only presented for corporate fraud.

Overall, whether corporations *intentionally* committed crime was widely discussed in reports for all three categories of fraud, but different framing means were used in each instance. In consumer fraud cases, the element of *intention* was directly connected to corporate criminality. In securities fraud reports, this element was disconnected from criminality but was at least connected to civil compensation. In the case of corporate fraud, the legal element was under the protection of constitutional rights; the legal debate created a hurdle for legal intervention regarding corporate fraud.

Deferred Prosecution Agreement. Other than settlements and restitutions, DPA is the third most-reported category in corporate punishment media reports. The ways the media justifies DPA include a) a settlement was already ongoing, b) the agreement could protect current employees, c) the brokerage firm (Prudential Inc.) cooperated during the investigation, d) the brokerage firm would be supervised stringently by the government, and e) DPA served public interests.

As seen in the previous analysis of the FCPA, cooperation and supervision were already the emphasis of media reports in corporate punishment before 2001; the degree and speed of cooperation justified the implementation of settlements, and the concept of the settlement became a form of punishment excluding the possibility of other forms of punishment, such as suspension of business and jail time for high-level executives.

What was new for the justification of securities fraud DPA in this pre-2001 era was that victims were relevant in securities fraud cases, whereas victims were not noticeable in FCPA violation cases. While the media stressed the protection of victims in securities fraud cases, a settlement looked more acceptable than in FCPA cases. As a result, settlements are mentioned in *every* pre-2001-era article that discusses a DPA, and the media is looped back into the previous discussion about whether a settlement was fair enough, implicating that if a settlement was fair, then the DPA was admissible.

Another interesting idea is that a DPA could protect a company's employees and public interest. This argument never appeared in FCPA cases but was quite prevalent in securities fraud cases prior to 2001. With the media arguing that criminal prosecution could be the equivalent of the corporate death penalty, DPA appeared to be "a very sensible resolution for a very difficult situation" (*The New York Times*, October 28, 1994). Although prosecution was never a death penalty for corporations, the message the media delivered was clear: these companies were *too big to fail*.

The media provided virtually zero counterarguments opposing a DPA. In the analyzed reports, the media cited two professors and several lawyers in articles that referred to the DPA for corporate fraud cases. When one professor actually supported the DPA, the other mentioned the punishment for individuals, and lawyers argued whether the settlement was *fair* enough. Though some reports' discussion of indictment for individuals questioned the DPA, their commentary actually strengthened the non-punishment for corporations for two reasons. First, the punishment for individuals still used bad apple framing, which penalized only low-level brokers who *intentionally* sold risky stocks; the legal debate focused only on the element of *intention*, which is not applied to corporate liability. Second, the media did not really follow up on mentioning

punishment for individuals; there was only one follow-up article produced within 2 years of the DPA's implementation, and after 5 years, the only article mentioning the Prudential case was about how a former manager had become a chief executive of the Nasdaq Stock Market. In this regard, DPA was never challenged prior to 2001 in the collected reports.

The justification of DPA, consequently, limited readers' perspective of justice. As previously stated, the media was willing to accuse company culture, blame an entire company, and question the role of high-level managers when securities fraud occurred. However, after DPAs were introduced into media reports, only *one* article mentioned changing company culture. All arguments that previously existed were removed after a DPA appeared, and the rest of the arguments involved asking investors to take risks or enhance self-regulation programs.

Corporate punishment for securities fraud, therefore, gradually vanished 1) given emphasis on settlements, 2) because of the legal debate about intention, and 3) due to an absence of arguments opposing the DPA.

Players: Experts, NGOs, and Lawyers

In the previous chapter, the rise of corporate lawyers and NGOs in FCPA cases was illustrated. In this section, the role they played in media framing is introduced.

First of all, in alignment with the criminalization of consumer fraud, media reports from this era cited experts, professors, and NGOs more in consumer fraud cases than in cases for any other forms of white-collar crime before 2001. Company spokesmen were only cited 8 times (11%). Grassroots NGOs were active in the framing of consumer fraud and took the form of tobacco research groups, the American Cancer Society, anti-smoking groups, and Counsel to the Coalition on Smoking, also including experts such as lawyers, consumer advocates, product

liability experts, and Wall Street analysts. While some lawyers and NGOs were previously employed by big companies in FCPA violation cases, NGOs and lawyers who opposed big companies in consumer fraud cases were not corporate lawyers. This may explain why the criminality of consumer fraud was established firmly in the 90s.

In contrast, in the framing of corporate fraud, experts and professors were cited only 6 times (27%). The establishment of corporate criminality was totally absent due to the inactive agenda of victims and NGOs although most victims were institutional investors[18]. Moreover, when lawyers were cited in corporate fraud cases, they actually presented constitutional rights opposing corporate criminality.

The citations in securities fraud reports, again, are more balanced than those in the previous two are. While company spokesmen were cited the most (31%), government officials (19%) and experts—including professors (18%)—were not ignored, nor were interviews with victims and their lawyers (13%). This reflected a focus on settlements and restitutions, which was necessitated due to the media's extra attention given to victims. However, these forces could not be identified as opposing big companies since only one professor explicitly expressed his concern about decriminalization and all other sources focused on civil compensation and its fairness. Regulators were cited when settlements and compensation funds entered the conversation to "guarantee that investors [were] treated fairly" (*The New York Times*, February 9, 1994), and they were "very pleased with the outcome" (*The New York Times*, April 23, 1994). Only three out of 22 government officials' quotations were about criminal investigations, and no follow-up reports existed. Given

[18] One possible explanation is that institutional investors were more reluctant to pursue crime than individual investors.

this minimization of criminality, it is not surprising that by 1995, there was a 50% decline in indictment of securities fraud even though the conviction rate increased to 73%.

As a sidenote, in the pre-2001 era, the *Globe and Mail* tended to focus on corporate fraud, (60%) while 65% of *New York Times* reports dealt with securities fraud and 66% of *The Wall Street Journal* reports cited consumer fraud cases. While different newspapers have their own emphases, there is no significant difference in their reporting styles during this era.

Ideologies

As chapter 4 introduces, the FCPA-related media reports depicted a friendly attitude toward big companies in the 90s due to the active agenda of Wilsonians. In other words, corporate liability was hidden when the role of *offender* was taken up by foreign corrupt officials. In this chapter, it becomes clear that although foreign countries were not involved in domestic financial fraud, another trend masked corporate liability: over-emphasis of *victims and settlement*. The moving focus of *offender* and the skewed focus of *victim* in turn constituted the decriminalization of corporate liability in the 90s. Below are explanations for the ideological basis of skewed victimization, explored using a comparison of consumer fraud and securities fraud.

The FTC and the Fall of the Deception Standard. Similar to FCPA violation framing, fraud framing no longer emphasized deregulation in this era. The idea of deregulation was replaced by the idea of rule of law before the year 2001, which is when requests for more regulations were often seen in media reports. These requests can be categorized into two stages.

In consumer fraud cases, requests for rule of law were about legislation. Media debates revolved around whether to regulate the cigarette business. On the contrary, in corporate fraud and securities fraud cases, requests for rule of law were about principles and standards, as per the

following ideas: "the issuer fraud reveals that moral standard are slipping"; "it's partly a function of the weakening of society's ethics" (*The New York Times*, September 21, 1992); "the standards of morality are rising, and things acceptable years ago are not acceptable today"; "[we should be] raising professional standards for accountants doing SEC work" (*The New York Times*, September 21, 1992); and "the industry will collapse if dishonesty is allowed to flourish" (*The New York Times*, October 25, 1993).

As a result, although the term *business ethics* did not emerge in these reports—as it appeared after 2001 in FCPA violations cases—fraud cases implied that instances of financial fraud were violations of *ethics/standards*, not *legislation*. Whether this practice was in line with *industry standards* and *ethical guidelines* became the focus, yet these terms never appeared in consumer fraud reports.

This huge difference in the interpretation of rule of law for consumer fraud and securities fraud can be explained by the changing role of regulators—FTC in consumer fraud (Federal Trade Commission) and SEC in securities fraud.

During the FDR years in the 60s, the FTC only had the power to protect consumers on the books, but it gradually gained a say in consumer protection conversation when the Kennedy and Johnson administrations promised to protect "quality of life" (Milkis, 2005). Philip Elman, the FTC commissioner in the 60s, initiated a movement against smoking and transformed FTC from "a sleepy second-rate agency" into "a professional and active regulator" that attracted young law school graduates (Milkis, 2005). Although government distrust continued in the 80s and the public questioned government intervention, the FTC cleverly claimed that it was "on the side of angels" to avoid the question of *Big Government* (Pertschuk, 1982). The way the FTC designed its own strategy is crucial, as its approach successfully prevailed over bipartisan conflicts.

While the FTC is a nanny of sorts, the regulator of corporate and securities fraud—the SEC—is not. Although the FTC walks the fine line between two contrasting ideologies—*Big Government* and *invisible hand*—the SEC fails to strike a balance between the two, which eventually leads to the prevalence of the latter. When the FTC works as a nanny, it is on the consumer's side in attempting to criminalize companies, whereas the SEC is always helping companies compensate victims without an adversarial attitude. In other words, the SEC prioritizes restitution instead of punishing companies. The over-emphasis on victims does not characterize companies as offenders when cooperation between companies and the justice department is still the concern. Therefore, as stated, the SEC is never a nanny, but a guardian of big companies.

The growth of the FTC and the retreat of the SEC in the penal field is crucial. First of all, the FTC strived to establish various rules of law to regulate consumer fraud, and since "quality of life" was the norm, it chose to emphasize the risk of smoking, asserting that the criminality of the tobacco industry was built on health risk, not deception. So, criminality was connected to "quality of life," not "deception through false advertising." As a result, corporations could easily avoid criminality when life and health were not concerns (like in securities fraud cases). What the FTC established is a dichotomy of legality: while the infringement of health is illegal, lying itself is not illegal. Since securities fraud only falls into the latter category, deception itself is only immoral, not illegal. This can explain why terms like *ethics/standards* were prevalent in media reports for securities fraud cases during the pre-2001 era.

Quality of Life and Small Government. The FTC worked well with NGOs and activists in the 70s[19], and their strategy apparently focused on the *consumer*, not *fraud*. Consumer fraud stands out due to the ideology of "quality of life," not "deception as devil." The quality of life argument

[19] The FTC was deemed the David figure at that time, having collaborated with consumer advocates and other interests groups. For more details, see Milkis, 2005.

is aligned with the ideology articulated by Michael Foucault and Giorgio Agamben, who argue that the idea of governmentality has shifted away from *death* to *life* in the modern era and that the establishment of quality of life (*bios*) represents sovereignty (Agamben, 1998; Foucault, 1977). This emphasis on *life* became more apparent when the FTC focused on "the vulnerability of children" in the 70s and "consumers' privacy" in the 90s, which strengthened the idea of governmentality with the promotion of quality of life and support from both the Bush and Clinton administrations.

Since the role of FTC was "on the side of angels," the regulator did not fit the stereotype of Big Government and did not contradict neoliberalism, which promotes the small government ideology. As a result, the "quality of life" ideology *moderated* neoliberalism in the 90s. The criminality and governmentality of consumer fraud were established through emphasis on quality of life, yet the idea of fraud, itself, was minimized.

Since health was not a concern in securities fraud cases, these cases could not create corporate criminality. The fall of the deception standard in fraud denotes de-emphasis of honesty—an element that is ethical but not legal in nature. The only right in securities fraud is property right, and it was not as powerful as the "quality of life" arguments in the 90s. As a result, without a supporting ideology and agency such as the FTC, corporate criminality in securities fraud cases was easily minimized. The framing of corporate and securities fraud, accordingly, diverges from that of consumer fraud, contributing to a discussion of *ethics* and *standards*.

Settlement, Social Harmony and Lighter Punishment. While the quality of life ideology modified neoliberalism, other elements of neoliberalism remained effective. One of these elements was risk management. In securities fraud cases, although investors were depicted as victims, there were voices stating that investors should have taken risks. This argument was actually connected

to the FTC when the FTC argued that the children of America should be protected, asserting that "some business practice activities are not unlawful if they only involve adults" (FTC, 1981). What the FTC implied here is that once an individual grows up, he should take risks.

The SEC, following the same logic, only focused on how to compensate investors when they made careful decisions regarding investment. The settlement became the norm in the discussion of punishment for securities fraud in the pre-2001 era, and the SEC prioritized social harmony instead of punishing companies. As a result, over-emphasis of victims, as part of the discussion of "taking risks," inevitably led the discussion from a criminal field to a civil one.

What *social harmony* implies is twofold. First, satisfaction of victims became the norm, and cases came to an end when satisfaction was granted. Second, punishment for high-level executives was missing because victims were satisfied; prosecutors had no incentive to charge companies when the SEC and the media delivered a message of consummation.

This is also why *supervision* is mentioned more in reports regarding securities fraud than in those regarding the other two types of fraud. If social harmony is reached using compensation, the only fix for high-level corruption, provided by the media, is supervision. Without proposing financial reform and tighter rules for punishment, the media stressed better supervision programs that could prevent fraud from happening. Once a supervision program is established, it actually prevents *upward* punishment because high-level executives have already done their jobs, in a sense.

The framing of *social harmony* and *supervision as prevention* inevitably looped back to the *risk management* argument—those with open eyes should not be compensated for their own

bad decisions (*take risks*)[20]. The criminality of the corporation vanishes as these three elements repeatedly arise in media reports: prosecution closes when social harmony is reached, punishment ends when supervision works as prevention, and victims' grievances are ameliorated when they take risks. These three elements, however, were only enhanced after 2001, as discussed below.

Second Era: After Enron

Background and Cases Selection

All cases I collected that took place after 2001, with the exception of one case, were corporate fraud cases. These cases included Enron (396 reports), Worldcom (Now MCI Inc, 370), Adelphia (171), Tyco (134), Rite Aid (21), HealthSouth (296), Halliburton (56), and AIG (47). No consumer fraud cases are included in the top 10 reported cases. This is not surprising since Enron, SouthHealth, and WorldCom all collapsed in a 2-year period (2000-2002), resulting in enormous investors' loss and immediately drawing the media's attention.

Tyco and AIG were selected as the case study subjects since these two cases took place after the corporate scandal occurring from 2000 to 2002. Both cases were discussed after enactment of the Sarbanes-Oxley Act that aimed to solve corporate fraud by targeting accounting issues. In this context, it is worth noting how the media framed corporate fraud *after* both the crisis and the legal response. My study also chose Citibank as the main securities fraud case study since it is the only securities fraud case in the top 10 reported fraud cases from this era.

Crime Description

Corporate Fraud. Decriminalization of corporate fraud existed before 2001, when the term "crime" was seldom used. However, concerning corporate fraud cases between 2000 and 2002,

[20] This type of risk management is not new to penology, as street crime criminals in prison have been assessed by their *risk*, which is a process strengthened by neoliberalism. This ideology of risk, however, worked in a different way in fraud cases.

the media tended to use the word "crime" more (77 times) than in the previous era, also applying verbs such as "lie" and "mislead" to establish corporate liability. The companies at fault were no longer depicted as victims, and the term "scandal" was applied less (13 times) during this time than in the previous era. The justice department and the SEC were cited more after 2001 than they were in the previous era, and the media also emphasized the crackdown on corporate fraud more than it did previously.

This framing, sadly, did not establish real criminal liability. This is firstly because bad apple framing continued. Offenders' individual info dominates the reports (mentioned 41 times in 64 reports) when the media emphasized punishment for individuals (32 times). The percentage this represents (60%) is even higher than that of the previous era (50%). Emphasis on trial details went from 9% to 25% from the 90s to the 2000s when individuals' liability was discussed in detail. This post-2001 emphasis, therefore, contributes to a stronger image of bad apple framing than the emphasis of the pre-2001 era.

Another example of bad apple framing is the image of victims that was generated in the post-2001 era. While victims gradually gained prominence in media reports due to corporate scandals, they quickly lost it when the term *investor's confidence* emerged. This term, which appeared in fraud cases after 2001, never appeared in corporate fraud cases before 2001. However, it immediately became the media's preferred terminology to refer to the framing of corporate fraud, as the idea of *investor's confidence* replaced the concept of *investor's loss.*

As an example of this usage and framing, according to the media, AIG and Tyco committed fraud that ruined investor's confidence in the market instead of doing harm to individual investors. The investigation of big companies may "scare the investors" or "shake the market"; settlements provide "relief among investors," and convictions "restore integrity to our financial markets." In

every stage of the criminal justice system, every step is connected to the integrity of the market, but the real victims of crime (investors) are not mentioned in and of themselves. This creates a blurred representation of victim, and the market as a whole comes to represent the voiceless victim. The market is just an abstract concept that can only be fixed by itself; the illegality of corporate fraud, therefore, is again reduced to the status of civil compensation in the *market*.

Securities Fraud. The securities fraud reports reflect a similar pattern: more reports mention *investor's confidence* while discussing individual liability. Moreover, while the media was forced to discuss individual victims due to infamous scandals like Enron, securities fraud reports tried to avoid representing victim's stories. While victims appeared in securities fraud reports 110 times in 75 reports before 2001, they were depicted by the media only 28 times in 56 reports after 2001. The media no longer interviewed victims as it did before 2001, and it no longer blamed victims since the victims themselves were not important. Much like corporate fraud framing, the discussion of punishment is all about its effect on the stock market, and the traditional offender-victim framing is completely negated. This market-oriented framing will be discussed in detail later.

Not only the idea of the victim is blurred in securities fraud cases, but the concept of the offender is also distorted. As investment banks emerged in 1999 due to the repeal of the Glass-Steagall Act, they dominated the securities market because proper regulations were not in place. Although investment banking groups are often the offenders in securities fraud cases, the media appears to not be sure how to classify these cases. As a result, the media has even depicted investment banks as victims (18%) and investors as victims (27%) as well. With the perplexing framing of offenders and victims, the investment-banking industry does not bear the burden of any perceived legal responsibility. A weakened image of victims and a blurred image of offenders therefore represent a strong message of securities fraud decriminalization.

Conflict of Interest and Individual Liability. Different from the simplicity of bad apple framing in corporate fraud, this post-2001 era's securities fraud reports add a layer of meaning that never emerged before 2001: conflict of interest. To emphasize the problem of securities fraud, the media chose to focus on the question "Why did it happen?" The answer, according to the media, is conflict of interest.

The conflict of interest concept could contain the conflict between (a) commercial banking and investment banking, (b) analysts and investors, (c) analysts and brokerage companies, and (d) rating agencies and brokerage companies. 84% of reports focus on (b), (c), and (d), and only 8 reports (16%) question (a). What distinguishes these two extremes is a focus on the individual and the corporation; (b), (c), and (d) emphasize individual liability, while (a) focuses on corporate liability and systematic issues.

Instead of highlighting the systematic practice of unregulated securities selling, the media tended to feature the analysts who selfishly betrayed the trust of investors or ruined investors' confidence. The notion of conflict of interest therefore revolved around the idea that analysts should be independent, altruistic, and honest. Over-emphasis of these ideal characteristics not only marginalized corporate liability, but also, again, made legal issues into ethical issues. Aligned with the blurred image of offenders in securities fraud cases, the discussion of conflict of interest further strengthened the decriminalization of securities fraud.

Punishment

A Limited Version of Settlement. The infamous Enron case in 2000 forced the media to focus on corporate fraud, so it is not surprising to see that the trial was the climax of corporate fraud cases during this time (the appearance of trial reports went from 9% to 25% after 2001). The media often expressed concerns about no prosecution, questioned light punishment, and even

advocated for more punishment. However, the media also justified light punishment by mentioning that corporations *fired* the individual (9 times in 12 reports), which implies that the content of the trial is the individual's responsibility, not the corporation's. A focus on the trial leads to discussion of law and evidence, eventually highlighting the individual instead of the whole company. The aforementioned bad apple framing continued, and corporate criminality became even more limited when settlements were no longer the core of conversation in corporate fraud cases.

Along this same vein, the criminality of securities fraud also vaporized after Enron. As previously mentioned, reports about securities fraud cases tended to focus on analysts who make problematic recommendations, minimizing the role of victim. This version of bad apple framing penalized the analyst, not the corporation, and the role of investment banking was seldom challenged. Since securities fraud cases did not draw the media's attention, focus shifted from the trial to the pre-trial when settlement and DPA became the core of media reports.

Interestingly, even when settlements are mentioned in securities fraud reports from the pre-2001 era, the *restitution* element is missing. The concept of settlement was previously viewed as a victory for investors, who lost billions due to misleading information. However, after 2001, satisfaction became not about victims, but about banks and government. In reports that mention pre-trial settlement, the media only discusses whether other investment banks were worried about the amount of money involved in the settlement, with none mentioning victim satisfaction. The significance of this reporting style is twofold: first, the settlement is limited to the interaction between the SEC and banking industry, and the impact of investors is minimized; second, it is common to treat other banks as *future offenders* who express their concerns about settlements because they intend to violate the law anyway. This *normalization* of violation, again, was similar to the decriminalization of securities fraud cases; the only difference is that the normalization

process still saw violations as a *crime* but *accepted* them as a daily routine. The term "compliance" appeared 12 times before 2001 in 75 reports but was totally absent after 2001, which means that establishing a compliance program within a company was no longer the focus of the media because violation became *normalized*.

As a result, while restitution vanished in media reports, the only punishment left for securities fraud was civil charges that lead to enormous *fines*. This became routine punishment for securities fraud cases, and the media, accordingly, normalized this process by not directly discussing the crime.

In sum, before 2001, the idea of settlement helped the media to justify the DPA and light punishment for corporations; although the role of victims was salient at this time, the blurred image of offender established a fertile environment for corporate non-punishment. After 2001, the idea of settlement was transformed from *offender-victim* to *offender-government,* the role of victim vanishing due to the idea of investor's confidence. The blurred image of victim is accompanied by the salient image of offender—the individual who is dishonest and guilty of betraying the trust of companies, thus representing a conflict of interest. Ultimately, the framing of fraud leans toward bad apple framing and corporate liability is ignored in this era.

Legal Debate. Since the trial becomes the core of legality when individual punishment is highlighted in corporate fraud cases, reports about the legal debate regarding corporate fraud suddenly increased between the 1990s and 2000s (going from 9% to 57%). In contrast, the legal debate about securities fraud remained approximately the same (going from 16% to only 20%).

However, it is the content of legal debate that matters. Before 2001, the legal debate focused on the element of *intention* and other constitutional rights that protect corporations. After

2001, the discussion of constitutional rights for big companies still existed, but the media started to focus on a new element that never appeared before 2001: *due diligence*.

The terms "negligence", "reckless", and "due diligence" came to dominate media reports after 2001, and they appeared more in securities fraud cases than in corporate fraud cases. Corporate fraud reports still emphasized *intention* since trials needed it to prove the occurrence of fraud, but in securities fraud cases, the term *intention* was totally removed. Instead, the media focused on whether analysts acted with care in dealing with securities selling.

One possible explanation for the prevalent usage of *due diligence* could be the media's over-emphasis on conflict of interest. Since conflict of interest is the media's interpretation of securities fraud, a possible solution could be to ensure analysts' diligence and honesty. In other words, an analyst should bear in mind the idea that he is acting on behalf of his clients and make sure that his clients' interests are protected.

The solution to conflict of interest, however, establishes the civil liability of analysts only when negligence itself does not constitute a fraudulent crime. *Due diligence* only requires high-level executives *supervising* stock-selling activities, thus preventing punishment for high-level executives from taking place. The AIG case exemplified this ideology: the media compared Maurice Greensberg and Warren Buffet, in the AIG/General Re scandal, when both of them *knew* about the fraudulent transactions but only the former knew details, failing to supervise transactions appropriately. Another perfect example of the focus on due diligence is the usage of the term "improper", which only appeared 6 times in 33 reports before 2001 yet showed up 79 times in 64 reports after 2001, again representing corporate immorality instead of illegality. The lever that could hang the tag of criminality disappeared, and the media did not provide any other ideas that could alter the normalization of fraud.

In the end, with a limited version of settlement and the distorted legal climate, *risk management*, not criminal liability, became a clear theme in reports from this era. Lynn E. Turner, a former chief accountant at the Securities and Exchange Commission, noted, “This is an indication that these large financial institutions do not have the risk management systems in place to give us accurate data" (*The New York Times*, February 12, 2008). This is definitely not a common way to describe fraud; imagine you receive a scam phone call and report it to the police, yet the police tell you it is a matter of risk management. It sounds odd, but this represents the way the media normalizes the systematic practice of corporate fraud. Ultimately, in the context of this perspective, it is not surprising that Andrew Cuomo and Eric Schneiderman dropped seven of the nine initial charges against Mr. Greensberg after the crackdown on corporate fraud.

Players in the Media

In post-2001 era corporate fraud cases, U.S. officials were cited more than in the pre-2001 era due to the media’s focus on the concept of trial. However, there was also a significant increase in the citing of experts, lawyers, professors, and company spokesmen, which makes the increase of citations for U.S. officials less discernable.

The forces opposing big companies, such as professors and NGOs, were powerless in the debate of corporate criminality. Although professors are cited more in the post-2000 era, they are discussed only in regard to individual liability and individual deterrence, and they are all from law schools, not sociology or criminology fields. Perception of corporate fraud as a social problem seemed to disappear, and the only shining legal elements in media reports instead became individual *intention* and *due diligence*.

The same citation ideas apply to securities fraud cases. Professors are present 10 times in 56 securities fraud reports, and all of them are, again, from law schools. In fact, the same two

professors are cited 6 times (60%), discussing how the elements of law could apply to the mentioned cases, whether lawyers do their job to secure evidence, and whether lawyers are satisfied with the settlements. All these are technical legal issues signaling the *normalization and general acceptance* of social problems that corporations create. These citations never establish the presence of a force opposing corporate criminal activities. The only place where different professors have opposing perspectives is in the debate of *conflict of interest*, rendering the debate an academic issue instead of a legal issue.

There is another significant change before and after 2001 regarding citations from U.S. officials. In securities fraud cases, the media cited U.S. officials 22 times before 2001 (19%). However, they were only cited 5 times after 2001 (8%). This substantial decrease in citations for U.S. officials may represent another form of privatization of justice, as the FCPA cases indicate.

As previously mentioned, when companies' illegal activities were normalized, the concepts of *compliance* and *supervision* were therefore minimized. In fact, supervision is only mentioned twice in media reports after 2001. As a result, the role of the government is reduced since it is not needed to ensure implementation of the compliance program and supervise corporate activities. Even when the media mentions how corporate supervision could be enhanced, the details of the reports only refer to supervision from a company itself or from NGOs such as NASD or NYSE. The role of government only exists in settlements—the daily routine of corporations.

The role of lawyers, simultaneously, exists only in representations of big companies. Lawyers on the investors' side are removed when the role of investors disappears. Lawyers appear in the media only when they help internal investigations or represent corporations in the negotiation of settlement. Interestingly, for example, the law firm that investigated Citibank during its securities scandal is the law firm that represented Citibank for the resulting settlement. The lack

of adversarial relationship in fraud cases, therefore, takes the form of the distorted social ideology that is introduced below.

Ideologies

Distorted Social Harmony and The Disappearance of Adversarial Settings. When the illegality of corporate and securities fraud gradually shifted from criminal to civil before 2001, at least there was an adversarial relationship between investors, lawyers, and corporations. Although criminality gradually disappeared due to misuse of deception standards, the conflict between investors and corporations still existed.

However, the conflict changed form after 2001. In addition, even though corporate fraud is a crime, it was *normalized*.

Before 2001, investors' loss was *individualized*. The stories of victims were vividly portrayed by the media, and *compensation* and *restitution* dominated the framing of fraud. In contrast, the individualized concept of harmony was not used in regard to individuals after 2001. The media still portrayed the idea of harmony, but it took a different form: *investors' confidence*. The message delivered by the media was that if a company was punished, the whole market would collapse and thus ruin the market value of securities. During this era, the media communicated a need to protect investors' confidence to prevent serious consequences. According to the media, individual loss is not as important as social loss, and social harmony can only be achieved when the market is stabilized.

This framing is, ironically, persuasive for investors. Because investors lost their money in certain corporate scandals, they did not want to lose *more* in future investments. The idea of protecting the market as a whole reduces the possible punishment for corporations and minimizes

the voice of victims, as investors need to be docile given the market rule. As a result, market-oriented values triumphed, and the concept of *investors' confidence* gradually replaced the role of investors as victims.

Bad apple framing fits perfectly into this market-oriented ideology. The punishment for individuals eases the insecurity of investors and reduces the possibility of the stock market crashing since these individuals are labeled as bad apples and fired. What the media did after 2001 was to highlight the offender as a selfish person who violated business ethics; it sometimes advocated for harsh punishment for individuals instead of mentioning any systematic practice of fraud. This reporting style ensures a stable securities market and satisfies the witch-hunting attitude after each corporate scandal.

This bad apple style of framing, however, also runs the risk of sacrificing the very legal nature of the U.S. system—particularly its adversarial settings. Focusing on investors' confidence not only minimizes the role of the victim, but also blurs the line between offender and victim since punishing corporations makes the whole market into a victim. With the help of this unclear image of corporate criminality, insecurities and anxiety are easily shifted from an individual level to a social/market level, which prevents punishment from happening. Criminality is therefore kidnapped by the so-called "market," and social harmony is then distorted by the idea of *too big to fail*.

Normalization of Crime and Risk Management. As the market-oriented ideology kidnapped the depiction of criminality, the media started to report on whether companies—not victims—were satisfied with other companies' settlements. Imagine this: the Justice Department reaches a settlement with a thief for burglary and, without asking the victims about their opinion, interviews other thieves about whether they are satisfied with the settlement.

This is how the media normalizes corporate crime. When adversarial settings are removed, justice becomes a form of business conducted by corporations. The violation of rule of law becomes a daily routine concerning how to strike a balance between making money and paying fines. The only mission of the government is to ensure this balance is maintained. Settlements and fines are just part of the daily lives of corporations, and this game was prominent in the post-2001 era with the retreat of the role of the government.

Before 2001, risk management referred only to whether investors should take risks. With the retreat of investors and the government after 2001, risk management became all about self-regulation in regard to how a company should supervise its analysts. Moreover, the threshold of supervision for corporations is very low since high-up executives are only prosecuted with *intention* and only need *due diligence* to escape from civil charges. When investors enact their risk management policies, companies also engage in risk management by escaping criminality. Ironically, the media's framing relies on the general public when there is no opposing force.

In the end, while punishment for street crime focuses too much on the individual, punishment for corporate crime focuses too much on the social level of liability, which minimizes corporate criminality. The individual—the scapegoat of corporate scandals—is treated as a street criminal and is given a harsh sentence.

Rule of Law. The legal climate in the post-2001 era indicates a trend of movement from criminal to civil liability; the description of criminality shifted from "intentionally sold questionable stock" to "recklessly sold questionable stock." Simultaneously, the disappearance of adversarial settings indicates a trend of transformation from civil to zero punishment, as victims were replaced by the idea of investors' confidence in the post-2001 era. These trends all boil down to a serious issue: the disappearance of rule of law.

In FCPA cases after 2001, the rule of law was replaced by the idea of business ethics. In this regard, at least FCPA violations were still actual violations of concrete rules. However, supervision, compliance programs, and rule of law are not concerns at all; when fraud is normalized, rule of law no longer exists. Before 2001, at least the media would say that corporations violated *industrial standards*, but this term was negated after 2001. The only time the media mentioned rule of law or ethical standards in the post-2001 era was when individual liability was called into question. In other words, before 2001, media reports were about whether a company violated industry standards, and after 2001, they were about whether certain individuals *made a wrong choice* in dealing with securities-selling activities and conflicts of interest. The idea of business ethics is therefore *individualized* for specific players, and what is left for corporations is just risk management.

Ultimately, when *victims are socialized and business ethics are individualized*, corporate criminality is normalized. The only thing that a company can do is to manage its risk, ensuring everything is transparent enough to escape liability by using the assertion "everything has been done already."

The Ideological Change

What chapters 4 and 5 present is a general framing of corporate liability. In addition to neoliberalism, there were other ideologies that have served to decriminalize or normalize corporate crime:

1. Wilsonian approaches, enhanced by 9/11, created a friendly attitude toward big companies. Human rights groups and NGOs were eager to help establish rule of law offshore before 2001 and were gradually replaced by corporate lawyers and financial experts after 2001. Although rule of law was salient before 2001, the same approach also identified foreign

countries as enemies, which masked the real offender—corporations.

2. Settlement and restitution, generated using the ideology of social harmony, distracted the media from the discussion of criminal punishment. The media emphasized and prioritized victims' loss in the 90s and replaced the idea of victims' loss with investment confidence in the 2000s, eventually dismantling the adversarial relationship between offender and victim.
3. When the offender and victim were lost in the discussion of fraud, corporate liability became blurred in corporate and securities fraud cases. In contrast, corporate liability was vivid in consumer fraud cases due to active NGOs and the powerful supporting ideology of "quality of life."
4. The retreat of the SEC, echoing the privatization of justice in FCPA cases, signaled a change in the idea of rule of law in the 2000s. In dominating media reports from this era, corporate lawyers and financial experts started to establish their own form of rule of law—the idea of business ethics. The SEC and the formal legal system deferred this privatized system and started to argue that corporations were just *reckless* in making decisions. Without questioning corporate liability, corporate crime was then normalized, as it was claimed that these companies were just doing business.
5. Elements of neoliberalism, such as small government, remained salient during the minimization of the SEC. However, other elements such as *supervision* and *cooperation* gradually vanished during the process of fraud normalization.

The "tough on fraud" in 2002, initiated by George W. Bush, signaled the rhetoric of fighting fraud; "Investors seemed encouraged, however, by the bill Mr. Bush signed into law. The legislation, prompted by accounting and ethics scandals at companies including Enron and WorldCom, strengthens penalties for corporate wrongdoing. It also requires executives to vouch

personally for the accuracy of their companies' reports" (*The New York Times*, July 31, 2002). This report, however, looks rather ironic in the context of corporate crime becoming normalized and acceptable in the late 2000s.

Chapter 6: The Chinese Media's Framing of Bank Fraud

Introduction

Before discussing Chinese data in-depth, it is important to address significant information that distinguishes corporate crime in the U.S. from corporate crime in China, as the two countries share different political and social systems.

Major Chinese banks are public banks owned by the government, so bankers are, in effect, government officials. Most corporations that can get loans easily from banks are state-owned enterprises (SOEs); they are thereby also effectively government officials. In this regard, Chinese financial crime is often caused by collusion between SOEs, bankers, and financial sector officials—all government officials. In the early 1950s, between 30 and 40 percent of all government officials were charged with corruption and financial fraud (Xi, 1952), and some were executed. It is therefore clear that discussion of bank fraud in China should be interwoven with discussion of corruption.

The Chinese stock exchange market began to grow in the 1990s, so it had a late start. Before this period, the major financial crimes in China were corruption and embezzlement committed by SOEs when SOEs bribed the bank for bad loans. Securities fraud was not the focus before the 2000s since only nine securities fraud cases are available from 1994 to 2006.

Securities fraud gradually gained importance after the 1997 economic crisis in Asia. The Security Act (SLPRC) was enacted in 1997, and four law enforcement agencies were then established: the Economic Crime Investigation Department (ECID) in 1998, the Division of Money-Laundering Investigation (DMLI) in 2002, and the Financial Crime Prosecution Unit (FCPU) in 2002. After these organizations were established, investors gradually gained

prominence in the discussion about financial fraud, even initiating a 2012 Beijing protest demanding rigid regulations and law enforcement. However, since SOEs dominate the market, it is hard for law enforcement to pursue SOEs if expected punishment runs counter to the political will of the PRC. In this regard, it is important to investigate how the media portrayed securities fraud after 1997, which is a time when public anger existed in the face of weak law enforcement.

Realistically, the banking industry dominates financial crime in China. Interestingly enough, in media reports, this problem is always hidden beneath the guise of political corruption. Other forms of securities fraud, including stock manipulation and illegal fund-raising, should be discussed separately since they do not involve political corruption. I therefore divide my data regarding corporate fraud into two categories: corruption-fraud and other kinds of securities fraud.

In this chapter, I first compare two high-profile bank fraud cases (pre-2003) and one similar case (post-2003) to investigate the media's framing of fraud and corruption before and after the establishment of the China Banking Regulatory Commission (CBRC) in 2003. In chapter 7, I compare four cases regarding securities fraud both before and after 2003 to see how the media portrays fraud sans corruption.

Table 6.1: Selected cases

	Before 2003	After 2003
Corruption and Fraud (ch.6)	CITIC Bank (bribes from Private Company) People's Bank of China (Bribes from SOE)	CITIC Bank (Bribes from SOE)
Securities Fraud (ch.7)	Qiong MinYuan HongGuang Inc.	LVDadi Inc. WanFu Co Ltd.

As the following sections indicate, the framing of bank fraud, not securities fraud, set the tone for the media's attitude toward corporate liability in the 90s. State-Confucianism made the media focus on political corruption instead of corporate liability, and the over-intervention of the CCDI also contributed to over-emphasis on s*elf-discipline* and *surveillance* that was supposed to solve the issue of *GuanXi*. However, since China has a history of challenging corporations, the idea of *The Big Should Fail* was still salient in the 90s.

In the 2000s, the Chinese media started to normalize *GuanXi* and bribe-giving activities, which shook the foundation *of The Big Should Fail*. In this new era, the role of the CCDI was diminished, and the role of government was reduced to mere punishment, represented by superficial crackdowns. The result of this interaction was the emergence of *Big Government* Neoliberalism, which will be introduced at the end of this chapter.

The First Era of Financial Crime and Corruption

Case Selection and Background

Although the Commercial Bank Act and Criminal Law were enacted and revised in 1995, the first crackdown on bank fraud was not initiated until President Hu Jintao took office in 2003. This is also when the China Banking Regulatory Commission (CBRC) was established. Therefore, my study focuses first on the media's reporting of bank fraud before 2003, later comparing the framing of bank fraud before and after 2003.

The factors contributing to bank fraud are different in America and China. While American companies commit bank fraud to defraud investors, Chinese companies, including private companies and SOEs, commit bank fraud mainly to make more money, simply taking money from the bank. Thus, while the United States government has prosecuted individuals who lied on their financial reports and therefore committed loan fraud after the 2008 economic crisis, China has tended to charge bank directors and executives. According to the former chairman of the CBRC, insider fraud represents 80 percent of bank fraud in China (Liu, 2005). High-level bank officials, therefore, became a target during the crackdown on bank fraud. Since banks dominate the financial market in China, with credit up to 128 percent of GDP (Elliott & Yan, 2013)[21], bank fraud has become the main type of fraud committed by corporations that draws public attention.

Most SOEs and bank officials are government officials and Party members. They are therefore regulated by corruption regulations and Party Discipline, which complicate bank fraud issues in China. To see whether companies and bank officials are treated differently, I first use three most-reported bank fraud cases before 2003 to investigate the media's framing of fraud and corruption. Cases that contain only embezzlement details not situated within the context of

[21] This is data from 2012; 48 percent is the American statistic.

companies are excluded since this dissertation focuses on the systematic practice of corporate fraud, not individuals that simply steal money.

The first case I examine involves Suntiang Kao, a deputy manager of China CITIC Bank in Shenzhen. He was sentenced to death because he took bribes from SOEs in the 90s. The second case I examine involves Xuebing Wang, the former chairman of the Chinese Construction Bank who was sentenced to 12 years in 2003 due to accepting bribes from both SOEs and private companies. The third case involves XiaoHau Xu, who in 2002 was sentenced to 15 years in prison due to providing bad loans and accepting bribes.

Criminal Framing of Bank Fraud

Street Crime Framing. Although street crime framing does not apply to media reports in America, it dominates media reports in China. In typical street crime reports, bank officials are often described as "rapists" or "rats," the latter of which is a Chinese metaphor that serves to label and stigmatize street criminals. Also, details about individual bankers' background are portrayed in detail in Chinese media reports, representing a gossiping style of reporting, whereas American media reports focus only on middlemen and whistleblowers in FCPA cases. In this regard, white-collar criminality, especially for bankers who take bribes, is well-established in China, involving discussion of individual background, case details, legal duty violated, and consequences.

This gossip-oriented style of reporting shows the media's over-emphasis on the individual. For example, the media explained what the embezzler Xuebing Wang likes and dislikes, talked about his hobbies in detail, and made note of what he accepted for bribes. Moreover, the media also compared his successor, Liu, with Wang, emphasizing their differences by contrasting Liu's thrifty lifestyle with Wang's luxurious tendencies (29 times in 49 reports). This comparison thereby implies that the media attributes a crime to a criminal's personality; Wang's disposition,

for example, is discussed 16 times in 49 pre-2003 reports. This over-emphasis on personality therefore leads to the question of whether the media utilizes bad apple framing in fraud cases.

Personality vs. Environment. Interestingly enough, the analyzed media reports reveal that bad apple framing is not utilized in reports for bank fraud issues. Although Wang's personality is highlighted 16 times in 49 media reports, the media also mentions systematic corruption in the bank industry 37 times in 49 reports. Personality is certainly underlined in gossip-oriented reports, and in the pre-2003 era, the media often asked or addressed the following question: "What kind of environment contributes to a criminal's personality?" This question is brought up 10 times out of 16 times that personality is mentioned in Chinese media reports. This question is followed with the idea that China needs institutional banking industry reform. It can be seen, as a result of this, that over-emphasis of personality alone does not lead to bad apple framing when the systematic practice of corruption is mentioned.

Per media reports from the pre-2003 era, institutional reform was imminent because China joined the WTO in 2001, which led to the banking industry facing multiple international challenges in 2003. The emergence of big fraud cases around this time signaled the incompetence of the Chinese banking industry, and the worry of being defeated by foreign banks was prevalent in the media. In fact, 20 out of 49 reports mention the idea that Chinese banks need to be reformed to compete with foreign banks, and discussion of the clash between neoliberalism and local protectionism is common.

In this regard, although there are no real individual victims in bank fraud cases, the media tried to frame society as a victim in the pre-2003 era. Media reports state that a crime could "ruin the economy" and "irritate Chinese people" (*People Daily*, December 31, 2002). Public insecurity

is mentioned to justify punishment for bank fraud, and, according to the media, the government is required to do something to ensure economic stability.

Thus, the corrupt Chinese financial environment became the main theme in banking scandal reports in 2003. The media even asked, "Why are there no corrupt bankers in the U.S?" to initiate discussion about banking corruption in China (*XinHua Daily*, August 16, 2002); it then referred to the uniquely corrupt environment there. As a main component of this discussion, the media focused on the element differentiating the U.S. from China—social networks (*GuanXi*).

GuanXi as a Focus. *GunaXi* refers here not to public social interaction, but to the influential relationships that facilitate business dealings. The concept of social networks is particularly important in regard to financial crime since elites need connections to have loans approved by bank officials. Social networks dominate the field of financial crime, encompassing groups such as the blue bloods; the political elite, who are relatives of senior officials; the new political elite, who advance themselves using higher education and political mentorship/affiliation; and the private business elite, who have a connection with neither the blue bloods nor the new political elite, but develop strong ties through the growth of their business (Cheng, 2016).

The blue bloods and the new political elite dominate the banking system and SOEs, and both groups commit acts of corruption when they collude in loan fraud cases since they are both comprised of government officials. The private business elite, however, are not government officials able to commit political corruption; instead, they are considered criminals by law because of their bribe-giving activities.

Although the media does not categorize social networks in the way scholars do, it highlights *GuanXi* as the main cause of financial fraud—especially in bank fraud cases. Of 20 pre-

2003 era reports that discuss the systematic issue of bank fraud, 17 attribute the issue to the prevalence of *GuanXi*, and 10 mention how individuals are influenced by greed. In other words, the media communicates that greed is the motivation for fraud but that *GuanXi* is what enables the pervasiveness of bank fraud.

Over-emphasis on Corruption and De-emphasis of Companies. Emphasis on *GuanXi*, unfortunately, ignores the other side of bribery: companies' bribe-giving activities. Of 49 reports concerning fraud and corruption, only nine mention bribe-giving activities, and seven out of nine mention Wang's bribe-giving activities in the U.S. As such, only two reports mention Chinese corporations that bribed Wang and Xu in China, and when it comes to discussing punishment, *no* reports mention how these companies were penalized. As a result, private companies and SOEs are totally absent from Chinese crime reports in the pre-2003 era

In contrast, although American media reports over-emphasized corrupt officials overseas, 45 out of 153 American reports discuss bribe-giving activities. Bribe-giving is almost completely neglected in Chinese media reports even though it is a main means with which companies violate the law. A mere two reports touch upon the names of companies; other reports only specify that "a company" partakes in bribe-giving.

Therefore, although the elite are included in the concept of *GuanXi,* not many specific individuals are mentioned by Chinese media reports from the pre-2003 era, which makes discussion of *GuanXi* limited. Although the media challenged the cronyism among political elites, real networks were not exposed. The blue bloods remained unchallenged, and the private business elite were ignored. The new political elite—who, like Wang and Xu, made their way to the top using higher education and political affiliation—became scapegoats in the discussion of corruption and fraud.

Punishment

Given that corporations are overlooked in fraud cases, it is not surprising that punishment for corporations is *never* mentioned before 2003 in the collected data. Although the punishment for officials was harsh to begin with, when Wang and Xu were sentenced to 12 years and 15 years, respectively, the media made it clear that there may have been even more to the idea of punishment than meets the eye.

Party Discipline and Criminal Punishment. Since Wang and Xu are PRC members, they are subject to internal discipline. Thus, before 2003, when the media mentioned a fraud case as soon as it became public knowledge, it applied the phrase "the violation of law and party discipline." Bank fraud cases do not directly go to the Justice Department. Instead, when investigation starts, it begins with an internal inquiry conducted by the Central Commission for Discipline Inspection (CCDI). Affiliated criminals, therefore, respond to the investigation of the CCDI at a "specific time" and in a "specific place" (*Shuanggui: Two Specifics*), which is similar to the concept of investigative detention even though the CCDI has no formal power according to the legislature. Of all investigation types in China, internal discipline investigation has always been prioritized, and criminal investigation only occurs when the CCDI concludes a case and refers it to prosecutors.

This CCDI-prioritized reporting style signals *Party-first* regulations, which triumph over legislation (rule of law) in a significant way. Punishment for bank fraud, therefore, focuses on Party discipline (e.g., membership deprivation); criminal punishment only appears afterwards. CCDI-prioritized framing from the pre-2203 era also represents the political concerns of financial fraud since the appearance of the CCDI signals the Party intervention. Therefore, interviews with politicians in media reports are common after CCDI investigations take place.

This integration of political elements in financial fraud reports seldom occurs in American media reports. Although the Bush and Clinton administrations often expressed their intolerance regarding fraud, the prosecution of fraud was still confined to the prosecution's discretion. In China, the words of politicians—as they are Party leaders—directly influence the CCDI's investigations. Therefore, political concerns, which were deprioritized in favor of economic concerns by 2003, cannot be ignored in the discussion of discipline and punishment.

For example, individuals were investigated by the CCDI when the media stressed, "China needs fair competition with foreign banks" because of "the pressure of entering [the] WTO" (*Finance Magazine*, January 16, 2002; *Far East Economic Review*, January 31, 2002). The imperative of economic success hinged upon Party discipline, which constitutes the informal elements of punishment.

Personality and the Removal of GuanXi. Since Party discipline and punishment constitute the two-track penalty for corruption and fraud, the Party's justification of penalty will be given considerable attention.

First of all, of the 12 pre-2003 era reports that mention Party discipline, 11 discuss criminals' personality. Although the media addressed *both* personality and systematic corruption in descriptions of crime, only the *personality* element remained present in the "verdict" of the CCDI's investigations. Normally, the CCDI highlighted the unethical part of an individual's activities and emphasized their inherent corruption. Therefore, the CCDI and the media emphasized the ethical aspects of the activities instead of the legal ones.

By contrast, of 12 reports confirming the sentencing of criminals, 8 highlight the amount of money embezzled by Wang or Xu. Instead of focusing on their personalities, in these reports,

what is stressed is the amount of money involved and the legal duty violated. The media also compares the amount of money taken to the sentencing in both cases, implying that the amount of money involved is the most significant determinant of sentencing, such as, for example, in the case of Wang being sentenced to 12 years for 100 RMB bribes and Xu being sentenced to 15 years for 400 RMB bribes.

Thus, the CCDI's investigation and court sentencing differ significantly in terms of rhetoric: Party discipline focuses on ethics, whereas criminal punishment focuses on amount of money involved.

The only thing left in the media's discussion of punishment is the systematic corruption issue mentioned when financial scandals arise. Although the media did not frame criminals as bad apples when these cases occurred, the following reports regarding investigation and punishment were presented very differently by the media. Systematic corruption and *GuanXi* were totally removed from the conversation as a result of punishment being dealt by CCDI or the courts. This sudden change can be explained by how the media presented its solutions for bank fraud, which is discussed below.

Solution: Self-Discipline

When the media mentioned systematic corruption and fraud, it often proposed institutional reform that could prevent fraud. This reform often included the separation of market and politics, external supervision, and non-intervention of local government. Conflicts of interest were often mentioned in the proposed reform of national banking, followed by the argument of separation of supervisors and supervisees; this, in fact, may have led to the establishment of the China Banking Regulatory Commission (CBRC) in 2003. The proposed reform for the banking industry focused on institutional building of supervision, particularly targeting high-level government officials who

collusively committed bank fraud. The media even discussed the way developed countries used supervision to ensure the validity of reform.

Institutional reform, however, is dysfunctional in two regards.

First of all, in 2003, the media narrowed down the argument of institutional reform after punishment for individuals was confirmed by the media. When 20 of 49 analyzed reports mentioned institutional reform, no mention of this appeared after reform was discussed in 2002. The media seemed allowed to argue broadly during investigation, but its arguments were restricted after the Party and courts reached a conclusion. For example, as the last section of this dissertation reveals, the discussion of GuanXi was removed from the conversation when Party discipline triumphed.

Secondly, the idea of 2003-era supervision was implemented in a totally different way than what the media promoted in 2002. After punishment for Wang and Xu was confirmed, the Party released an administrative rule that supervised high-level executives in the banking industry, thereby monitoring their "lifestyle." Bank officials were asked to keep their distance from their relatives and friends and were subject to an "off-8-hour rule" that requires officials to report any activities with members of social networks that occur during leisure time (other than sleeping for 8 hours).

As a result, the external supervision proposed within the banking industry became supervision highlighting *self-discipline*. However, this solution focused on personality instead of challenging the corrupt nature of *GuanXi*. As per the CCDI's statement about the media, Wang's trial occurred because of the lure of hedonism, materialism, and extremism. Media reports noted that to avoid being poisoned by greed, individuals should be humble, prudent, and patient, realizing

that their living standard should not be higher than that of the average person (*CCDI Reports*, January 20, 2003). It therefore promoted the idea that it is the leader's responsibility to discipline his own self in order to ensure successful reform.

The media's focus on personality, furthermore, neglects the concept of real institutional reform. Reform is tied to individual characteristics that are in turn connected to Chinese traditional values. Emphasis on personality also speaks to the scenario that discipline triumphs over criminal punishment and represents the media's gradual loss of focus on *GuanXi*.

Players

It is not surprising that the Chinese media cited government officials often in the media reports from the pre-2003 era (21%). However, foreign newspapers and investigators are cited more than government officials (29%), and experts and professors (29%) are also quoted often. Lawyers (5%) play only a marginal role in media reports from this era, as they were cited only after punishment was confirmed.

The reason why foreign sources were cited often was that Wang also committed bank fraud in the U.S., and American news was therefore quoted several times to emphasize blame. Moreover, foreign sources were quoted when the media emphasized the shortcomings of the Chinese banking industry, which indicates globalization-related Chinese incompetence. The media never challenged this stance; instead, it proposed institutional reform measures to fix the issue in the midst of comparing developing and developed countries. However, as mentioned above, the process of institutional reform eventually transitioned into a form of self-discipline.

Experts and professors were also cited. Finance experts expressed concern about risk management and transparency issues in the banking industry; professors also professed their

anxiety about how the CBRC would work in the future. These players correctly identified the problem of fraud on a systematic level instead of referring to the issue as a personal choice. However, after the participation of politicians and the CCDI in media reports, experts' concerns were diverted from systematic issues to personal matters.

Overall, the Chinese media used a balanced approach to communicate instances of corruption and fraud before 2003. Now I will shift focus from *players* to *the ideas that players promoted* before 2003.

Ideologies

Semi-Neoliberalism and Foreign Capital. Ideologies such as globalization play an important role in the media's framing of corruption and fraud. In 49 analyzed reports, the media mentions 20 times that China needs reform in order to meet the "international financial standard." As part of this, the media also reported on individuals, including Wang, who possessed foreign capital and brought China into the world of globalization. The emphasis on globalization and foreign capital represents the public anxiety associated with entering the global market.

When the terms *fair competition* and *separation of politics and finance* appear often in media reports, it is plausible that this is a sign China is accepting neoliberalism—the ideology that focuses on international fair competition and small government. This explanation, however, may not fully represent Chinese politics. Although the media promoted the separation of the financial market and politics before 2003, it *only* promoted the separation of *corrupt* officials and the market, indicating that once corrupt elements are eliminated, it is acceptable for the Party to intervene in the market. In other words, the media indicated that the force supporting the idea of neoliberalism was essentially the force challenging corrupt government officials—an ideology prevalent in China.

An emphasis on *GaunXi* further proves the point that Chinese ideology is more about anti-corruption than neoliberalism. The media's denouncement of *GuanXi* denotes the Chinese ideal of *Qing Guan* (clean and honest official that is implicit in Chinese ideologies). Although *GuanXi* is only given partial media attention when the SOE elite and blue bloods are ignored, emphasis on the dysfunctional political system permeated by corruption was still the norm in media reports prior to 2003, and neoliberalism—especially the idea of separation of politics and finance—was therefore not the real focus during this time.

Although neoliberalism was not a dominant ideology in 2003, Chinese society's anxiety about entering the WTO was indeed a major force that informed ideologies. A discussion of globalization, therefore, should not be excluded in an analysis of media reports. For example, the media did not challenge the idea of fair competition; instead, it focused on what China should do to survive fair competition. America is often perceived as having a better financial system than China, and prior to 2003, the Chinese media stressed the importance of possessing foreign capital (an idea similar to Bourdieu's ideas about cultural capital) in order to reform the banking system (7 times out of 49 reports). Mentioned examples of foreign capital included studying abroad at Harvard University, being supervised by professors at Stanford University, speaking fluent English, and working on Wall Street. Chinese government officials who possessed these forms of capital were highly praised by the media and were encouraged to participate in banking institutional reform.

This foreign capital framing, naturally, is reminiscent of FCPA framing. Given the concept of globalization, before 2003, the Chinese media communicated that certain countries were not civilized enough to do business with developed countries. The feeling of inferiority this connotes, although resisted often by the Chinese, is prevalent in reports regarding the financial system.

In sum, as globalization began, those who had foreign capital gradually gained importance in media reports. Other elements of neoliberalism, such as transparency and supervision, are also mentioned often in the collected data (11 times and 27 times out of 49 reports, respectively). However, Chinese media reports by no means promoted small government. Instead, they only condemned corrupt officials while *encouraging officials who possessed foreign capital to aggressively intervene in the financial system*. Under the pressure of globalization in 2003, the media's approach tended to tighten governmental control over the market by simultaneously punishing corrupt officials and asking for a better *leader*.

State-Confucianism and Big Government. As mentioned in the previous section, only the new political elite were exposed to the public and punished, whereas the blue blood, SOE elite, and private companies are all absent from media reports in the pre-2003 era. It is understandable that higher-level officials are excluded since the media dares not challenge authority. The question is: why was punishment for private companies excluded in pre-2003 media reports?

One possible explanation is that capitalism began to favor big companies. However, given the legacy of communism, China is not afraid of penalizing big companies. In this regard, another possible explanation is the existence of State-Confucianism, which emphasizes that rulers should be morally exemplary and that social order can be restored through the practice of moral virtue (M. Chen, 1995; Ng, 2000)

So-called *State-Confucianism* was associated with a bureaucratic governing system in China, which claimed all-encompassing jurisdiction over the empire in 220 BC (Schwartz, 2009). State-Confucianism, which supported state legitimacy, was replaced by party-state hegemony (state socialism) after 1949 (King, 1997), but Confucian ideas also persisted to some extent. The remnants of Confucian ideology were eventually challenged—though not eradicated—by

communism and socialism during the cultural war (1966-1976). With rapid economic growth since 1978, scholars indicate that Confucianism promoted systematic adjustments to the economic boom in the 80s by demanding self-control, frugality, and unrelenting effort; these qualities undergird the modern development of East Asian capitalism (Hamilton & Kao, 1987; Yu, 1981).

Under State-Confucianism, a government official is a ruler, dominator, and leader whose personality should guide the entirety of the Chinese people. In other words, the specter of State-Confucianism reminds the public that society should be governed by morally exemplary leaders and that social order is the result of practicing moral virtues. The state becomes corrupt only when an official is corrupt. In this regard, punishing private companies does not "fix" banking problems since private companies are not government officials. The corruption problem can only be fixed when the leader is punished through condemnation of his moral character. This may well explain why when the Party (CCDI) punishes its cadres (officials), it is not jeopardizing its own status; instead, it is legitimizing its own position because punishment emphasizes ethics, not the law.

Prior to 2003, although criminal punishment continued to exist, the media prioritized Party discipline particularly when the media proposed "self-discipline" as a solution for banking issues. The Party, in this regard, aggressively intervened in the market and governed by emphasizing traditional virtue, also punishing bad apples by condemning their greed. This focus on self-discipline and leaders' ethics, although in and of itself appealing to the public, eventually led to a version of punishment skewed toward officials that excluded private companies from the legal system.

Big Brother and The Demise of Rule of Law. The term "supervision" appears 27 times in the collected data. Instead of considering the term indicative of the concept of neoliberalism, my

research tends to interpret it as *Biopolitics*—the concept that denotes the way sovereign power is produced as a result of a biopolitcal agent (Agamben, 2004).

According to Agamben, sovereign power is produced by *suspension of law*. At first glance, this idea does not apply to China; Chinese laws are mentioned all the time by the media, and the reform proposed for the Chinese banking industry also promulgates the establishment of a new legal system. The media even compares *law-on-the-books* and *law-in-action,* saying that law-on-the-books cannot be implemented when political power intervenes. According to the media, law enforcement needs to be remedied in order to initiate financial reform.

The solution to financial issues the media provided prior to 2003, however, is removed from rule of law. The way the Party "supervises" law enforcement is not a means of applying rule of law, but instead a means of implementing administrative rules that emphasize discipline. In other words, supervision from the Chinese government is more like *surveillance* than regulation. Theoretically there are more rules than just administrative rules that govern officials. However, they are ethical rules, in essence; for example, there is the previously-mentioned "off-8-hour rule" that supervises the leisure time of government officials. In this regard, it is not the rule of law that systematically supervises banking activities, but the rule that manages certain "lifestyles"—the "bios" as Foucault referred to (Foucault, 1975, 1977). In a Foucauldian sense, "governmentality" denotes "the conduct of conduct," molding the activities and conduct of any individual to match the Chinese ideal lifestyle. To use a popular expression, in this instance, "Big Brother is watching you." While the neoliberal American government focuses on the market and employs an economic measure for all market activities, its Chinese counterpart focuses on surveillance and stability.

This surveillance triumphs over rule of law primarily when informal investigative power, led by the CCDI, prevails over the formal power of the Justice Department. When the media

prioritizes the CCDI's role, rule of law is *suspended*, revealing the *lawless space* created by Chinese sovereign powers such as *Shuanggui* (Two Specifics) in which virtues and ethics, not the law-on-the-books, are the norm.

The discourse of the lawless space not only demonstrates the government's power of surveillance, but also limits the scope of rule of law in which corporate governance is left behind since surveillance is enacted for officials, not companies.

Conclusion

As forms of neoliberalism, State-Confucianism, Big government and Big Brother all interact with each other in creating ideologies regarding corruption and fraud in China. This interaction forms the basis of several differences between punishment in the U.S. and China. For example, the idea of supervision signifies two totally different meanings; supervision in China represents strong sovereign power, whereas supervision in the U.S. represents the retreat of the government. Moreover, ethical issues usually translate to *harsher* punishment in China, whereas in the U.S., a focus on ethical issues means non-punishment for big companies. Although big companies are left unpunished in both countries, the ideologies that lead to non-punishment for corporations completely differ.

Now I will move to the second era (2003-2010) to investigate whether Chinese ideologies changed during the Hu Jintao period (2002-2012).

The Second Era of Financial Crime and Corruption

Case Selection and Background

Enzhao Zhang, former chairman of the China Construction Bank, was responsible for the most publicized fraud case during the Hu period (2002-2012, 140 reports)[22]. He was first suspected of taking bribes from Fidelity, an American company that violated the FCPA. He was then investigated by the Party, and as a result, he stepped down as chairman in 2005. In 2006, the Chinese No.1 Intermediate Court indicated that he accepted 19 bribes from three businesses, not including Fidelity, and was sentenced to 15 years in prison.

Zhang's case was noteworthy for several reasons. First, his predecessor, Xuebing Wang, was sentenced to 12 years in prison due to corruption and loan issues, and this impacted the public's perception of Zhang. Second, the China Banking Regulatory Commission (CBRC) was established in 2003 as a result of the Party declaring its intention to reform the banking industry; this did not, however, prevent Zhang's embezzlement. Third, China signed several free trade agreements such as the ASEAN–China Free Trade Area (2002) and a free trade agreement between the Government of the People's Republic of China and the Government of the Islamic Republic of Pakistan (2003). In this regard, Zhang's case harmed the nation's reputation when globalization dominated the decade following 2000. As a result, Zhang's case became the cover story of finance-related sections in the media and became the most-discussed case of the 2000s.

A general comparison of Wang and Zhang is illustrated below.

[22] The second most-publicized is the case of Jinbao Liu (2003). Since this case is too similar to the case of Xuebing Wang (2002), I chose the case of Zhang (2005-2006) to represent corruption-fraud during the Hu era.

Table 6.2: A general comparison of Wang and Zhang

	Wang (pre-2003)	Zhang (post-2003)
Criminal Framing	Personality as focus	De-emphasis of personality
	GuanXi as major cause	*GuanXi* as routine
Punishment	Party discipline triumphs	Risk management triumphs
	Main player: CCDI	Main player: CBRC
Solutions for bank fraud	Self-discipline	Crackdown and transparency
Ideologies	"Big Government," "Big Brother," and State-Confucianism	"Big Government," Ethical Neoliberalism, and Home Thief

Criminal Framing of Bank Fraud

Diffusion of the Word "Scandal" and Removal of Personality. Before 2003, corrupt bank officials were referred to as street crime criminals. However, this changed after 2003. The word "scandal" never appeared in media reports before 2003 but was used by the media 19 times in 140 reports after 2003. Possible explanations for this shift are that Zhang was involved in a FCPA case in the United States and that the Chinese media often cited summaries of Zhang's case from *The Wall Street Journal* in which the term "scandal" was used often, leading to emergence of a less formalized criminal reporting style.

In addition to the term "scandal," the term "fall" appeared 21 times in 140 reports, indicating the tendency of the new political elite to climb the social ladder yet eventually fall as a result of scandal. Combined with use of the word "scandal," this linguistic framing shows

sympathy rather than blame, marking a divergence from typical street crime framing. These reports made it clear that an official was no longer a "street rat" and was instead a white-collar entity that unfortunately *fell from grace* because of dishonor.

This decriminalization of officials contradicts one of my findings regarding another journal article, which indicated that the media tends to treat corrupt officials seriously and seldom applies the word "scandal" from 2006-2012. In common corruption reports, the media often exaggerates officials' lavish lifestyle and details how their greed leads them down a devilish path. However, this kind of reporting style is not evident in Zhang's case. Although the media discussed Zhang's background (24 times in 140 reports) more than in Wang's case (17%, as compared to Wang's 14%), Zhang's characteristics and personality were no longer the emphasis, as only 10% of reports from the post-2003 era mention personalities, compared to 34% in the pre-2003 era. As a result, when corrupt officials are referred to as greedy people who violate traditional values and deserve the death penalty, corrupt officials like Zhang who are involved in finance issues are *not* depicted the same way (see Figure 6.2). This sudden removal of personality from the larger discussion of fraud is definitely worth noting and will be analyzed later.

Table 6.3: the outlier

	Pre-2003	Post-2003
Corrupt Bank Officials	Focus on personality and self-discipline	*The discussion of personality is absent*
Other Corrupt Officials	Focus on personality and self-discipline	Still a focus on personality and self-discipline

GuanXi as Routine. In addition to the removal of personality from the discussion of white-collar crime, in the post-2003 era, the media was reluctant to engage in discussion about *GuanXi* in regard to Zhang's characteristics. *GuanXi* is mentioned much less in the post-2003 era; the term appears only 19 times in 140 reports (13%), as compared to 16 times in 50 reports (32%) in the pre-2003 era. As *GuanXi* was the focus before 2003, it seems like the media chose not to attribute the occurrence of bank fraud to *GuanXi* after 2003, which presumably was the case due to pre-2003 reports. However, *GuanXi* is still the focus in the general discussion of other types of corruption (Shen, 2017) during this era, so it is worth exploring the particulars of why Zhang's social networks were no longer emphasized after 2003.

In Wang's case, blame is mentioned in regard to social networks three times in 49 bribe-giving reports from the pre-2003 era; in Zhang's case, social networks were never mentioned when the media reported bribe-giving. In other words, the media was not afraid of reporting bribe-giving activities and, in fact, started to treat them as normal behavior after 2003. Indeed, discussion of individuals who provided bribes appears 37 times in 140 reports in the post-2003 era (24%), compared to 8 times in 50 reports in the pre-2003 era (16%). However, the media *never* denounced certain corporations or people who gave bribes, nor did it mention victims suffering as a result of

bribe-giving. Bribe-taking was still the focus after 2003, as Zhang himself was still the focus, but this increase of bribe reports does not contribute to particular framing of the illegality of bribe-giving.

As a result, a decrease in *GuanXi*-related reports after 2003 amounts to the decriminalization of bribers. Bribe-taking was still punishable since Zhang was a government official. However, when *GuanXi* is normalized in the world of finance, bribe-giving activities are seen as a routine common in the Chinese business world. A report from *China News* proves this point in saying, "Multinational corporations must bribe in China because it is efficient…we should not blame multinational corporations; instead, we should reinforce our law enforcement and separate politics and market" (*China News*, November 18th, 2006). According to this source, it is normal for corporations to bribe, and when corrupt officials are punished harshly, bribery vanishes naturally. Per media reports, multinational corporations are "not perfect, and they bribe anyone anywhere, not just in China" (*Fengshang Weekly*, January 1st, 2007), indicating that this problem is not exclusive to China.

Before 2003, the media denounced bribery and claimed that corruption is a systematic issue, noting that institutional reform should be initiated to fix the *GuanXi* problem. However, since focus shifted away from *GuanXi* after 2003, the media needed to find another way to justify Zhang's actions. As we can see in the previous quotation from *China News*, after 2003, the media started to blame law enforcement, stating that bribe-taking occurred because of weak law-in-action. In fact, the media tended not to refer to corruption as a systematic issue in China after 2003. Only 22 paragraphs in 140 reports attribute the occurrence of bank fraud to systematic issues, and of these, only five imply that corruption is systematic in China. Instead of blaming Zhang's actions on *GuanXi*, the media focused on blaming weak law enforcement in the post-2003 era.

Moreover, even in the analyzed reports from liberal media sources such as *Southern Weekly*, Zhang's case is never attributed to the influence of *GuanXi*. Instead, it is stated that Zhang's bribery was allowed to occur because China is not neoliberal *enough*. According to the liberal media, Chinese politicians have too much control over the banking industry, and the FCPA is violated because of a lack of separation between politics and the market. This argument again reinforces the idea of *GuanXi's* normalization; it implies that social networks are acceptable and that the only thing China needs to do is free the market, therefore ensuring no government officials are involved in scandals.

In sum, a rather distorted idea of market fundamentalism is inherent in Chinese bank fraud. The media perpetuates the idea that social networks are common in the world of finance and that politicians should keep their hands off these networks to avoid scandal. In this regard, individual personalities and characteristics, as well as corruption issues, are no longer problems once the market is free from governmental intervention. Corporate bribery is no longer an issue, and the idea that Zhang fell from grace only because of faulty political-economic structure is perpetuated. Corporate criminal activities, unfortunately, are therefore ignored in the normalization of *GuanXi*.

This normalization is not only a media focus, but also a bank focus. An interview regarding financial crime in China further substantiates the cultural acceptance of certain fraudulent practices among bankers. In an interview about a senior banker who was arrested, another bank employee noted,

"As much as I admire this kind of man because he is successful and rich, I admire him even more if he can be successful again after his downfall. It doesn't matter how you get rich. All that matters is what you are now. The ones who got jail terms are usually supertalented ones. They got jail

because people were jealous and reported them. But to me, it seems we are punishing them for being smarter than others. (Cheng, May 2013)."[23]

If this is the perspective of bankers in the post-2003 era, the way the media normalizes *GuanXi* and bank fraud, attributing these problems to political-economic policy, is not surprising.

Punishment

Two regulations are involved in Zhang's case: Criminal Law of the PRC and the FCPA. However, the media overwhelmingly emphasizes FCPA, citing it 50 times in 140 reports; in comparison, Chinese Criminal Law is referenced only five times in the discussion of Zhang's sentence. As the FCPA only punishes bribers (corporations)—not officials—it is clear that Zhang's criminality is minimized in the discussion of the FCPA. This framing echoes the previous points regarding the decriminalization of bank officials in bank fraud cases.

Furthermore, corporations who bribed individuals are not emphasized at all after 2003 even though the FCPA is the focus of the media's discussion of punishment. In 50 reports that mention the FCPA, only *one* report mentions the corporations that bribed Zhang. The infrequent co-appearance of the FCPA and bribers indicates that emphasis on the law—the FCPA—does not lead to corporate responsibility. While Zhang's sentence is mentioned 10 times in 140 reports, only one talks about a non-prosecution agreement for corporations in only one sentence, with no explanation provided. The minimization of corporations' criminality is therefore highly evident in media reports in this regard as well.

Zhang's criminality, likewise, is not only minimized in the discussion of the FCPA, but also absent even when Chinese Law is involved. Of 140 post-2003 era reports, 93 emphasize Party

[23] Another interview revealed that *GuanX*i is still important, but only important in regard to "not being punished." As the interviewee, who was arrested for bank fraud, also said, "I know it might be not good from what I learned in school, but who isn't doing the same in banks? Are there any good people in China's banking industry? I am just the unlucky one who got targeted since I don't have a strong protective umbrella of senior government officials. Morality isn't worth anything here" (Cheng, May 2013).

discipline, which triumphed over rule of law in much the same way as it did before 2003. Prosecutors suddenly emerged in the 115th report, and the court released Zhang's sentence in the 116th report. Only four reports published after this report talk about criminal charges and trial details. In comparison, trial details about FCPA violations in the U.S. are often mentioned by the media, which takes offshore justice for granted even though the FCPA does not punish foreign officials.

Retreat of Party Discipline and the CBRC. As mentioned in the discussion of the pre-2003 era, rule by law was highlighted when the CCDI supervised and regulated officials' behavior; rule of law was trivialized when the CCDI dominated investigation. This style of framing changed slightly after 2003. Currently, the CCDI is still the main agency that investigates bank corruption, but self-discipline is no longer a focus in media reports, which indicates that the CCDI is just a proxy in these reports, as the appearance of CCDI shows merely that the Party *cares* about the issue of bank fraud—nothing more. In contrast to the pre-2003 era, in the post-2003 era, the CCDI did not publish a single statement emphasizing self-discipline and supervision. Additionally, after 2003, the term "supervision" appears much less (19 times in 140 reports) than it did during the previous era (25 times in 47 reports), and Party control over government officials—although it still exists as a concept to this day—is totally absent in media reports after 2003.

This de-emphasis of Party discipline does not denote the revival of rule of law, however; instead, it indicates the Party's importance in the rule of law. After Zhang's sentence was released, the media still emphasized his regret in "betraying the Party," implying that regret ensured a lighter sentence. In this regard, the Party was still the emphasis in the law. In the 49 reports before 2003, the Party is depicted as a victim once, but it is portrayed as a victim 17 times in the 140 post-2003 reports. As a result, although Party discipline is not emphasized in these reports, the role of the

Party existed *within* the rule of law when the media justified Zhang's punishment with Party victimization.

The retreat of the CCDI in media reports about bank fraud signifies the importance of the CBRC. The CBRC appears 20 times in 140 media reports, cited as a main agency that supervises the banking industry. The CBRC is the embodiment of proposed institutional reform before 2003, and indeed, the media treated the CBRC's role seriously in post-2003 reports. CBRC agencies were often interviewed as Zhang's case proceeded, and the co-appearance of the terms "supervision" and *the CBRC* is four times greater than the co-appearance of *supervision* and the *CCDI,* indicating that the CBRC, as the main agency at play here, took over even the role of the CCDI.

Per media reports, the CBRC, like the CCDI, never mentions self-discipline and comprehensive control over officials after 2003. Instead, mention of the CBRC often appears alongside the term "risk management", illustrating the notion that bank fraud is a daily routine and merely a burden the nation needs to bear. The CBRC reports illegal activity annually, but instead of saying this activity violates the law, the CBRC always refers to it as violating "inner rules." While the CCDI saw bankers as violating inner Party rules before 2003, the CBRC viewed bankers as violating *inner banking rules* after 2003. This term is similar to its American sibling *business ethics*, indicating global acceptance of fraud.

Solutions: Crackdown and Transparency

As mentioned above, the separation of politics and the market has gradually gained importance in the discussion of institutional reform. Although it doesn't attack officials' *GuanXi*, in general, the media tends to depict social networks as a political-economic issue. Liberal newspapers such as *Southern Weekly*—and some more conservative ones, such as *People Daily*—

also promote the idea of separation. In this regard, the media's proposed solutions for bank fraud are twofold: first, the CBRC should tighten supervision for bankers, and second, bankers should be supervised by the public, not the government (*People Daily*, December 19th, 2005).

These two arguments seem incompatible with each other. Tightened CBRC control means "Big Government" being implemented by the Party, and public supervision indicates a market-oriented, small government strategy. How can a banker be supervised by both the CBRC from top-down and the public from bottom-up? What lies beneath the rhetoric of the bank fraud crackdown is a strong political interest in finance, which contradicts neoliberalism, as neoliberalism indicates that finance should only be regulated by the market (the public) itself, not the nation. In this regard, how and why could the Chinese media promote both top-down finance and neoliberalism at the same time?

A possible explanation is that the media is pro-neoliberal and therefore hopes for the separation of politics and the market. The crackdown is therefore just a form of rhetoric that tries to assuage public resentment regarding corruption. However, when the media wants to soften public insecurity regarding bank fraud and corruption, it can demonize corrupt officials such as Zhang, emphasizing personality and *GuanXi* much like it did in the pre-2003 era. It follows that the media does not have to change its framing of bank fraud if the government is concerned about public insecurity. Rather, an alternative argument might be plausible: the media is not pro-neoliberal and therefore wants to maintain government control. In other words, the crackdown itself is real, yet the separation of politics and market is a false promise. This argument is more persuasive than the former argument because a) a transition from the CCDI to the CBRC does not represent the disappearance of the Party, and b) the way the media emphasizes market supervision is limited.

Thorough market supervision, according to neoliberalists, should not be controlled by the nation or the Party, but instead implemented by a non-government organization. The media is cautious not to argue this point, as doing so would fundamentally challenge Party hegemony. To avoid this, whenever the media mentions market supervision, it always applies the term *transparency.* In the post-2003 era, the media stated that once a financial report was transparent, the investors' (the public's) decision-making would be free of confusion. Transparency, according to the media, is the most important task the Chinese government can undertake to secure investors' interest.

Other elements of the free market—such as self-regulation, internal investigation, and self-vigilance—do not appear even once in the analyzed 140 post-2003-era media reports. These elements are salient in FCPA reports in the U.S. but totally invisible in Chinese reports. As a result, declaration of "transparency" is just a placebo—a tactic that only assuages economic insecurity, further indicating that separation of politics and the market is a false promise.

In sum, if the media keeps emphasizing *GuanXi* and personality in bank fraud cases, eventually the public will realize that it is necessary to separate politics and the banking industry—the scenario that the government may not want to see. Hence, the best way for the media to do is to lessen emphasis on *GuanXi* and individual characteristics, leading to further minimization of bank fraud. Bank fraud is normalized as a daily routine, and if something serious happens, the nation—the "Big Government"—will initiate a crackdown to fix it. This strategy of promoting both neoliberalism and Big Government leads to a dysfunctional ideology, illustrated below.

Players

Similar to in the pre-2003 era, during the post-2003 era, the media cited experts (29%) and professors (16%) more often than officials (6%) and lawyers (7%). A factor differentiating both

eras is the fact that foreign newspapers were cited more often in the post-2003 era (17%), which represents the anxiety associated with globalization. The chi-square test does not show any significant change in media sources, and my content analysis also does not show any difference. However, as mentioned previously, the abrupt retreat of the CCDI and the emergence of the CBRC in media reports is worth noting. The ideologies underlying this sudden change will be discussed below.

Ideologies

Big Government Neoliberalism. As mentioned in my pre-2003 analysis, the ideology that drove punishment for bank officials was furthered more by anti-corruption than neoliberalism. This statement is only partially true in post-2003 reports. A de-emphasis of anti-corruption ideas in bank fraud is common in the post-2003 era[24]. As a result, the ideology that drives punishment for bank officials is absent in reports from this timeframe. Overall, after 2003, the question of what ideology drives *non-punishment* for bank officials and bribers becomes relevant.

Per media reports, it seems that neoliberalism became more acceptable in China after 2003 than it was before 2003. Elements of neoliberalism are evident in post-2003-era reports. The frequency of business concern being mentioned in media reports skyrockets after 2003; stock price and business effects are mentioned 56 times in 140 reports, compared to 3 times in 50 reports from the pre-2003 era. Further, the term *investment confidence* appears 29 times in 140 reports, whereas it appears 3 times in 50 pre-2003-era reports. It is clear, therefore, that the idea of free market is taken for granted after 2003. Other elements such as fair competition, transparency, and corporate governance are also prevalent in post-2003 reports, indicating the media's acceptance of neoliberalism in China.

[24] Anti-corruption is mentioned less in the post-2003 era than in the pre-2003 era.

However, acceptance was limited. Just like in the pre-2003 era, in the post-2003 era, the idea of small government that neoliberalists promoted essentially conflicted with the Big Government idea that the Party preferred. As a result, the terms *self-regulation* and *internal investigation* are missing in media reports. The idea of separating politics and the market, although emphasized by the media after 2003, does not cross the line in denouncing Chinese planned economy policy, as it focuses only on transparency. Only one article in 140 reports emphasizes the real separation of politics and the market, but it is merely an opinion article submitted by a reader.

The concept of so-called *Big Government neoliberalism* is different from the prevalent term *State capitalism*. *State capitalism* refers to the fact that the state functions as the leading economic actor, who utilizes the free market for political purposes (Bremmer, 2009). Although State capitalism indeed describes the nature of Chinese capitalism, it does not paint a complete picture of the government's role in regulation and punishment. As Loic Wacquant illustrates, a neoliberal government could switch to Big Government policies in the case of street crime, and these two ideologies—neoliberalism and Big Government—do not necessarily contradict each other (Wacquant et al., 2011). Thus, Big Government neoliberalism indicates the government's rigid role in discussing the war against bank fraud—the crackdown on corrupt officials.

The idea of Big Government in post-2003 bank fraud case reports, however, is shallow. Although the rhetoric of fighting corruption is prevalent in the post-2003 era, the normalization of *GuanXi* and corporate bribe-giving activities is also prevalent, and punishment for Zhuang, despite its harshness, is not highlighted in media reports. As a result, another aspect of neoliberalism—ethical neoliberalism—is relevant.

Ethical Neoliberalism. In an effort to justify harsh punishment for corrupt officials, the Chinese media tended to highlight their personalities, as previously discussed. This strategy not only focuses on individual responsibility, but also emphasizes the moral responsibility of officials, which is an idea associated with State-Confucianism. This strategy, interestingly, is absent in the case of bank fraud. Intentionally neglecting the strategy in reports about bank fraud neutralizes the ethical debate and normalizes *GuanXi* as routine. Criminals tried for financial fraud can therefore conveniently avoid scrutiny concerning ethical responsibility and conscience (Cheng, 2016).

This process of *ethicizing* criminality is crucial in understanding Chinese neoliberalism. While *unethical* means "bad but not necessarily illegal" in the U.S., *unethical* means "illegal" in China—at least in the context of corruption. Thus, decriminalizing bank fraud entails de-ethicizing bank fraud. In other words, giving and taking bribes in the Chinese banking industry is normalized not just in regard to law, but also in regard to virtue. This can help to explain why *GuanXi* is normalized in bank fraud reports and why the Party refuses to prioritize discipline over punishment in any post-2003 era media reports. The media ensures money connections and bribes are commonly discussed in the Chinese business world, so they are taken for granted, considered just "unspoken rules" in the Chinese market (*Beijing Daily*, November 9, 2006). Bribery is not mentioned as violating the law; instead, it is portrayed as one of a number of "activities that might do harm to fair competition" (*Xinhua Daily*, November 9, 2006). The media prioritizes the market, not the law (*China News*, November 18, 2006, written by a law professor).

Interviews with bankers and experts further prove the presence of this ethicizing process. A senior banker, interviewed by Dr. Cheng, said that "Morality isn't worth anything here"; a liberal economist also asserted, "How much is morality worth? Encouraging people to learn morals is to encourage them to do wrong, because it's against the law of market economy" (Cheng, 2016).

When morality is opposed to the unspoken rules of the market economy, it becomes ironically ethical.

The Home Thief and Offshore Justice. Given Ethical Neoliberalism in China, punishment for corporations is totally absent in the analyzed media reports since Ethical Neoliberalism treats their activities as ethical and normal. However, this begs the question of what factors justify punishment for corrupt officials. The answer to this question can be answered by examining how the media portrays victims of bank fraud.

In the pre-2003 era, banks and the public were both portrayed as victims of crime, whereas only one article depicts the nation as victim. However, in the post-2003 era, 17 out of 140 articles depicted the Chinese government as a victim. In 31 reports that mention the victims of bank fraud, 19 paragraphs refer to the government (54%), and only 4 paragraphs mention investors (13%). This is ironic because the term "business is affected" emerges 31 times in 140 reports (compared to only *one* time in 51 reports in the pre-2003 era), and the most-reported "victim" is not an investor, but the government itself.

Thus, Zhang's punishment is justified not by investor's loss, but by his supposed betrayal of the government and inability to lead the banking industry correctly. The implied expectation that Zheng should have led the country echoes State-Confucianism, and the media's depiction of *betrayal* relates to Big Government ideologies. The term "betrayal" appeared suddenly after 2003, and the reasoning for why this occurred is introduced below.

The main factor connecting State-Confucianism, Big Government, and Ethical Neoliberalism is a factor that surfaces in U.S. newspapers often—the idea of investment confidence. The emergence of the term *investment confidence* in post-2003 era American media

reports quickly replaced the depiction of investors, which was tainted after 2003. The same replacement process transpired in China in a subtler way. While the term *investment confidence* appears only 2 times in reports about Wang's case in the 90s, it appears 29 times in 150 post-2003 era Chinese media reports. Due to pressure associated with entering the global market, the Chinese industry was eager to prove that Chinese companies are worth investing in. The media reveals this anxiety, and the Party is responsible for easing it, thereby restoring confidence. Under State-Confucianism, the Party is obliged to lead the country with a clean and honest spirit, and when neoliberalism enters China, it makes the Party shoulder the burden of itemized responsibility. In other words, the media wants the government to ensure fair competition, free market, investment confidence, and transparency—almost every element of neoliberalism—using the Big Government ideology.

In this way, ensuring *investment confidence* becomes a facade of the Chinese government. If investment confidence drops, the government is degraded in front of the international community, and the Party, of course, is reluctant to lose the market—and respect—altogether. In this regard, what Zheng did is not about fraud, not about corruption, and not about the market, but instead about saving face for the Chinese government. Zheng is therefore portrayed by the media as the betrayer—the one who harmed the reputation of the Chinese government.

A perfect example of the definition of a betrayer in Chinese culture is from the biggest newspaper in China, *People Daily*. It notes, "We need transparency to stop these *Home Thieves*" (December 19, 2005). Here, the criminal is depicted as a thief who harms China's house—an image symbolizing investors' confidence, the market, and the whole nation. The analyzed media reports indicate that there are no individual victims in bank fraud and that the main thing to consider is whether the nation prospers in competing with other countries. The punishment for *home thieves*,

therefore, is justified not by law, virtue, or ethics, but by the prestige of the Chinese government. More importantly, as previously stated, the focus is not on discipline in post-2003 reports, but on risk management that the Party can enforce (*China News*, June 20, 2005).

The idea of the home thief is inextricably related to the idea of offshore justice. Media reports indicate that in order to not lose the battle of globalization, it is the Chinese government's responsibility to ensure victory by punishing the home thief. Moreover, understanding the unspoken financial and political rules of foreign countries—especially America—is essential for participating in the neoliberal game. As a result, the Chinese media often referred to the FCPA and even elaborately describes it on occasion, listing precedents in the U.S. to provide a complete picture of the FCPA. The terms *globalization* and *international rating agencies* dominate reports, appearing 9 and 54 times in 140 post-2003 reports, respectively; they only appear once in 51 pre-2003 reports. American trial details are provided by the media, whereas detailed Chinese trial data is limited because the media does not report it. Thus, foreign investigation was taken for granted and never challenged by the media in Zheng's case; full cooperation between China and the U.S. is default in every bank fraud report. *The Wall Street Journal* was cited without any doubts being mentioned, therefore contributing to frequent use of the term "scandal"; in the end, the ultimate investigative power of the U.S. is left unchallenged.

In sum, globalization, in the name of *fair competition*, forced China to adopt neoliberal ideas. However, the specter of *Big Government* and *State-Confucianism* continues to exist and therefore produce Chinese neoliberalism, or *Ethical Neoliberalism*. The punishment for corporations vanishes under Ethical Neoliberalism, and the punishment for bankers transforms the idea of discipline into that of *risk management*, which works in tandem with offshore justice initiated by the U.S. However, this does not mean China responds to offshore justice amicably. An

overall picture of China's reaction to globalization is further analyzed in chapter 8 after the Chinese media's framing is illustrated in chapter 7.

Chapter 7: The Chinese Media's Framing of Securities Fraud

The First Era of Securities Fraud

Introduction

The Chinese Security Act (SLPRC) and Criminal Law (CLPRC) illustrate four types of securities fraud: insider trading, price manipulation, fraudulent presentation, and fraud in issuing shares. My dissertation will focus on the latter two categories since they relate best to the main theme of my work: corporate liability.

Several infamous securities fraud cases came to light in the late 90s when the advent of the stock market was a craze in Shanghai and Shenzhen. QiongMinYuan (1997) and HongGuang Inc. (1998), two companies that made false financial statements, were the first two criminalized fraudulent cases after the establishment of the CSRC and the revision of the Business Organization Law in 1993. "QiongMinYuan" even became the most-cited term in Chinese media reports whenever a company was involved in financial fraud.

The CLPRC and SLPRC were amended and re-enacted during the Asian economic crisis in 1997, but the 2001 case of YinGuangXia—also termed "QiongMinYuan 2.0" or "the Chinese version of Enron"—signaled that law enforcement was too weak to tackle securities fraud. SLPRC was again revised in 2005, but several infamous cases, such as LVDadi Inc. and WanFu Co Ltd., indicated the continuing severity of securities fraud in the Chinese stock market.

This study will use the YinGuangXia crisis as a turning point, enabling ideologies before and after 2002 to best be observed. The first era of securities fraud (1990-2002) is represented by QiongMinYuan (1997) and HongGuang Inc. (1998), while the second era is represented by WanFu Co Ltd (2003) and LVDadi Inc. (2004).

As the following sections show, the 90s framing of fraud represents a struggle between small and big government ideologies, and neoliberalism is presented in an incomplete form in Chinese media reports. The incompleteness became even more serious in the 2000s when the idea of *self-regulation* vanished and the role of supervision shifted from the government to brokerage firms. By the end of 2010, even though China utilized the "Three Strikes and You're Out" policy for corporations, the punishment for corporations was only symbolic, having been based on saving face for the nation in the name of investment confidence.

Crime Description

QiongMinYuan, a real estate and communications company, attracted investor attention when its stock rose suddenly from 2 RMB to 26 RMB in 1996. However, its stock was abruptly suspended by the CSRC due to falsified profit reports indicating accounting fraud. More than 100,000 investors were involved in this scandal, compelling the government to take action against QiongMinYuan. Nine months after the company's stock market scandal began, QiongMinYuan's CEO and lead accountant were sentenced to three and two years in prison, respectively. HongGuang Inc., also suspected of accounting fraud in 1998, was not only fined 1 million RMB, but also had high-level executives sent to prison. This was the first criminal securities fraud case to come to light after the SLPRC was enacted in 1998. High-level executives drew media attention to the extent that their names still appear often whenever securities fraud is mentioned as a concern. Indeed, the prolific nature of these cases makes it important to probe into the way media reports depicted these crimes in the 90s, as this framing established the general framing of securities fraud cases in China.

Fraud is Serious. Chinese media depicts securities fraud as on par with any other kind of fraud. *People Daily* asserted that "fake medicine inflicts the public health, while fake financial

statements impose serious damage to the whole nation" (*People Daily*, September 22, 1999), *Beijing Daily* stated that fake financial statements should be loathed more than fake food (*Beijing Daily*, July 10, 2000), and *Chinese Economics* even described securities fraud as a serious public hazard second only to drugs (*Chinese Economics*, February 6, 2001). In this regard, in the 90s, securities fraud was viewed as existing on the same level as consumer fraud, and there is no distinction between cooking the books and adulterating food, for example. In 1999, the Chinese government even initiated a crackdown against fraud that aimed to penalize any kind of corporate fraud. This campaign will be analyzed in detail because it may overemphasize or undervalue certain types of fraud.

An instance of typical security fraud crime is not committed by one person, but by a group of people who intentionally, systematically lie to investors. A company itself and its accountants, rating agencies, brokerage firms, and lawyers were involved in both the QiongMinYuan and HongGuang cases, but interestingly, only their executives and accountants became the focus of Chinese media reports. Nearly half of reports (29 out of 51) described these cases as the result of accounting issues or a conspiracy between high level executives and accountants. As a result, the crackdown against fraud was redirected to the path of regulating accountants; lawyers, brokerage firms, and rating agencies are left unchallenged in media reports. Indeed, only one article briefly touches upon the issue of dishonest brokerage, and a mere three articles denounce agencies that did not detect the issues at hand as early as possible. Only one of these reports mentions the brokerage firm's responsibility.

On the other hand, accounting issues were certainly highlighted and criminalized. Unlike the brokerage and rating companies, the accountants who cooked the books were severely denounced by the media. The stigmatization of tampering financial statements is further proved

by the media's great sympathy for investors, who are characterized as victims. Victims' stories appeared 15 times in 51 reports, and all the victims in question are small-scale, individual investors who lost thousands in the stock market. The media not only provided details about their investment loss after careful assessment, but also focused on how they were helped by human rights lawyers to retrieve what they deserved in the flawed legal system. Furthermore, the media denounced the corporate restructuring of QiongMinYuan, stating that it benefits only large-scale, institutional investors (*Xinhua Daily*, December 11, 2000).

The link between offender (the company) and victim is rather strong, and restitution is highlighted to emphasize the idea that justice must be served. Therefore, the criminal framing of securities fraud is rigid, and prison sentences for high level executives are therefore justified by criminalization. The only downside of this approach, as mentioned above, is that some offenders are left behind.

Nation-Corporate Management and Corporate Liability. Yet another kind of victim story is worth noting—that of the nation. Interestingly, when investors were portrayed as victims 25 times in 51 reports, the PRC was also depicted as a victim 13 times. Accounting fraud, according to the media, not only damages investors, but also the order the Chinese government has established. In other words, the media did not use the terms "market" or "financial system," but instead utilized terminology such as "Chinese market" and "Chinese financial system" in order to indicate that the government is the origin of the free market. Moreover, instead of utilizing the basic Western term "corporate governance," the media used the term "nation-corporate management system," which further proves the existence of linguistic logic that emphasizes the nation itself.

The usage of this term not only underscores "nation first" logic, but also indicates that the criminal framing of securities fraud has diverged from its original path. The occurrence of

QiongMinYuan led to the revision of the 2000 Chinese Accounting Law, which focuses on falsified statements in both the private and public sector and thereby demonstrates that government officials who make false financial statements are subject to punishment. This kind of discussion blurs the line between nation and corporation even though both are regulated by the same law. The uniqueness of securities fraud is therefore lost when the accounting system, under the nation-corporate management system, dominates the media's attention. This focus also contributes to the abovementioned failure to include brokerage firms and rating agencies in the discussion of securities fraud.

This new framing of market, however, differs from the bank fraud framing mentioned in the previous chapter. In the 90s, bank officials were subject to "ethical" framing that focused on individuals' corrupt, unethical behavior. In securities fraud cases, the term "unethical" only appears once in 51 securities fraud media reports, and it refers only to government officials who were involved in unlawful stock exchange. Namely, none of the analyzed media reports discuss the personalities, characteristics, or disposition of defendants guilty of committing securities fraud. The only document that touches upon the issue is the indictment of HongGuang Inc., stating that the defendant was a "diligent, ethical, and reliable person." Even though trial details are provided by the media in both cases, the defendants simply vanish in the context provided. What is left in trial is just legal debate among lawyers, and the media's focus therefore becomes solely *corporate liability*, not individual liability.

The omission of ethics discussion here represents a stark contrast to the framing of bank fraud. Personal characteristics were the focus of bank fraud cases in the 90s, but in securities fraud cases before 2000, ethical issues were never a concern. A possible explanation for this is that bank officials are government officials and that the media therefore tends to use ethical framing for

government officials. Another explanation could be that the media tended to view the whole corporation as the offender in securities fraud cases in the 90s, emphasizing corporate liability instead of individual liability.

However, this does not mean that high-level executives were ignored. The result was quite the opposite in the 90s; while high-level executives were mentioned 9 times in 51 bank fraud case reports, they were highlighted 17 times in securities fraud cases, almost doubling their appearance. Although executive personality was not a concern in the 90s, executive punishment was repeatedly mentioned by the media during this time, and corporate liability was also a media focus. This framing is quite beneficial for establishing corporate liability, as it confirmed not only that high-level executives should bear responsibility, but also that corporations, as a whole, should still be penalized. Without ethicizing defendants, the criminal framing of securities fraud looks normal and consistent, and the only downside, as mentioned above, is over-emphasis on accounting issues, not dishonest brokerage firms.

Punishment

Criminal and Civil Punishment. Much like with the American trends in the 90s, the Chinese media portrayed a similar trend regarding criminal and civil punishment. In other words, the illegality of securities fraud was first mentioned in a criminal context, and then the restitution—in the form of a civil context—emerged afterwards. However, the framing of the trend differs between the two countries in a significant way that is introduced below.

In the 90s victims became part of the main theme of reporting securities fraud in the U.S., but this theme did not establish a company's criminality; rather, it all came down to whether victims were civilly reimbursed. *Fair compensation* became the norm, and as chapter 5 argues, use of this term ultimately led to frequent usage of DPA. At the same time, while victims became

the focus of Chinese media reports, corporate liability was established using the media's frequent references to individual criminal punishment.

A possible explanation for this is that civil compensation was not even law on the books in the 90s in China. Investors who sought compensation needed to find "Right Defender Lawyers" (Weiquan Lawyers) who could advocate their rights and bring their case to courts. Namely, common litigation did not guarantee compensation since the law was ambivalent at this time. This late rights development in securities fraud inadvertently allowed the media to focus *only* on criminal punishment when the QiongMinYuan and HongGuang cases were brought to light. Even though focus shifted to investor's loss in the late 90s, the criminalization of securities fraud was previously established, and this explains why criminalization remained intact even after the idea of restitution was introduced by human rights lawyers.

The previously-discussed form of established criminalization was also reinforced by the quick response of both prosecutors and the CSRC. In each case, prosecutors and the CSRC initiated investigation right away. Since these private companies are not official aspects of government, the CCDI was never involved in these cases, so the CSRC and prosecutors did not have to wait for the CCDI's approval to examine securities fraud.

Corporate Liability and The Big Should Fail. Unlike bank fraud cases, securities fraud cases are immune to the Chinese ethical debate since no government officials are involved in these cases. As previously discussed in regard to bank fraud cases, the CCDI tended to emphasize personality to justify punishment for individuals in the 90s. In contrast, with no CCDI participation, the media seldom emphasized ethical issues in regard to securities fraud; most reports focus only on legal—as opposed to ethical—matters.

In the Chinese context, punishment was light when the ethicizing of securities fraud was ignored. Although executives were punished in both the QiongMinYuan and HongGuang cases, all sentences were for less than three years. Without highlighting greed and extravagance, the media *never* challenged lenient punishment for individuals in the 90s. As discussed in the last section, during this time, the media tended to focus on corporate criminal liability, not individual liability.

This is most evident in the tendency of media reports to focus the legal debate on corporate illegal assets instead of individual intention. Only three articles mention the argument about whether individuals have the intention to commit fraud, but 10 articles refer to corporate illegal assets that mask accounting problems. This preference of reporting corporate liability, although slightly marginalizing individual responsibility, paints a vivid picture of corporate punishment.

When the media portrayed securities fraud as on par with consumer fraud, light punishment for individuals therefore still made sense since the media emphasized harsh corporate liability. In contrast to the prevalent American idea that the corporation is "too big to fail," the Chinese media presented an alternative message in the 90s: *The Big Should Fail*. After accounting scandals transpired, QiongMinYuan undertook the process of corporate restructuring in order to generate a profit for investors as a way to assuage investor resentment. However, this strategy was heavily criticized by the media, with outlets like *People Daily*, for example, asserting that "QiongMinYuan's business should be suspended and [be forced to] make financial reparations to its victims immediately" (*People Daily*, December 25, 2000). Another 8 reports also criticized corporate restructuring, stating that the fines QiongMinYuan and HongGunag paid were too low and "not in the best interest of investors." Although corporate restructuring may have compensated for investors' loss, the media still insisted that the strategy "[would] jeopardize the market in the

long run since companies were not deterred by punishment," (*Securities Times*, December 28, 2000) and "damage investors' confidence in the Chinese stock market" (March 15, 2002).

The ideology operating in these reports is the idea that companies should fail if they commit securities fraud. Given the ideology of deterrence, the media believes that the death penalty for corporations—indefinite business suspension—is the key solution to fraud. In this regard, the American ideology of *too big to fail* is unacceptable in China.

This attitude of *The Big Should Fail* likely results from the media's denouncement of local government. Since most collected media reports come from national newspapers or those from Beijing, it is plausible to conclude that newspapers were pro-center (anti-local) in the 90s. Some media reports suspected that QiongMinYuan and HongGuang hit the stock exchange market too fast because of local interests, as the local government invested in them. Local driving forces then compelled corporations to falsify their financial statements to attract more investors, eventually leading to indictment. Apparently the media was not afraid of challenging local interests in the 90s and refused to accept limited corporate liability.

Other neoliberal ideas such as self-regulation were not tolerable in the media's eyes either. When HongGuang surrendered itself to the CSRC and undertook the self-investigation process, the self-regulation aspect of this investigation never became a concern of the media or judges.

Players

Legal Mobilization and Vanishing Big Government. Because the media challenges corporations often, another notable aspect of analysis is that corporations are seldom cited in media reports. Unlike its American counterpart, the Chinese media seldom interviewed corporations in the 90s. Corporations looked voiceless in-context, as they were cited only twice in 51 reports. On

the contrary, financial experts were cited four times, and professors who studied law or finance were also cited four times. The players that dominated media reports were lawyers and victims, cited seven and eight times in 51 reports, respectively.

As corporations did not play a particular role in media reports from the 90s, lawyers and victims established strong, vivid framing of legal mobilization in securities fraud cases. Almost one-third of reports focus on the suffering of victims, and lawyers became important in this context because they are agents that allow victims to mobilize the law. The SLPRC did not guarantee restitution on the book, which provided the media raw material with which to create a David versus Goliath spectacle.

This story of legal mobilization fits perfectly with the criminal framing of securities fraud. First, the nation and investors were both depicted as victims, which makes the corporation, not the nation, into Goliath. Second, the corporation was deemed evil in the securities fraud context, and the lawyer—David—was someone who asked the nation for support. The PRC Supreme Court then held corporations civilly liable after years of mobilization, and restitution was formally enacted into the SLPRC in 2005. The nation was therefore poised to accept legal reform, which showed an attitude of 'tough on crime' (securities fraud) and 'merciful to victims.'

As a result, the Right Defender lawyers (Weiquan Lawyers) who mobilized the law established a rather distorted portrayal of a David and Goliath story. A loophole in the law was the government's responsibility, but the story told by the media masked this reality. The media blamed corporations, and the government became the savior that saved small investors. This framing ignored the role of the government from the very beginning and begged the question of why the CSRC didn't prevent securities fraud from happening in the first place. Although the CSRC was

mentioned 27 times in 51 reports, none of the analyzed reports mention the failure of CSRC supervision.

Therefore, the retreat of the government's role in the media is worth noting. Although the Chinese media did not apply the neoliberal idea of self-regulation, the government's role in restitution cases has gradually become less significant because a) the media has portrayed the nation as a victim, not a supervisor, and b) "Right Defender" lawyers took over the "job" that was designed for the government. As the retreat of government was enhanced over time, the government played only a minimal role in institutional reform to regulate the stock market even though the CSRC was often referred to by the media. This introduces an important question: does this retreat mean that the Big Government ideology we observed in bank fraud disappears when restitution is present?

Ideologies

Big or Small Government. The Chinese media minimized the government's role in the discussion of restitution in the 90s. However, the government still plays a major role in *punishing* corporations—as evidenced by the quick response of the CSRC and prosecutors and judges' rejection of self-regulation ideology—ultimately revealing that the government maintains the presence of so-called Nation-Corporate Management.

As a result, the minimization of the government's role in the discussion of restitution is better viewed as a *strategy*. Instead of being blamed by investors for its lack of supervision in the 90s, the nation played the role of victim in civil cases so blame was placed on the shoulders of corporations; human rights lawyers then took on the job of legal reform when these lawyers utilized the market of representations. Nevertheless, with the rhetoric of "tough on fraud" and

continuous government efforts to highlight corporate liability, the role of the government still fell within the ideology of *Big Government*.

The ideology of Big Government, however, is shaky in securities fraud cases. As we observed in bank fraud cases, the Big Government ideology works hand-in-hand with Big Brother and State-Confucianism ideologies, which strengthen each other. These ideologies, without the active interference of the CCDI, did not exist in securities fraud cases in the 90s. Thus, even though a Big Government ideology was prevalent in punishing securities fraud cases, because of the idea of Nation-Corporate management, whether it would persist after 2000 became a valid question. Indeed, in the 90s, in securities fraud cases, the idea of "better supervision" appeared only 7 times in 51 reports, as compared to 25 times in 51 reports regarding bank fraud cases. This finding is quite contrary to the ideology of Big Government.

Neoliberal Ideas and Rule of Law. Several neoliberal ideas such as "fair market competition" and "take risks" appeared occasionally in the media in the 90s but did not dominate the framing of securities fraud. Several reports even challenged the idea of asking investors to take risks (e.g., *Shanghai Securities*, September 6, 2001). The idea of separating politics and the market—the ideology that was salient in bank fraud cases—only appeared twice in 51 securities fraud reports. The de-emphasis on separation between politics and the market again proved the prevalence of Big Government, begging the question of whether the Chinese government wanted to pursue neoliberalism.

A rather contradictory concept that is related to neoliberalism is the idea of rule of law. As scholars contend, rule of law is a very political term that indicates loathing for the East. Chapters 4 and 5 discussed that rule of law was often integrated into neoliberalism and democracy, which assumed that a developing country did not have the legacy of rule of law. However, this assumption

ignores how Confucianism established the Chinese style of rule of law (Ruskola, 2013), and the idea that China adopted German and Japanese elements of law in the late 60s.

In fact, in the 90s, rule of law was mentioned 42 times in 51 reports regarding securities fraud. Punishment was emphasized and followed-up by the introduction of rule of law; as a civil law system, it was common for the newspaper to delve into the details of certain clauses and terms in the SLPRC or CLPRC. The concept of *regulate society using law* was usually highlighted in media reports, and with a deterrence ideology in mind, the media often indicated that it expected a better deterrence effect followed by harsher punishment for corporations.

However, since public distrust of the legal system could arise if no action was taken, it is plausible to believe that the government emphasized the idea of rule of law for a reason: to assuage public distrust. As such, it is possible that the promulgation of rule of law served a political purpose. For example, when the media showed disgust in regard to corporate restructuring of QiongMinYuan and HongGuang, its suggestions for harsher punishment were never based on law on the books. In fact, the reason the media proposed imposition of harsher penalties is that "corporate restructuring [would] let investors lose confidence in free market and damage the rule of market" (*People Daily*, December 28, 2000). Here, the idea of rule of market triumphs even over the rule of law, failing to provide any reference to amending the law. As a result, the declaration of rule of law might only be rhetoric, not the rule of law Western society assumed.

Overall, with no ideologies like self-regulation and small government in place, neoliberalism was presented in an incomplete form in 1990s China. However, since rule of law was simply a form of rhetoric and fair market competition that gradually gained importance in media reports, it is worth noting that how the framing of securities fraud changed in the next era.

The Second Era of Securities Fraud

Introduction

After the infamous instances of fraud committed by QiongMinYuan and HongGuang, which were followed by the Enron scandal in the U.S. and its "Chinese Enron" counterpart, securities fraud gradually entered the government's radar. Because fraud was on the rise in both countries, in 2003, the Bureau of Securities Crime Investigation (BSCI) was established solely to combat securities fraud, and in 2007, the CSRC also created a special unit to investigate securities fraud cases. However, LVDadi Inc. (Green-Land Biological) drew public attention for the second time in 2011, as its chairman, Xuekui Hu, created falsified financial statements to mask operating difficulties, eventually causing a loss of one billion dollars in the stock market. In addition, a recent instance of securities fraud, committed by WanFu Biotech Co. Ltd. in 2012, proves that fraud remains a serious issue in the Chinese stock market.

The punishment for these two companies is controversial. Both companies were fined (4 million and 0.3 million RMB, respectively), but some high-level executives' sentences were reprieved. In the WanFu case, the sponsoring brokerage firm (PingAn Securities) was fined 76 million RMB, and its license was suspended for three months; the law firms and accounting companies involved were also charged amounts ranging from 210 million to 414 million RMB. What ideology operates beneath the punishment for these cases should be investigated, and any difference between these cases, as well as the cases in the first era, will be noted.

Crime Description

Overall, most post-2002 reports mention the complicated nature of fraud. The media not only reported on the high-level executives who were involved in falsifying financial reports, but also denounced the involved accounting firms, brokerage companies, and law firms. Unlike

American hierarchical reports in regard to broker's fraud and issuer's fraud, Chinese media reports regarding all kinds of fraud were rather *even*, so the same amount of emphasis was placed on every kind of fraud.

The media's focus on fraudulent practices can be attributed to its perspectives on corporate fraud. The media designated that corporations, accounting firms, lawyers, and brokerage companies might work in collusion with each other to partake in so-called corporate fraud, and the media made it clear that crime "could not be perpetuated simply by a single person" (*21 Century*, October 26, 2012). The use of *collusion* appears 23 times in the 115 reports in the post-2002 era, the level of frequency of which was never present before 2002. In addition, 65 of 115 reports (56%) mention the responsibility of the brokerage firm, compared to 7 of 51 reports (14%) in the previous era. As a result, the media depicted all companies involved as significant offenders, which was effectively lying to investors and thereby causing serious consequences for the stock market. Only two articles[25] asserted that brokerage companies were "affected" by the scandal instead of depicting them as offenders.

Victims as Rational Players and the Disappearance of the Nation. Unlike American media reports, in which victims were gradually marginalized after 2000, Chinese media reports treated investors as the main victims of crime after 2002. The Chinese media's criminal framing, which emphasized the loss of victims and the link between the offender's behaviors and its victims, certainly reappeared after 2002. However, fewer reports from 2002-2012 focused on the story of victims (only 4 times in 115 reports), which means that the media was less likely to sensationalize victims' loss. Compared to the image of victims in the first era, in the era being discussed, investors are portrayed as rational players instead of helpless, irrational stakeholders, and this depiction

[25] 60, 62

communicates the idea that victims should be compensated when they make rational choices. As *Finance Magazine* put it, "the scheme is beyond regular investor's considerations" (December 3, 2012).

There are two elements of the media's focus on rational investing worth analyzing. First, the theme of "take risks" rarely appears in reports since investors are not to blame if they are *rational*. Second, the media's focus implies that the stock market could be fairer in administering punishment for offenders. This connects back to the media's criminal framing of corporate fraud, whereby it became clear that significant offenders should be penalized to "restore the market." Thus, a decrease in the sensationalized stories of victims instead contributed to significant criminalization of corporate fraud and securities fraud, as victims' losses were still often mentioned by the media.

The framing of victims in corporate fraud in this era also differs from framing in the previous era in another significant way. Before 2002, the nation being depicted as a victim—the concept of which was termed *Nation-Corporate Management* in the previous era—completely vanished after 2002. Instead of using the term "Chinese market" or "Chinese financial system," the media simply applied the term "stock market" or "capitalist market" while discussing corporate liability, thereby effectively removing the word "China" from the discussion of the market. As previous discussion reveals, the idea of Big Government became shaky in the late 90s, so the decrease in the usage of "Chinese market" may implicate the diminishing role of government in corporate and securities fraud cases after 2002.

The Image of Offenders and the Cause of Crime. The diminishing role of government is also noticeable in post-2002 reports when the media discussed the cause of crime. In viewing all companies as gigantic offenders, the media revealed the Chinese ideology of crime prevention.

Indeed, the media claimed several times that if one of the companies detected and reported crime, this tragedy would be prevented. Among all companies involved, PingAn Securities is the most frequently mentioned company that the media believed should "supervise and notice" the fraudulent practices (e.g., *Chinese Economics*, January 16, 2013; *Shanghai Securities,* May 11, 2013). The frequency of the co-appearance of the concept of *supervision* and "PingAn Securities" in the same paragraphs is two times higher than the appearance of *supervision* and "the CSRC," which implies that the market could not function properly with PingAn's involvement.

This image of offender, in the case of WanFu, is rather distorted. In addition to the criminalization of the brokerage company (PingAn), the media deemed PingAn Securities responsible by the media because of its supervisory role. The media denounced PingAn's recidivism 13 times in 115 reports, ultimately making PingAn the main target in much the same way as WanFu Inc. was made a focus. However, this criminalization process excludes the role of government (the CSRC). While the CSRC is the public institution that is supposed to supervise securities trading activities, it is bizarre that the CSRC is not the media-specified institute that bears the burden of supervision. Instead, as per the media's presentation, PingAn securities became the main player that should have detected and prevented fraudulent practices.

This focus on *supervision* is again important for two reasons. First, although several experts and professors expressed their concerns about PingAn's active role in WanFu's fraud, the media's overemphasis of supervision decreased PingAn's criminal liability since it was depicted as *supervisor*, not *perpetrator*. This framing eventually affected the punishment that will be introduced in the next section. Second, the real supervisor, the CSRC, was again marginalized in this process, which echoes the theme of the diminishing role of government.

The causes of corporate fraud are multidimensional, making it possible for the media to attribute this crime to a) individual greed, b) lack of supervision, c) systematic issues, and d) irrational victims. In the Chinese context, investors were depicted as rational after 2002, and systematic issues are only mentioned twice in all 115 reports. Thus, the media emphasized a) individual characteristics (11 times) and b) lack of supervision (38 times)[26].

High-level executives were mentioned often by the media during this era, and their stories about fraudulent practices were reported from time to time. Their personalities, however, were not considered noteworthy by the media. Three articles state that fraudulent practices were "too bold to believe in," but other articles focus on motivation. The story provided by the media includes aspects of financial difficulty and pressure from the free market or local government, which allowed the media to depict an individual's desire to list his company on the market. These reasons do not justify crime, but add to the gossip elements at play.

What catches a researcher's analytical eye is overemphasis of neglected supervision as the cause of crime. In fact, among all articles that mention the issue of supervision, only two of them (5%) explicitly challenge the inertia of the CSRC (*Beijing Times*, March 4, 2013; *Chinese Economics*, March 21, 2013). All other articles attribute lack of supervision to accounting firms and brokerage firms (PingAn). As mentioned previously, the role of government simply vanishes in the process of referring to firms as supervisors, as they might be actual offenders. This distorted depiction of the cause of crime certainly affects subsequent punishment reports.

A Signal of Self-Regulation. During the investigation process for both cases, the scandals were exposed by the companies themselves, not the SCRC. This never happened before 2002 in China even though it was an American norm for years. Even after the CSRC made information

[26] Including the lack of supervision/lax control from brokerage firms, the CSRC, or local government

about the WanFu case available to the public, the company kept providing evidence via its self-regulation programs. This raised the question of whether self-regulation was an acceptable concept in post-2002 Chinese securities fraud cases.

The term "self-regulation" appears 23 times in 115 reports, and three of them even emphasize the idea that self-regulation should come before further investigation. The internal vigilance program was established after the CSRC reprimanded WanFu and LVDadi Inc., and a spark of self-regulation was gradually ignited. This spark, however, was soon extinguished.

Punishment

Administrative Sanctions: Three Strikes and You're Out. Although the criminalization of corporate fraud was highlighted in post-2002 era reports, the investigation and punishment process uncovers another story. In the process of investigation, the media focuses on both administrative examinations by the CSRC (38%) and criminal investigations initiated by the police (62%), the latter of which align with the criminalization framing of corporate fraud. However, when it comes to punishment, 71 in 115 articles (60%) emphasize the administrative sanctions announced by the CSRC and Shenzhen Stock Exchange (SZSE), which is supervised by the CSRC. *None* of the articles mention the prosecution of corporations, and a mere 7 out of 115 articles (6%) mention criminal sanctions.

This trend of administrative action in post-2002-era media reports works in quite a different way than the framing in the previous era. Before 2002, 17% of articles mention prosecution, and final verdicts appeared 19 times in 51 reports (37%); their appearance dropped to 6% in post-2002 collected data. After 2002, the media suddenly chose to not focus on criminal punishment even though there was deliberate criminal framing. Most articles discuss the warning WanFu and LVDaidi Inc. received and whether they were subject to being unlisted from the stock market. In

2011, the SZSE essentially declared, "Three strikes and you're out," which indicated that the listed companies would be unlisted after receiving three reprimands in three years.

The three-strikes rule certainly become the media's focus given that WanFu was reprimanded twice in the past, meaning that the third reprimand would mean the company having its license suspended; being unlisted would also harm investors. The administrative sanction, however, was disappointing to the public. The brokerage firm (PingAn) was fined 76 million RMB by the CSRC, and its license was suspended for three months; WanFu was only fined 0.3 million RMB, and its license was never revoked.

When the American media delivered the idea of *too big to fail*, the Chinese media operated in an opposite manner. Most media reports denounced the light administrative sanction implemented by the CSRC, which is exactly why criminal punishment was marginalized, catalyzing the media's discussion of administrative rules. Legal debates were highlighted by all levels of the media, and it is apparent that the public and the media hoped WanFu leave the market since it "defrauded the market and its investors seriously" (*Finance Weekly*, June 17, 2013).

The inquiry of the media in the post-2002 era, however, focuses mostly on the administrative sanctions for WanFu, not PingAn, although PingAn received a much higher fine than WanFu and was suspended for three months. The U.S. Enron case was referenced four times in Chinese media reports, and the media challenged the three-strikes sanction 26 times in 115 reports. More punishment for individuals was suggested because high-level executives were punished in the Enron case, and the ultimate ban for corporate business was proposed every time the CSRC decision was challenged. The idea of suspending businesses was proposed even before the release of the CSRC decision. Indeed, suspension *of business* was reported 89 times in 115 reports, and the media maintained its position even though the CSRC ruled in favor of WanFu.

From 2002 to 2012, the media strongly disagreed with the government's position. When the CSRC tried to implement the idea of "tough on brokers," the media promoted the idea of "tough on issuers." Why the media was opposed to the CSRC is unknown, but at least the equal focus on issuer's fraud and broker's fraud in the 90s changed as the media started to treat the issuer (the company itself) more seriously than the broker (the securities company). This trend becomes more obvious when we look closer at punishment reports about the brokerage firm PingAn.

From Collusion to Reckless: The Effects of Restitution. PingAn's sizeable fine of 76 RMB and suspension of business for three months were rather severe punitive measures compared to other applications of administrative punishment, and the message was clear: a brokerage firm should be liable and should be punished even more severely than a company. Although some reports indicate that the penalty was too lenient since three months is not a long duration of time, the money involved—the highest fine a brokerage firm can face--made PingAn a milestone case.

Thus, instead of challenging the administrative sanction, the media focused on the concept of lenient punishment. PingAn did not receive any criminal sentence; there was no prosecution either, as WanFu's chairman was sentenced to three years and six months and was also fined 8.5 million RMB. The media did not say a word about the nonexistence of PingAn's criminal punishment, and this attitude is bizarre since the media previously established strong criminal framing of broker's fraud before the administrative sanction was revealed. This sudden change in attitude will be further investigated.

When PingAn was fined 76 million RMB (about 11 million USD) on May 11^{th,} 2013, the brokerage firm also announced an unprecedented plan—a 300 million reimbursement scheme that would compensate investors appropriately given that WanFu inflated its profits by 90%. The plan certainly drew the media's attention, but the news soon after completely negated discussion of the

fine. In the media's interviews with PingAn, the brokerage firm expressed its deep concern about investor's loss, admitting that it was reckless in sponsoring WanFu.

The reimbursement plan soon changed the nature of the criminal framing that the media previously utilized. The term "collusion", which refers to WanFu and PingAn's scheme, appears 23 times in 115 reports, but the term only appears once in reports published after the reimbursement plan was released. In contrast, the term "reckless" appears 24 times in 115 reports, 15 instances of which were published *after* the proposed plan was announced. An abrupt drop in the term "collusion" and the rise of the tern "reckless" signals a shift in the media's attitude toward securities fraud; the brokerage firm is responsible due to its recklessness, not its intention to commit crime.

Thus, the restitution plan was rather powerful: the media began to use the term "reckless" when illustrating PingAn's responsibility, and just like its American counterparts, the Chinese media started to discuss whether the plan was fair or not. PingAn's criminality soon vanished in the discussion of fairness, as criminal investigation was marginalized. Even before any prosecution efforts were initiated, the media claimed that "the case was finally closed…with the restitution plan" (*South Money*, May 14, 2013), stating also that "the ending of this case is imperfect" (*Economic Daily*, May 14, 2013). Criminal punishment was not even a concern.

This echoes the way the media defined PingAn as a *supervisor* instead of a perpetrator. According to the way the media depicted the restitution plan, the brokerage plan did not pay enough attention to WanFu and recklessly endorsed its stock, which led to investor loss. The media accepted the *supervisor* rhetoric easily, and only two articles from *Economic Daily* (May 15, 2013) and the liberal newspaper *Southern Daily* (May 24, 2013) challenged the idea that restitution replaced criminal investigation. More importantly, the media did not question the suspension of

PingAn's license either. Within the concept of restitution, the discussion of PingAn's criminality no longer existed.

Tough on Issuers, Lenient on Brokers. Since the criminality of PingAn disappeared in the process of restitution, the media's debates on this issue eventually fell on the three-strikes doctrine, and focus shifted back to WanFu again as the media examined whether its business license should be rescinded. Only one article discussed the legality of administrative sanctions for PingAn, and the 115 remaining articles all expressed their concerns about WanFu's lenient fine. Although WanFu's executives were prosecuted and sentenced afterwards, since the media officially ended its discussion of the case with the proposed reimbursement plan, the media trivialized criminal punishment for corporations.

The result of this trend is the ideology of "tough on issuers, lenient on brokers." In 28 articles that mention the future reform of the stock market, 21 of them express the idea of "be tough on corporate fraud," and only 9 of them mention that the government should "be tough on securities firms."

Especially in consideration of what has already been observed, this trend was deleterious for two main reasons. First, the CSRC's responsibility shifted to securities firms, which exemplified the mission of *supervision*. If the ideology delivered by the media did not contest the accountability of the brokers, then the supervision system would eventually fail since there was no pressure from the bottom-up. Second, being tough on an issuer—like with Enron in the U.S. and WanFu in China—is a common trend in the financial world. However, harsh punishment in the Enron case did not further the health of the financial system, and the same thing could occur in China. The media's overemphasis of issuers, not brokers, ignored the possible scheme of the two that were dead to the financial world.

However, there is an advantage that this trend created. The death penalty of corporations—suspension of business—is an administrative action rather than a form of criminal punishment. Although criminality was ignored, a means of real punishment was still on the table for discussion. This trend at least put the idea of punishment on the public radar, which may represent an important and distinctive ideology in China—*The Big Should Fail*.

Players

The SCRC undoubtedly became the most important player in the media when its administrative action became the focus. However, similar to in the previous era, the CSRC was only active as an institution promoting messages about sanctions. Since only two reports questioned the inertia of the CSRC, the CSRC was revealed to be more like a rubber stamp than an active player. As previously mentioned, supervisory responsibilities shifted from the CSRC to private securities firms, so it is not surprising that the CSRC became a mere "punishing" institution during this era. The fact that CSRC officials were only cited 5 times in 115 reports further reinforces this point.

The most active players in the media are lawyers, which were quoted by the media 29 times in the 115 reports from this era. Although the same three lawyers kept being interviewed by the media, the trend of interviewing lawyers indicates a rise in *legal mobilization*. Human rights lawyers[27] still dominated restitution-related reports, and since the restitution plan did not substantially challenge the legality of the government, it is possible that the media felt it had free rein to interview and quote these lawyers. However, since the same three lawyers were interviewed, the framing of advocating rights is one-dimensional: these lawyers only emphasized investors' rights in general, expressing their *satisfaction* after compensation was granted by the courts. Only

[27] In China, the definition of "human rights lawyer" is broader than its counterpart in the U.S. The civil lawyers who help investors are deemed human rights lawyers.

two of 29 quotes question compensation, and the rest of the comments indicate that the lawyers were pleased with the results. Although the role of government was marginalized, it still served as an institution that satisfied the public and eased anxiety in regard to human rights lawyers' help.

Companies were interviewed more often than then they were in the previous era, but most corporate quotes concerned what were, at the time, their latest financial reports. What differs from the previous era is that several more experts were interviewed by the media during this time. Experts appeared 27 times; 8 of these instances are in the form of quotes from professors. Professors were the most radical players in the quoted group. Three of them directly inquired about the scheme of brokerage firms and WanFu, and one of them even discussed the liability of the CSRC. Although these radical messages appeared occasionally, professors were the least quoted group in media reports. Other experts, who discussed only minor issues in administrative sanctions for corporations, were cited more often.

Ideologies

Weak Supervision: Shifting Responsibility from the Center of Fraud to a Local Context. The marginalization of the role of government is worth noting. First, the CSRC and its branches are supposed to supervise all trading of securities. Without an active prevention program, it is impossible for companies to regulate themselves since the Chinese stock market is still immature. However, as previously discussed, the media placed supervisory responsibility on accounting firms and securities firms, and these companies were civilly punished because of their supervisory failure. This shifting responsibility left the CSRC a single mission: punishment.

In much the same way that the way the government punishes street criminals, the web that captures every single criminal activity can still be deemed an instance of *Big Government*. However, this is not the case in regard to the CSRC in this era. As prosecutors simply vanished

during this time, the only power of the CSRC became administrative action. Suspension of business is the most discussed category in this era and is the *only* category that is related to the CSRC. In other words, within the ideology of deterrence, the media kept challenging whether administrative sanction was enough to deter crime. The term "deterrence" appeared 34 times in 57 reports that mentioned administrative sanctions, and 12 of 34 reports questioned the efficacy of sanctions.

Thus, although the media questioned the CSRC often, it focused only on the role of imposing punishment, which means CSRC's real role—supervision—was left behind in the discussion of liability. While the power of punishment should belong to prosecutors and the court, the media seems to ignore the checks and balance process of criminal justice and administrative power. The result of this ideology, unfortunately, contributes to a system of weak oversight other scholars discuss (Pontell, Ghazi-Tehrani, & Chang, 2017).

The Big Should Fail and Individual Restitution. While deterrence is the only goal of the CSRC according to the media, the idea of "tough on corporate fraud" became rhetoric without substance. In this regard, the ideology of *The Big Should Fail* is also shaky. Although the media was determined that fraudulent companies should be banned from participating in the market, the CSRC was reluctant to issue ban sanctions, and prosecutors were simply not a focus of the media. As a result, the media constructed an ideology that may not have reflected reality.

If the gap between ideology and reality widens, public anxiety can be heightened, uprooting the legitimacy of Chinese governmentality. However, during this era, this anxiety was easily appeased using the idea of restitution. As discussed in the last section, emphasis of PingAn's criminality certainly faded after the restitution plan was released, and the legal debate surrounding the case simply became the idea of *recklessness*. Thus, the anger and anxiety of non-punishment

were neutralized by restitution and legal mobilization, as lawyers and victims expressed their satisfaction in media reports.

The era after 2002 is also the heyday of Stability Maintenance Innovation (SMI). Since stability became the Chinese government's mission, public anger toward fraudulent practices in the stock market could cause ripples. Interestingly enough, restitution became the panacea of criminal cases during this era, which has largely to do with Chinese individualism.

Individualism is deeply rooted in Chinese society. The Chinese, who believe in collectivism, only apply this concept within their own networks (*GuanXi*). The general public is not concerned with something outside their own network (Fei, Hamilton, & Wang, 1992). This can create a legal mobilization hurdle. Most investors do not know each other and are reluctant to bring a case to court so that other investors can join. Class action is not the norm in China, and very few citizens bring a securities case to court simply for "accountability" or "justice," which is very different from the actions of their American counterparts (Nielsen, Nelson, & Lancaster, 2010).

In addition, as Martin King Whyte indicates, the Chinese do not necessarily oppose the wealth gap of capitalism (Han & Whyte, 2009). Although the ideology "take risks" does not prevail in China, capitalist ethos—partial individualism—already exists. If one investor is reimbursed, it is very likely that he regards the case as closed. In this way, the stability of Chinese society can be achieved by an assertion in restitution, which marginalizes real criminal punishment.

Localized GuanXi. Another theme related to SMI is the ideology of *GuanXi*. *GuanXi* is a main indicator of corruption during this era, and the media mentioned "*GuanXi*" very often in bank fraud reports since all defendants are officials. However, since most companies that commit

securities fraud are private companies, the term *GuanXi* was absent in the securities fraud reports of this era.

However, when the local government was involved, the term *GuanXi* did appear in several reports. This is interesting because some reports maintained the opinion that local government should be responsible for fraudulent practices because it compelled companies to hit the market even when they were not ready to do so. In other words, the local government was motivated by "China's current structural dynamic of rewarding officials for generating vigorous and unprecedented growth" (Pontell et al., 2017), which encouraged local companies to be listed in the market no matter what. In this regard, any relationship between companies and local government would be negatively tucked under the media's umbrella of *GuanXi*.

This trend of *localizing* the idea of *GuanXi* is important in twofold. First, as we discussed in the section about bank fraud, the media tended to normalize corporate bribery, making *GuanXi* routine and attributing the issue to "too much government involvement"—a very neoliberal idea. In this regard, local government—not corporations—was to blame, which eventually led to the decriminalization of corporate bribery. Second, the media's denouncement of local government promoted the idea that the central government was trying to help solve securities fraud issues, and in this context, the local government was the hurdle that impeded the efforts of the central government. Consider the tension between the central and local government in China; it is not surprising to see the media localize the issue of *GuanXi* and blame the local government instead.

Crippled Neoliberalism. As *GuanXi* was localized, the voice of "too much government involvement" emerged again in securities fraud reports during this era, and this all circles back to the discussion of neoliberalism and small government.

The government easily embraced neoliberalism in securities fraud cases. As the CSRC said in an interview, "the solution to these issues is marketization" (*HuNan Daily*, May 16, 2013). In addition, the media did not challenge the idea of small government since the role of the CSRC was minimized to that of punishment. According to the media, administrative punishment would lead to restitution, and the only role of the CSRC was to let the market resolve the issue with the help of human rights lawyers.

This ideology, echoed by the media, made the CSRC look like the SEC in the U.S. However, since not every element of neoliberalism is accepted by China, these organizations differ in several ways.

First, the CSRC did not embrace the idea of self-regulation. The idea of self-regulation, just like in the previous era, seldom entered the media's focus in the discussed era. Companies indeed have self-regulation programs, and they conducted internal investigations when the CSRC initiated investigations. However, the media never used self-regulation and internal investigation to justify light punishment, and the courts did not mention self-regulation at all in their verdicts. As a result, the media was still very careful about using the term *self-regulation*, which could challenge the central government's power. Other ideas that are related to self-regulation—such as the idea of "cooperate with investigation," which appears often in American media reports—could not find their place in China.

However, the power of the central government dissipated given the shifting of responsibility from the CSRC to private business. Thus, the idea of small government is rather *implicit* in the reports from this era. The Chinese government may have had the power to punish corporations, but in reality, the ideas of marketization were implicitly promoted by the media. The burden of responsibility of supervision did not fall on the CSRC, and if private accounting and

brokerage firms colluded with corporations instead of *supervising* them, that could create a fertile environment for fraud with no substantive supervision. This became even more of a reality since *none* of the articles discuss the idea of conflict of interest, which is a plausible means of challenging the role of securities firms around the world[28].

In contrast, in bank fraud cases, the Chinese government still maintained the Big Government ideology since CCDI supervision (Big Brother ideology) and State-Confucianism work hand in hand with each other, enhancing the Big Government role in the banking industry. The only issue with this is that the media tried to normalize and de-ethicize *GuanXi*, which put too much emphasis on corrupt officials instead of big corporations, in turn marginalizing the issue of banking fraud.

In securities fraud cases during this era, the problem is even worse since *Big Government* was only significant in punishing, not regulating, corporations. Without a proper mechanism of supervision in mind, the media actually promoted an ideology that endangered the Chinese securities market. Since the CCDI and Confucianism did not find their place in securities fraud cases, the Big Government ideology could not stand on its own.

The result of the interaction of the abovementioned ideologies is *crippled neoliberalism*. Originally, corporations could face more serious penalties in China since the idea of "too big to fail" was replaced by *The Big Should Fail*. However, with the normalization of *GuanXi* in bank fraud cases and the shifting responsibility of supervision in securities fraud, *The Big Should Fail* became a slogan and assertion. Though it seemed compelling because of its façade of Chinese characteristics, but it eventually vanished because there were no ideologies to support it. The

[28] As chapter 5 indicates, China's U.S. counterparts were not doing better since the issue of conflict of interest is also marginalized in American media reports.

crippled neoliberalism concept, disguised by Chinese characteristics, could, in this regard, contribute to another economic crisis much like what happened in the U.S.

The interviews with judges and prosecutors in China, conducted by Dr. Cheng, reveal the danger of crippled neoliberalism. Judges and prosecutors are not interested in taking securities fraud cases because "[they are] not serious crimes," and the cases are only exposed to the public when the CCDI has an interest in them (Cheng, 2016). Even with the idea of *The Big Should Fail*, the system could not work properly when the criminality of corporations was marginalized in both bank fraud and securities fraud cases from this era.

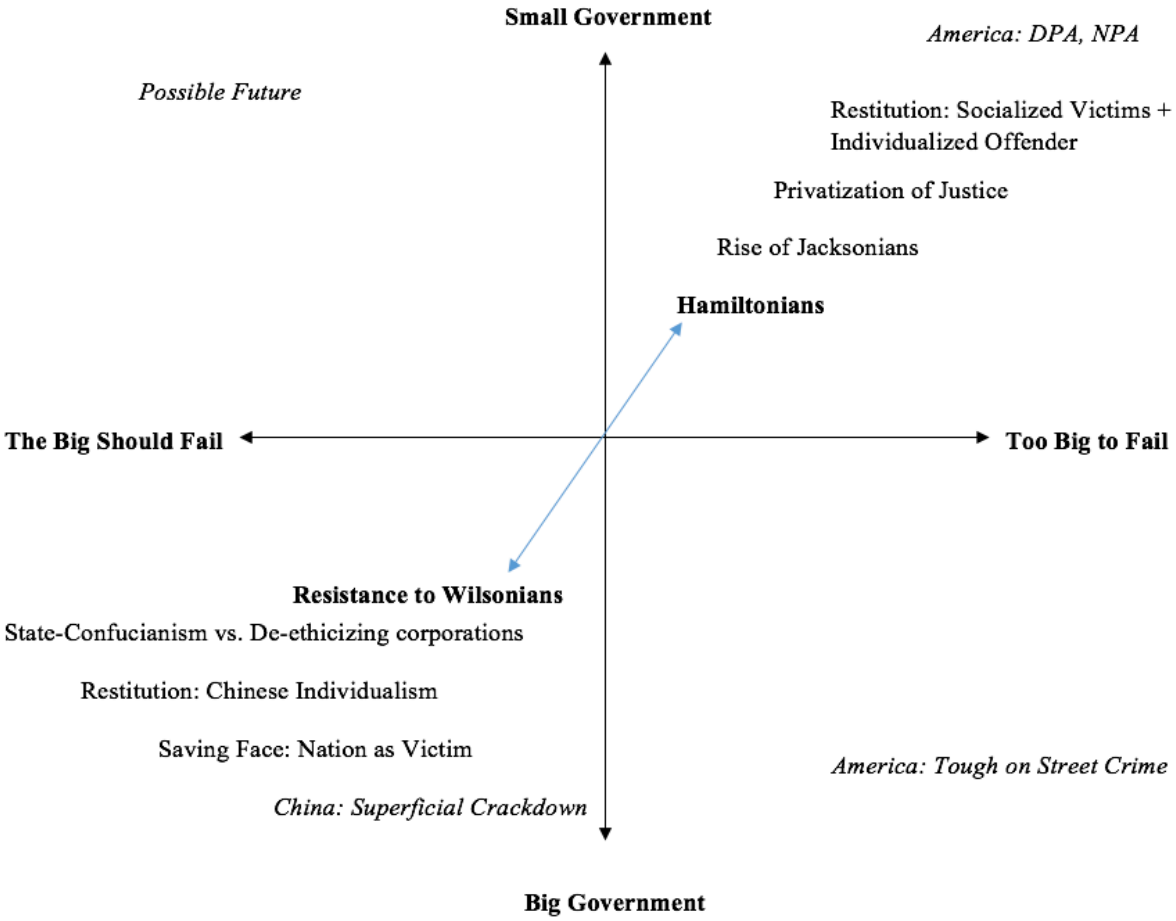
In the next chapter, I will discuss these problems globally, focusing on how neoliberalism and other local ideologies collude in both 1990s and 2000s U.S. and China, also exploring how the interactions between these ideologies affect the global financial system.

Chapter 8: Local Ideologies: the U.S. and China

This paper began with an analysis of the FCPA, later delving into the American framing of fraud before and after Enron. By using the FCPA as a "control group," this paper discussed fraud-reporting trends in the 1990s and 2000s in chapter 4 and 5. Along the same vein, chapter 6 and 7 explored the Chinese media's framing of fraud by comparing bank fraud and securities fraud, thereby revealing a very different reporting style of fraud in China even though both China and the United States are affected by global forces like neoliberalism.

As a cross-national study by Cavadino and Dignan (2006) notes, different ideologies about political economy are strongly related to the punitive nature of penal culture and rates of imprisonment (Cavadino & Dignan, 2006). Because of this, how corporate liability is established by these ideologies—and what the effect of this is—will be examined in this chapter. Summaries of fraud reports in the U.S. and China will also be compared to highlight the local ideologies that modify neoliberalism.

A visual comparison of the U.S. and China is illustrated below. This figure represents the deconstruction of neoliberalism, which is associated with the content of this chapter. The visual focuses on how two spectrums—government intervention and general attitude toward big companies—have intersected, generating different ideologies in America and China. This chapter will first introduce the de-criminalization of corporate fraud in the U.S. from the 90s to the 2000s, exploring how it is related to prevalent DPA and NPA aspects (upper-right) and then explaining how different international and local ideologies created the superficial crackdown approach in China from the 90s to the 2000s, which also led to the de-criminalization of corporate fraud (lower left).



American De-emphasis of Corporate Crime in the 90s

The FCPA and Wilsonians

We begin with the media's framing of another kind of white-collar crime: that of the FCPA. As chapter 4 discussed, the media minimized corporate liability by denouncing developing countries. However, even though corporations were not punished harshly in the 90s, this was an era when the media questioned the justification of lenient punishment and the effectiveness of self-regulation. During this so-called "war on self-regulation," the concept of neoliberalism was unstable. On the one hand, the media did not believe that a company could regulate itself without

active government intervention; on the other hand, the media tended to not depict corporations as "criminals," and the term "bribery" did not even exist in media's descriptions of corporations.

The turning point of unsteady neoliberalism was the emergence of two key terms that gradually dominated media reports in the 90s. The terms "cooperation" and "supervision", when introduced, served to neutralize big corporations' criminality. A quick response from the corporations (*cooperation*) and a promise to regulate oneself (*supervision*) both justified lenient punishment for corporations. Corporations that violated the FCPA were considered on the same side as the government; they cooperated with the Justice Department, established a supervision program to prevent violations, and eventually fought corruption within the government. The ideology behind this was not surprising because both the government and corporations shared the same enemy.

Namely, when street criminals were depicted as the enemies of the general public in street crime stories, white-collar criminals—corporations—were not depicted as enemies in white-collar crime stories. The "othering" processes of white-collar and street crime certainly differ.

The ideology supporting this framing can be represented by the clash between Hamiltonians and Jeffersonians. Hamiltonians support a strong alliance between big business and government and want foreign policy to be designed to serve business interests, while Jeffersonians believe that the government should not work hand-in-glove with corporations (Mead, 2013). These two contrasting views found common ground during Bill Clinton's presidency in the 90s, which supported Wilsonian ideology. Although the U.S. government did not officially work with corporations, it focused on establishing universal values—such as those regarding human rights—and urged other countries to accept its values. In this regard, multinational corporations were "friends of the government" that supported and reinforced Wilsonian foreign policy.

The Wilsonian approach consequently affected the framing of the FCPA and corporate liability. While both undeveloped and developed countries were deemed *uncivilized*, the countries denying democracy—not big corporations—were an American enemy. While Jeffersonian principles gradually lost their place in Congress in the post-Cold War era, Wilsonian ideas became the norm in 1990s neo-conservative politics.

Thus, the human rights approach that interacted with neoliberalism substantially minimized corporate liability. Corporations started to promote *rule of law*—a salient Wilsonian idea—and established international organizations, such as Transparency International, that would supervise foreign activities. In this way, corporations became supervisors, protectors, and advocators of rights and the law rather than perpetrators that committed crimes. This framing, coincidentally, emerged again after 9/11.

Disproportionate Fraud Framing and the Rhetoric of Restitution

The media's depiction of a connection between Wilsonian ideas and neoliberalism became salient in the 90s, and the story of FCPA violations certainly revealed the media's general attitude towards corporations. Whether this general attitude was applied to other kinds of white-collar crime—especially corporate fraud—is illustrated in detail in chapter 5.

It is not surprising to see that corporate fraud—especially issuer's fraud—was marginalized in the era of deregulations. Corporations were portrayed as victims of fraud much in the same way as what was observed in FCPA cases. Although there were no foreign countries to blame in corporate fraud cases, the media tended to use "bad apple" framing to victimize corporations, entering a process of decriminalization echoing that of FCPA cases.

The trend of decriminalization was rather complicated, however, as chapter 5 indicates. Although corporate fraud did not enter the radar of the media, the media did indeed severely denounce consumer fraud in the 90s. The framing of the FCPA, which included frequent usage of the term "scandal" and reluctant usage of the term "crime", did not occur in consumer fraud media reports. Corporate liability was underlined in consumer fraud cases, contrasting the trivialization of corporate fraud. A new type of white-collar crime existing in the middle of two directions (Figure 8.1)—securities fraud committed by brokers—had the potential to mirror either the criminalization of consumer fraud or the decriminalization of corporate fraud.

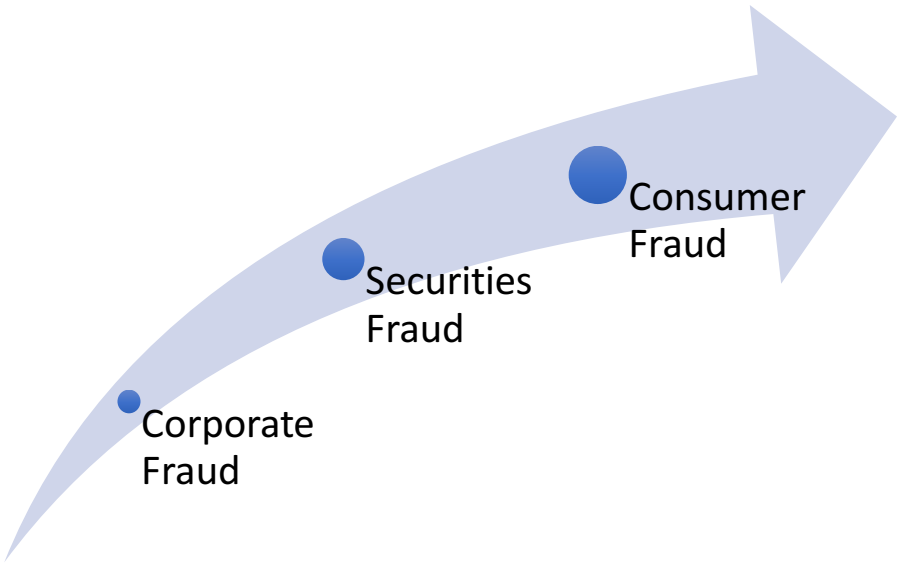


Figure 8.1: Increased criminalization of fraud before 2001

While the media first portrayed investors as victims in securities fraud cases, like what it did with consumer fraud cases, securities fraud cases were mostly emphasized through discussion of *settlement* and *restitution*. While consumer fraud reports put *punishment* before *compensation*, securities fraud reports always put *compensation* before *punishment*. This reporting style inevitably minimized criminality and focused primarily on whether investors

were satisfied with restitution. Furthermore, since civil procedure became the focus instead of criminal investigation, civil legal concepts, such as comparative negligence, emerged in the disguised form of "take risks," which partially attributed investors' loss to the investors themselves. As a result, securities fraud framing leaned towards the other side of spectrum: corporate fraud framing. The DPA of securities fraud cases looked acceptable, as the media quoted *just compensation* in every report that mentioned the DPA, which eventually contributed to the prevalent idea of *too big to fail*.

Reasons for Disproportionate Framing: Four Ideologies and Players

The most intuitive explanation for disproportionate criminalization involved how players were involved in each kind of fraud. Company spokesmen were quoted by the media only 8 times in the reports about consumer fraud cases (11%), while NGOs, experts, and professors were cited only 6 times in reports about corporate fraud cases (8%). Whether an opposing group existed made a huge difference in the process of framing de-criminalization. Because consumer protection groups and the Federal Trade Commission had been active since the Kennedy and Johnson administration, the players were mature and ready to confront consumer fraud.

However, the citations regarding securities fraud reports are more balanced than those for consumer fraud and corporate fraud. Thus, the ideologies influencing active players are as important as the players themselves. While the FTC and other activists chose to confront consumer fraud in the 70s, they chose the argument of "quality of life" instead of "the rule of deception." Since this argument was widely supported by the Bush and Clinton administrations, the concept of law created a dichotomy: *while an infringement of health is a violation of law, deception itself is only violation of a standard*.

Thus, of the different aspects of white-collar punishment ideologies are illustrated in Figure 8.2. As Wilsonians established a human rights policy that focused on cooperation and supervision internationally, big corporations were deemed friends—not enemies—in the 90s. The criminality of corporations has been blurred since then, and only a strong historical ideology, such as "quality of life," could vividly portray corporate offenders. However, because the "rule of deception" was marginalized in the consumer protection movement, corporate fraud cases largely failed to find a connection with which to create corporate criminality. Even when these cases did so, bad-apple framing punished low-level executives. The final nail in the coffin was the idea of restitution and fair compensation. Given the acceleration of civil liability, victimization of corporations started to emerge, downgrading the importance of rule of law in fraud. In the end, the media communicated that those who committed fraud were merely violating *business principles and standards*, not *rule of law*.

While the FTC operated as a nanny of sorts, the SEC was influenced by the interactions of ideologies and eventually stood on the side of big corporations. While the media did not consider fraud to be a violation of law, it was easy for the SEC to prioritize social harmony (*compensation*) over punishment. The subsequent increase in the use of the DPA might not be surprising given these ideological changes.

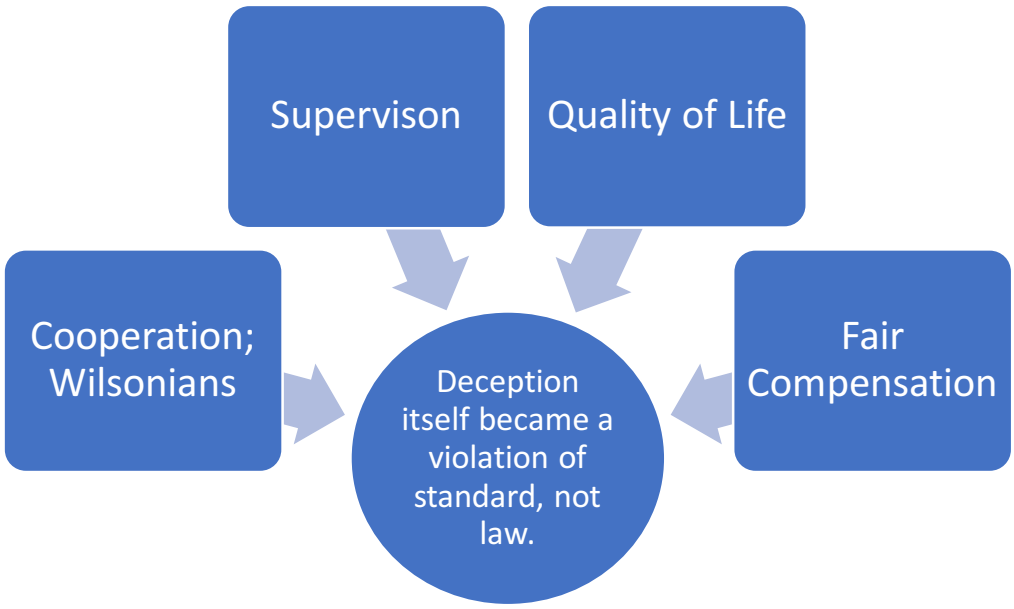


Figure 8.2: A complete depiction of white-collar punishment ideologies in the 90s

American De-emphasis of Corporate Crime in the 2000s

From Bribe to Fraud

In my discussion of previous era, I established an ideological framework that included the framing of both FCPA violations and fraud. These ideological interactions became more prominent in the 2000s, as FCPA violations were marginalized due to the infamous Enron case in 2000. The Enron case made the media over-emphasize tax evasion and accounting issues, and FCPA violations were therefore depicted as "not being transparent in their financial statements" instead of "giving bribes." The issue of *accounting fraud* outweighed the problem of overseas bribing when the cooperation between corporations and the U.S. government was dominant, representing the Wilsonian legacy.

To decrease the criminality of FCPA violations, the media not only digressed from corporate liability to accounting issues, but also started to blame middlemen outside the involved companies. The story of the middleman represents how corrupt and uncivilized other countries are, normalizing the need for middlemen to fix the problem.

Following the legacy of Wilsonians, in 2001, 9/11 enhanced the idea of offshore justice, or the idea that justice should be found offshore in order for Americans to have the best advantage. Under threat of terrorism, the process of "externalizing enemies" is common, and this trend echoes the rise of Hamiltonian ideas in the George W. Bush, administration, emphasizing business interests more than human rights (Mead, 2013). Treating terrorists as enemies certainly created tension between Wilsonian and Hamiltonian ideas, and this tension gave Jacksonian concepts a chance to thrive, eventually leading to Donald Trump's election.

Overall, the legacy of Wilsonian ideas and the rise of Hamiltonian concepts gave big corporations space to breathe in the post-2003 era. Corporations were willing to establish human rights programs—especially those focusing on transparency (TI)—with Wilsonians. They were also eager to expand their overseas business with Hamiltonians using avenues such as the World Bank and International Monetary Fund. The story of the WB, IMF, and TI that chapter 4 illustrates further explores the connections between these institutions, constituting a general depiction of corporate liability.

Therefore, offshore justice was taken for granted and was replicated to mimic fraud framing when the 2002 Sarbanes-Oxley legislation, designed to prevent future incidents of this nature, gave the SEC and DOJ the power to investigate foreign corruption in the name of accounting fraud. The framing of FCPA violations and fraud were therefore intertwined.

Privatization of Justice and Business Ethics

While opposing neoliberal groups were not quoted much in the previous era, mention of these groups totally vanished in the 2000s. Self-regulation was no longer contested after 2000, while experts and lawyers who worked within the abovementioned theoretical framework were the most cited group in the 2000s, and unfortunately, they furthered the privatization of justice. Companies would regulate and supervise themselves or employ the use of NGOs. Lawyers who specialized in white-collar crime found a niche and soon become compliance counselors and private investigators. Former prosecutors and members of the FBI also joined privatized networks to make business flourish.

The trend of privatization simply formed a new caliber of law in action that differs from the law on the books, creating a semi-legal system that was present in the formal legal system. Within this framing, the most noticeable term is *business ethics*; when prosecutors made formal decisions about indictment, these non-legal, ethical factors were actually quoted by the media to explain prosecutors' decisions. The human rights approach that emphasized foreign civilization did not place law on the books responsibility on corporate shoulders, but instead established a precedent of non-legal responsibility that helped corporations evade punishment in the formal legal system. This may explain why the prosecution rate decreased in FCPA cases even though there was an increased presence of FCPA investigative personnel. Ideological forces certainly played a role in the decriminalization of corporate liability.

Enron, interestingly, did not challenge the abovementioned ideologies. There are several explanations for this. First of all, civil liability disappeared after Enron. Instead of focusing on victims' loss, media reports tended to use an abstract concept called *investment confidence* to depict crime. Victims' stories were not on the media's radar anymore, and since victims' loss was

the *only* channel with which to create criminal liability given the promotion of *quality of life*, corporate criminality did not emerge because of Enron. Second, bad apple framing continued, as reports about fraud cases overwhelmingly focused on individuals that harmed companies. Both kinds of framing contribute to the reduction of corporate liability.

The idea of "take risks" emerged in the 90s and was further developed in the 2000s with the framing of "take risks once you enter the market" when victims' losses were discussed only as part of the umbrella idea of *investment confidence*. As a result, since investment confidence is a business concept rather than a legal concept, any infringement on investment confidence was only unethical, not illegal. The media even invented the term *conflict of interest* to emphasize the importance of being honest, altruistic, and independent in the securities world. In the end, the idea of unethical behavior that violated business ethics became even stronger after Enron. Victims' voices vaporized, and their satisfaction with results was replaced by the satisfaction of the government and banking industry.

The terms *conflict of interest* and *business ethics* gradually established an image of an honest, rational broker. The legal concept most similar to these concepts is *due diligence*—a term that does *not* indicate criminality in securities fraud. High-level executives will never be punished since their legal duty is only to supervise the due diligence of brokers, analysts, and accountants. Thus, even though high-level executives *know* the details of crime, this only means that they *know* due diligence has not been implemented, and it is therefore low-level executives' concern. The media's wording of due diligence violations explains the trend; "improper transaction"—instead of "illegal transaction"—was used 79 times in 64 reports, for example. In the eyes of the media, what companies encountered was just a risk management issue.

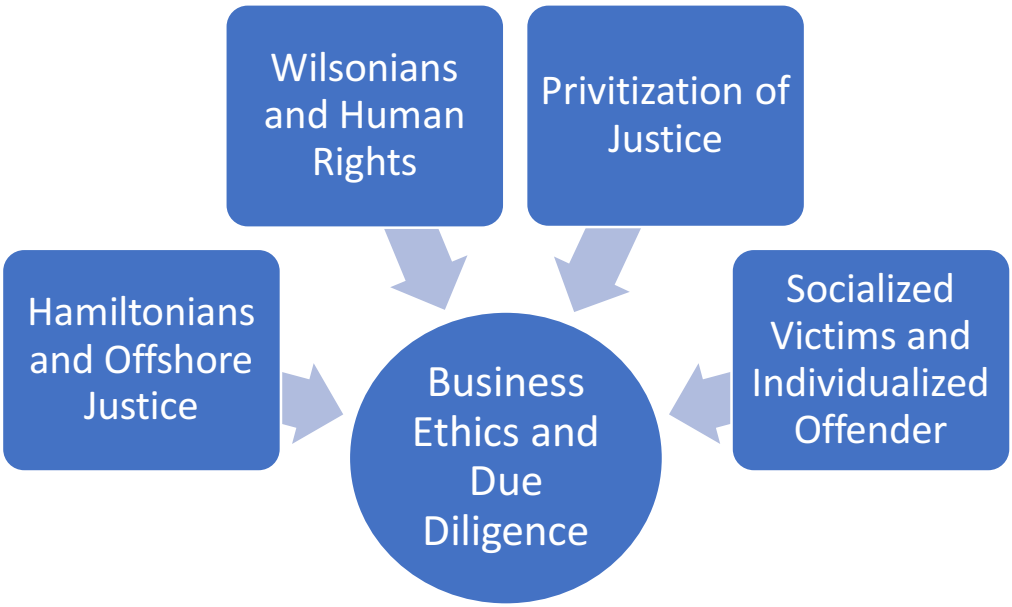


Figure 8.3: A complete picture of white-collar punishment ideologies in the 2000s

The End: Not Just Neoliberalism

Neoliberalism promotes small government, deregulations, unlimited competition, privatization of state assets, and lower taxes for the rich. These ideas certainly influence punishment for white-collar crime, but they do not depict a complete picture of it. Often scholars mention the idea of "too big to fail" in the discussion of non-punishment; however, the actual ideologies supporting non-punishment for fraud are far more complicated, as Figure 3 indicates.

The idea of neoliberal small government was highlighted in the ideological framework Figure 3 introduces. The media did not continue to focus on *supervision* in the 2000s, and the last duty of the government was to punish corporations that violated the law. This was not significant since the role of government in street crime was also marked by the role of punishment. Given the nature of the adversarial system, the government still had the chance to regulate corporations.

However, the government failed in this role anyway. The adversarial system was salient when two parties worked in opposition to each other, but other ideologies rendered the presentation

of the contrast impossible. The Hamiltonians chose foreign countries as enemies in FCPA cases, and through the human rights approach that Wilsonians established, corporations became friends—not enemies—of the government. The ideological framework gradually helped corporations establish their own form law in action: a semi-legal system that emphasized business ethics. This was the converse of deregulations, as corporations and other groups of interest essentially built up aspects of the rule of law that were both *outside* and *inside* the legal system.

These "rules" were outside the legal system because they were not rules enacted by Congress or enforced by police, but they were inside the legal system because they became non-legal factors that became part of prosecutors' thought pattern. Privatization of justice allowed law school professors, lawyers, and experts to participate in the game of rule-making, and it eventually marginalized the criminality of corporations by ensuring that the ideas of business ethics persisted.

However, in highlighting victims' loss, it became clear that the prosecutors would need to prosecute corporations because of the pressure associated with victims' property rights. This, however, was negated by the idea of investment confidence, which replaced the idea of individual investors' loss in media reports; corporate liability focused only on whether brokers were honest about the conflicts of interest they faced. Moreover, according to the media's bad apple framing, business ethics was violated by individuals, not corporations, which further limited corporate criminality. In the end, business ethics and the legal concept of due diligence created comfortable territory for corporations, and it was not surprising that no high-level executives were prosecuted after the 2008 economic crisis since corporate fraud and securities fraud were both normalized in the 2000s.

Since individualism is a fundamental principle in the U.S., it is hard to believe that the idea of *investment confidence* triumphed over individual loss in the discussion of securities fraud. The

ideology of investment confidence and the media's depiction of "market" kidnapped corporate criminality, threatening investors with the possible collapse of economics and asserting that punishment would lead to more individual loss, therefore exhibiting the idea of "too big to fail." However, this concept could not stand without help from other ideologies, constituting the framework of fraud minimization.

The Future

After Donald Trump took office in America, it became a possibility that the framework of non-punishment would shift. Trump is a Jacksonian rather than a Hamiltonian, and Wilsonian politics would never be a choice for him. In addition to demonizing foreign countries, Jacksonians would also focus on "inner" enemies such as immigrants and elites. On the one hand, Trump's deconstruction of Hamiltonian and Wilsonian politics may create a different portrayal of multinational corporations, moving corporations from the territory of "friend of government." On the other hand, he could alter the privatization of justice by appointing big companies' CEOs to government positions, effectively bringing them from the outside to the inside of the legal system. While the market force—the characteristics of socialized victims—remains unchanged, changes in other elements (illustrated in Figure 8.3) may alter the direction of corporate punishment in a significant way, and we may enter a new era of neoliberalism with these changes. To predict the future more precisely, we will need to observe trends internationally, focusing specifically on China below.

Chinese Framing of Fraud in the 90s.

Corruption, GuanXi, and Bank Fraud

In China, the framing of fraud depends on whether government corruption is involved. Since bank officials are government officials, the framing of bank fraud certainly differed from

that of common securities fraud in the 90s. Since China has been punishing government officials since the 1950s, bank officials and SOEs easily entered the radar of the penal field in 90s bank fraud cases. However, securities fraud only attracted public attention after the 1997 economic crisis in Asia, and the Security Act (SLPRC), which specifically target securities fraud, was enacted in 1997. Therefore, in the 90s, the framing of most fraud cases was established through the discussion of bank fraud, not securities fraud.

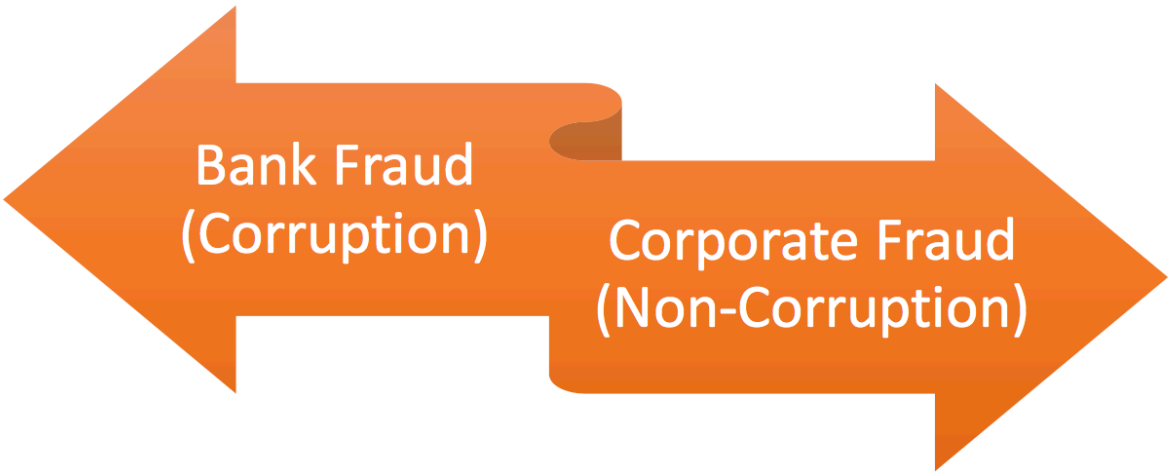


Figure 8.4: Two styles of fraud framing

With the help of the denouement of corruption, bank fraud was depicted as a form of street crime in the early 90s. Bank officials who took bribes from SOEs were treated as street criminals, their personalities dramatically depicted by the media. However, Chinese media reports did not engage in bad apple framing. Instead, the media emphasized the corrupt environment that fostered criminals' criminality. As a result, the media questioned the Chinese characteristics contributing to the prevalence of bank fraud, such as those in the realm of *GuanXi*.

As Wilsonians started to denounce the corrupt financial environment of other countries that stymied international trading, China itself began to accept this framing. One possible explanation

is that China was eager to join the WTO in the 90s, and any scandals in the banking industry would have ruined its plan; therefore, instead of resisting Wilsonian opinions, the Chinese media criticized itself, blaming *GuanXi* as the main cause of widespread corruption in the banking industry.

Figure 8.5: The hierarchy of social networks

Although *GuanXi* became the media's focus in the 90s, not every player in social networks was emphasized in media reports. The blue bloods and private business elites were not on the media's radar, but the new political elites became scapegoats in the criminalization of corruption. It is understandable that while the media was under censorship in China, the blue bloods were intentionally neglected by the media. However, private business elites, who did not have a particular relationship with the media, should not be ignored in the criminalization of bank fraud.

A possible explanation for this inconsistency circles back to the Chinese over-emphasis of corruption. Bribe-giving was not an issue in the 90s because companies were not government officials. While China was entirely focused on its own corruption issues, it did not take bribe-givers—companies—seriously. Thus, discussion of *GuanXi* was limited; only the new political

elites, who made their way to the top via higher education and political affiliation, became the focus.

Specifying Enemies: Wilsonians and Confucianism

The ideologies influencing the political elites trend are both international and domestic in nature. Wilsonians, who treated foreign countries as companies, significantly discredited foreign corruption internationally. China could have faced this international challenge in one of two ways: a) condemning the international trading forces that paid bribes to foreign officials or b) questioning its own corruption. Due to the pressure of entering the world market, the Chinese media chose the latter option, and a Wilsonian approach remained unchallenged, as the Chinese media even quoted foreign newspapers noting Chinese incompetence in the era of globalization.

Some may say that China just deemphasized bribe-giving activities historically and that this has nothing to do with international forces. However, the findings of this dissertation reveal the opposite: Chinese businessmen who bribed American officials were often criticized in Chinese media reports in the 90s. Thus, per the Chinese media, bribe-giving became particularly significant when China lost face internationally. Entering the international market made national reputation an important issue, and it took the form of emphasizing punishment for corrupt officials and bankers, not private companies.

As Wilsonian perspectives were unobstructed, Confucianism also contributed to the theme of "being civilized to fit international standards." State-Confucianism emphasizes the notion that rulers should be morally exemplary and that social order can be restored through the practice of moral virtues (M. Chen, 1995; Ng, 2000). Officials, who are supposed to lead the country virtuously, became an easy target in the discussion of bank fraud. Private business elites, who are not ideal personalities in the context of Confucianism, were left out in the 90s.

In sum, with the help of Wilsonians and State-Confucianism, corrupt officials—excluding blue bloods—were demonized by the media. This kind of framing was similar to the practice of the American media that criticized foreign corrupt officials to distract the public from recognizing the real offenders and establishing corporate liability. Indeed, the Chinese media underwent the same process, also marginalizing corporate liability. However, the American media differs from the Chinese media in that it depicted big companies as "friends of the government," whereas China did not. With the assistance of Confucianism, corporate liability vanished in the Chinese context.

Since ideologies like *corporation*, *supervision*, and the *quality of life* that dominated American media reports never appeared in China in the 90s, more ideologies are necessary to explain Chinese punishment for fraud in this era.

Designating Victims: The Big Should Fail

In the case of the American media, the "quality of life" argument brought victims to light and led to the criminalization of consumer fraud in in the 90s. Corporate fraud in America was then marginalized because there was no ideology that could emphasize the role of victims.

In China, although victims of bank fraud were portrayed ambiguously, at least the abovementioned ideologies highlighted the offender vividly, therefore contributing to the enactment of harsh punishment for corrupt officials. However, when corruption was not involved, clear depictions of the offender were removed, especially in non-bank fraud cases like those regarding corporate and securities fraud. Thus, in establishing the criminality of corporate fraud, the way victims were depicted became especially important. As chapter 7 shows, the depictions of victims in corporate fraud in the 90s are unambiguous. Summaries of the victims' activities were provided; further, consumer fraud and corporate fraud were treated equally in Chinese media reports.

As a result, the disproportionate criminalization of fraud in the U.S. did not occur in 1990s China. However, it is worth noting that the nation was also depicted as a victim by the Chinese media, as the media tended to use the term "Chinese financial system" instead of "finance system" and depict the nation as a victim of corporate fraud, therefore representing the ideology of "nation first."

In addition to a clear portrayal of victims in regard to corporate fraud, China maintained its representation of corporate fraud's criminalization in the 90s for two more reasons. First, the idea of restitution did not dominate 1990s China due to late legal rights development. Thus, the media could focus only on the criminal side of corporate fraud cases when corporate scandal transpired. Second, Chinese media reports sensationalized corporate fraud by introducing victims' stories, heavily criticizing light punishment for corporations; this was quite different from the American media's tendency to emphasize disproportionate criminalization in the 90s.

The result of corporate criminalization in China is the ideology of *The Big Should Fail*. The "nation first" ideology—the idea of Big Government—lowered the status of the corporation in China. In the eyes of the media, if a corporation created turmoil, then it should fail because it violated the social order the Party established. Also, the tension between the central and local Chinese government made corporations seem to be enemies of the central government since local government often worked hand-in-hand with corporations to boost local business. As a result, different aspects of the media—especially those that had strong connections to the central government—were not afraid of promoting the ideology of *The Big Should Fail*, which sharply contrasted its American counterpart, "too big to fail."

The promotion of *The Big Should Fail* was prominent in this era, and the Chinese media made it clear that corporations could receive serious punishment in the form of suspension of

business licenses. However, this was not the case in the 90s. Even though the media created the idea of *The Big Should Fail*, harsh punishment did not change in a way to suit this ideology. Corporate liability was only established when several ideologies strengthened and *reinforced* each other. When Wilsonian ideas and Confucianism marginalized corporate liability, the idea of *The Big Should Fail* became weak. Thus, the conflict between these ideologies should be investigated further. As the next section shows, the idea of *The Big Should Fail* did not get enough support in the 90s, which eventually led to the decriminalization of corporate and securities fraud.

Limited Surveillance and Self-Discipline

The CCDI was involved in almost every bank fraud case, thereby highlighting the corruption of officials. Its intervention was important in two ways. First, it prioritized Party discipline over criminal investigation, and a case could not be brought forth without the CCDI's permission. Second, criminality was constructed using the CCDI's interpretation of fraud cases, which means that if the CCDI was not involved, the criminality of a fraud case would disappear. Chinese corporate fraud and securities fraud were therefore first marginalized without the aggressive intervention of the CCDI.

While the media focused on corrupt officials' personalities, the CCDI proposed self-discipline as a solution for prevalent corruption. Unlike the American idea of "unethical but not illegal," emphasis of morality and self-discipline in China means *more* punishment due to the ideals of Confucianism and Legalism. Emphasis of self-discipline created a harsh punitive foundation in the 90s, ensuring that criminality would dissolve if self-discipline were not involved. As the findings in chapter 7 reveal, the terms *self-discipline* and *morality* never appeared in corporate fraud cases during this era, distancing corporate liability from criminalization. Thus, the idea of *The Big Should Fail* did not persist since a discussion of ethics, virtues, and self-discipline

was missing. In the Chinese context, these elements were needed to establish a moral and legal consciousness regarding corporate fraud.

While the CCDI established comprehensive surveillance of government officials in corruption cases, neoliberal ideologies like *supervision* were not quite established in the 90s. Without active CCDI intervention, the role of the CSRC was marginalized in corporate fraud cases, and no media reports mention the failure of CSRC supervision. The government supervised only corrupt officials, not corporations.

Compared to America, in which supervision was still emphasized in the 90s, China experienced the de-prioritization of supervision because of the concepts of self-discipline and surveillance. Moreover, although *GuanXi* was discussed in Chinese media reports, emphasis of self-discipline nullified discussion of the systematic practice of corruption and institutional reform, explaining why only a portion of the social network in Figure 8.5 was highlighted in media reports.

The lack of "demoralizing" of corporate fraud fit perfectly with the idea of the "nation-corporate management system." In the discussion of how to prevent corporate fraud from occurring in the late 90s, the Chinese media emphasized the public sector rather than its private counterpart. Echoing punishment for corrupt officials in bank fraud cases, the Chinese media started to focus on whether State-owned Enterprise (SOE) accountants were liable in corporate fraud cases. Again, private business elites were ignored in the discussion of punishment even though they were treated as serious criminals in the context of corporate scandal. In addition, other corporations related to corporate fraud—such as brokerage firms, law firms, and rating agencies--were absent in the discussion of corporate and securities fraud. *The Big Should Fail,* in turn, became rhetoric that did not lead to harsh corporate punishment.

The End: Semi-Neoliberalism and Two Lawless Spaces

Spurred by the force of globalization, Wilsonian ideas entered China, working surprisingly well with the State-Confucianism concepts that denounced corrupt officials in the 90s. Both Wilsonian ideas and State-Confucianism highlighted the corrupt nature of China's financial market and caused the media to focus disproportionately on corrupt officials rather than private business. The idea of self-discipline further distanced the punishment for private business from criminalization. Although the idea of *The Big Should Fail* emerged, it did not get enough support to establish comprehensive corporate criminality.

The result of these interactions of ideologies was a style of semi-neoliberalism that differed from its American counterpart (see Figure 8.6). With the aggressive intervention of the CCDI, the ideology of Big Government emerged, and the idea of separation of politics and finance came to indicate the separation of corrupt officials and finance. Neoliberalism was accepted partially since the Big Government ideology could not be denied in China, especially in bank fraud cases. Anti-corruption ideologies became more important than neoliberalism, and the feeling of inferiority this prioritization generated certainly enhanced skewed punishment for officials and the marginalization of corporate punishment.

The ideologies depicted in Figure 8.6 were not stable since they sometimes contradicted each other; as such, whether they would persist after 2000 became a valid question. However, at least two lawless spaces created by these ideologies could be observed in the 90s. The first lawless space is the comprehensive surveillance of corrupt officials, in which Party discipline triumphed over the rule of law. The second lawless space is the supervision of the stock market, which was marginalized due to the non-ethicizing of corporate fraud.

The idea of rule of law disappeared in both America and China in the end of 2000s. By prioritizing the nation and de-ethicizing corporate fraud, rule of law was suspended in China, whereas the U.S. used the rhetoric of business ethics and restitution to exclude corporate liability. Neoliberalism was certainly not the only force affecting the decriminalization of corporate and securities fraud, and local, national ideologies in both countries mediated the impact of neoliberalism, attempting to regulate its effect on corporate punishment.

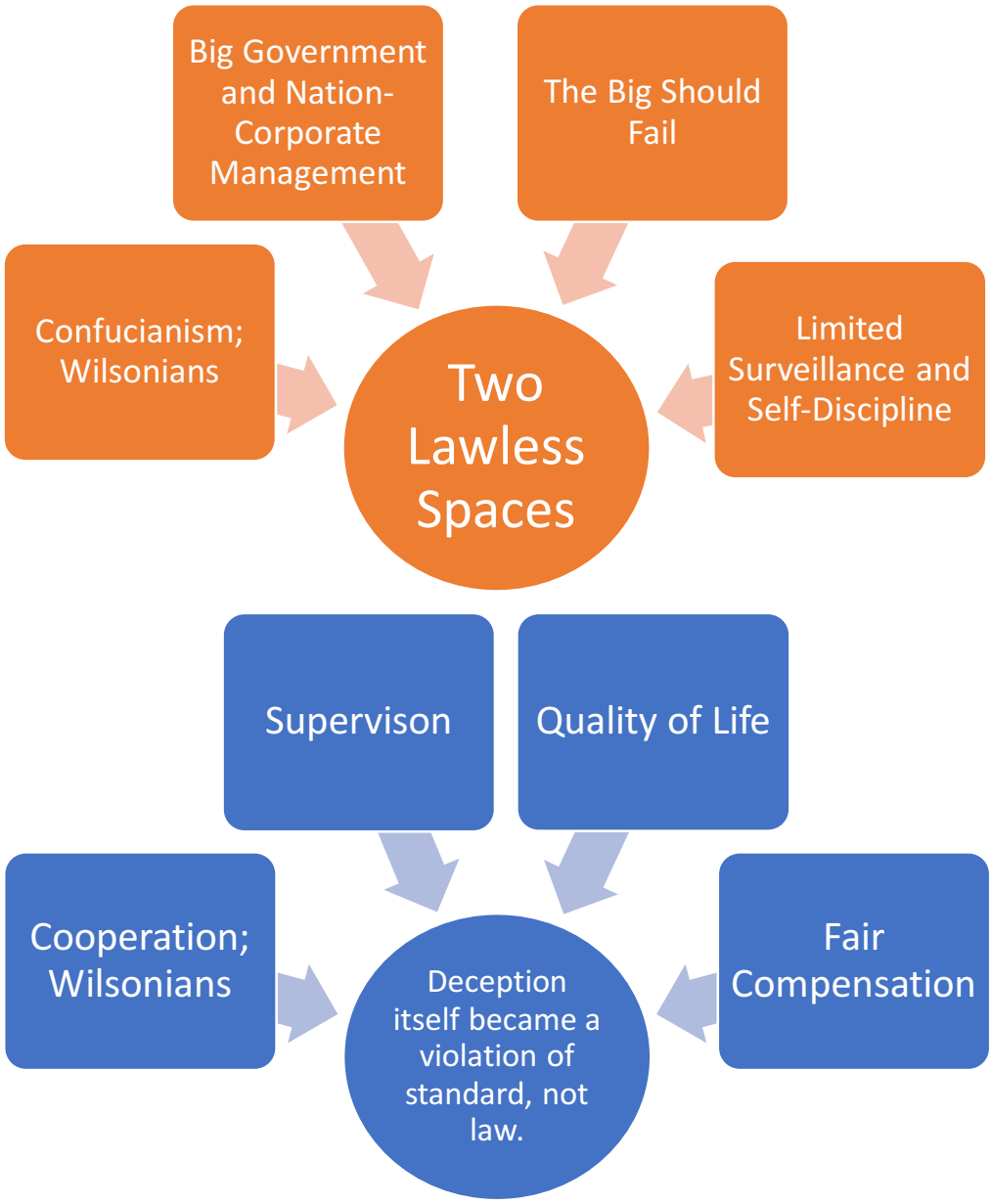


Figure 8.6: A comparison of American (blue) and Chinese (orange) 1990s fraud ideologies

Chinese Framing of Fraud in the 2000s

No More Ethicality

As illustrated above, ethicality is an important channel through which ideologies about punishment in China are communicated, and the de-ethicizing process of corporate fraud in the 90s resulted in a non-punishment ideology. This process of de-ethicizing became widespread after the 2000s. Not only corporate fraud, but also bank fraud, was influenced by the de-ethicizing process. The media suddenly stopped focusing on the personalities and personal characteristics of bank officials who committed fraud in this new era, and they started to use the American term "scandal" to describe crime. Personality and ethics were removed, and there was no further focus on self-discipline, which was a dominant ideology in the 90s. Further, white-collar criminals were no longer "street rats" and were instead officials who were unfortunately caught by the CBRC.

As a result, *GuanXi* was no longer the focus in the 2000s. The appearance of social networks in media reports dropped 20% in the 2000s, and readers did not even know who provided bribes in post-2003 bank fraud cases. Even though *GuanXi* was depicted, it was *normalized* and was *acceptable,* according to the media. As a report notes, "Multinational corporations are not perfect, and they bribe anyone anywhere, not just in China" (*Fengshang Weekly*, January 1st, 2007). In this regard, *GuanXi* was transformed from a Chinese characteristic into a normal business practice that had significant financial repercussions everywhere around the world. Even in the case of corporate fraud, the media only discussed *GuanXi* when local government was involved and, interestingly, accused the local government instead of corporations' *GuanXi*.

This trend of normalizing *GuanXi* could indicate the resistance of Wilsonian ideas. In this new era, the Chinese media no longer viewed corruption as a domestic issue, but a universal one.

Thus, the media indicated that government officials should keep their hands off the financial system to avoid scandal; once the political-economic system was revised appropriately, they felt bank fraud would not be an issue. This trend inevitably decriminalized both bribe-takers and bribe-givers; as corporations were already unsupervised, the crimes bank officials committed were also normalized.

The Role of Deterrence and Shifting Responsibility

Before 2000, it was the CCDI that deterred crime using the idea of self-discipline. After 2000, the CCDI's existence was only symbolic. No reports emphasized self-discipline or Party discipline, and the CCDI was effectively replaced by the CBRC. Since CCDI investigation was de facto punishment, the removal of the CCDI from media reports signified the non-punishment trend for bank officials. However, the CBRC did not focus on punishment either. The CBRC often viewed bankers as violating *inner banking rules* after 2003. This term is similar to its American sibling *business ethics*, indicating global acceptance of fraud.

The only task that was left for the CBRC in this new era, according to the media, was to deter crime. One possible reason is that the ideology of deterrence was prevalent in China in the 2000s, as the government tended to initiate "crackdowns" for social problems. However, it is worth noting that the crackdown did not entail comprehensive prevention of crime. In contrast, the crackdown worked as a means of assuaging public resentment and creating stability, echoing the mission of the SMI. As a result, national newspapers, such as *People Daily,* emphasized that bankers should be supervised by *the public*, not the government. The only task that the CBRC should undertake, according to the media, is that of punishing officials—if they happen to be caught.

The same scenario happened with the CSRC: the media shifted supervisory responsibility from the CSRC to the brokerage firm, blaming the brokerage company rather than the CSRC in securities fraud cases (as exemplified in chapter 7). In the end, the financial system was supervised by public and private firms, with no government involvement in sight. The media only blamed the government in the case of law enforcement, which implied that fraud occurred not because of a weak legal system, but weak law enforcement. The media communicated the idea that once punishment was enforced—usually in the form of administrative sanctions— fraud would be deterred.

This shift of responsibility, ironically, created a fertile environment for fraud in China, as inactive NGOs and the public did not actively supervise big corporations, and failure to do so would generate problems worse than those of their counterparts in the U.S. Although the role of the American government was also marginalized in the 2000s, at least the American financial system created its own rules. With the idea of privatization of justice, corporations in the U.S. were still "regulated" using certain forms of supervision, but the rules were not strict. In China, private supervision did not even exist when the roles of the CBRC and CSRC were minimized. In other words, China accepted the spirit of market fundamentalism but did not embrace the solutions market fundamentalists proposed.

As a result, when the U.S. used the weak rhetoric of "war on fraud" due to the non-adversarial nature of white-collar crime, the system at least operated using its own ethics in the 2000s; in China, although there was strong rhetoric regarding the crackdown, the system was not regulated appropriately since the role of the CBRC and CSRC was limited to punishment and ethics was no longer the focus.

Crippled Neoliberalism and Investment Confidence

The Chinese weak supervisory framework could be explained by its resistance to neoliberalism, especially in the form of small government. If the market could be regulated by itself, and if the concept of self-regulation was widespread, the authority of the Chinese government could be severely threatened. When tension between the central and local government persisted, the idea of self-regulation was capable of intensifying it.

Thus, even though the media occasionally promoted the idea of separation of government and finance, this concept never became the dominant ideology. It is true that with this separation, the issue of *GuanXi* could be fixed. However, it is also true that the government could have lost its control over the economic system if the small government ideology was promoted. The result of the Chinese resistance to small government is crucial. First, in order to decriminalize bank fraud, *GuanXi*—the imminent problem of China—was normalized, as indicated by the process of de-ethicizing introduced in chapter 6 and 7. Second, without a solid supervisory framework, either from the public or the private sector, neoliberalism was introduced to China in an extremely incomplete form.

Since the Chinese government could not be separated from the economy, the Party was obliged to lead the country to ensure investment confidence. Unlike the American media, which used investment confidence to decriminalize corporate fraud (representing the too big to fail concept), the Chinese media used investment confidence to stress the Big Government ideology. To prove that Chinese companies are worth investing in, the government needed to ensure that the Chinese market did not lose face internationally, and this is why the media focused on how bank officials "betrayed" the government instead of on their systematic practice of taking bribes.

In sum, the crackdown in China aimed to ensure reputation and investment confidence, not to ensure the regulation of all corporations involved. The Hamiltonian approach, which emphasized international trading business, certainly integrated well with the Chinese media's depiction of fraud, as the role of government was to deter crime and insert itself into the international market. Even with the crackdown—and a lack of privatization of justice—China still de-emphasized corporate fraud like the U.S. did in the 2000s (see Figure 8.7). Although both countries experienced the retreat of the role of government, America used a semi-legal system (privatized justice) to replace the role of government, while China insisted on a Big Government ideology that led only to a superficial crackdown. This may explain why deferred prosecution agreements (DPA) were so popular in the U.S. in the 2000s, as they worked in tandem with the idea of privatized justice. China, on the other hand, used crackdowns, not DPA, to address fraud issues, which aligned with its insistence on Big Government. The results of both approaches were similar, though corporations were not under supervision in China and not initially punished in the U.S. Different ideologies eventually led to the same consequences.

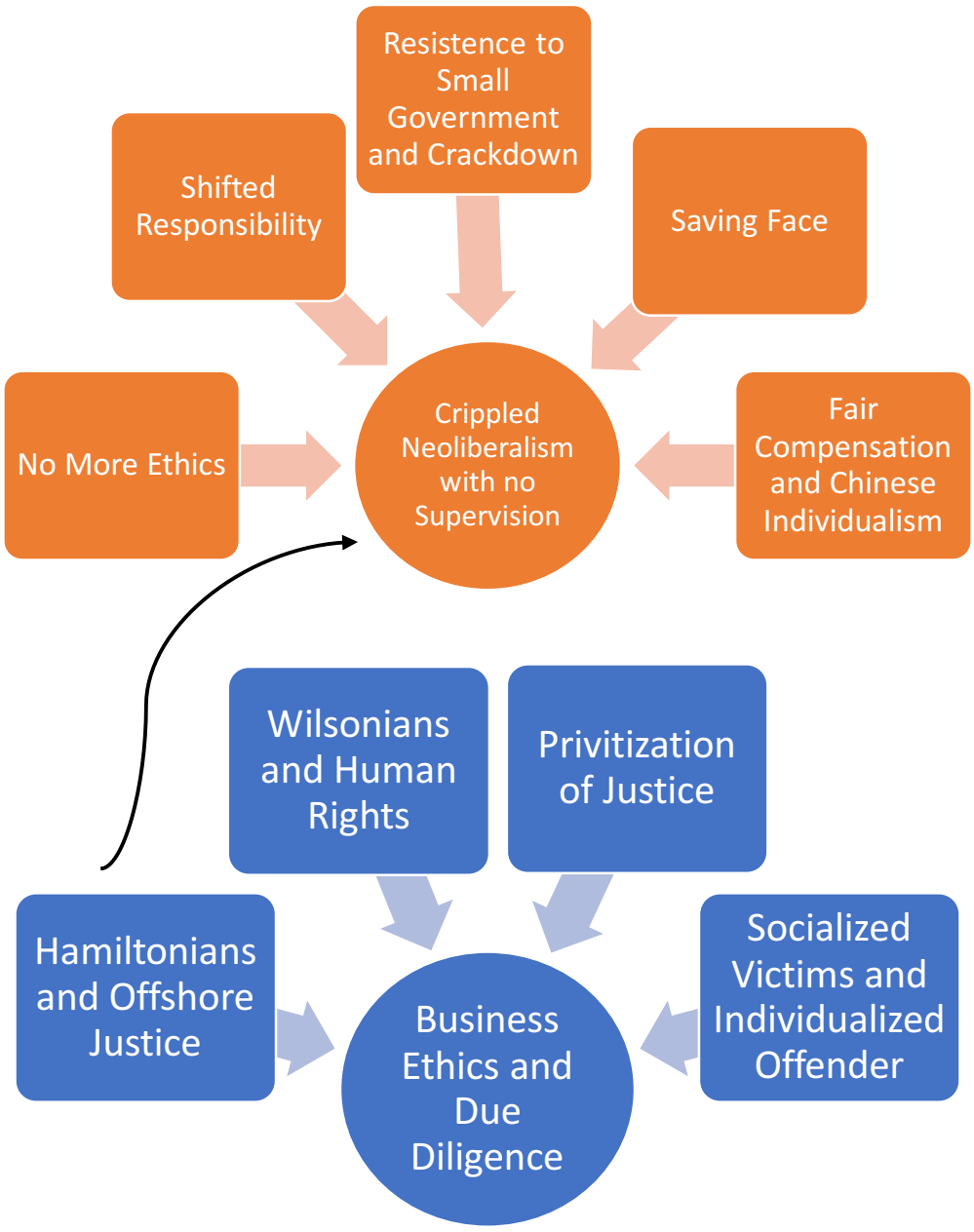


Figure 8.7: A comparison between American (blue) and Chinese (orange) 2000-era fraud ideologies

The Demise of *The Big Should Fail*

As illustrated in the last section, the unique idea of *The Big Should Fail* was unstable in the 90s. With no supporting ideologies at that time, the ideology was bound to fail eventually. In the 2000s, it seemed like the concept of *The Big Should Fail* would thrive with the regulation of "Three strikes and you're out." However, although the media questioned the light punishment of securities firms in the 2000s, quoting the three strikes law, the ideology eventually disappeared with the emergence of restitution, presenting a scenario similar to what occurred in the U.S. in the 90s.

Fueled by the effects of restitution, the Chinese media shifted its focus from the three strikes ideology to the legal debate of recklessness and due diligence. Because it did not question the securities firm's role in fraud, the media accepted the concept of recklessness easily. The criminality of securities fraud soon vanished due to discussion of fair compensation and investors and lawyers' satisfaction, and the decriminalization process echoed the theme of responsibility shifting from the CSRC to private firms.

It seems bizarre that the media abolished the idea of *The Big Should Fail* so readily. However, looking back at the interaction of ideologies in China, it is not surprising that *The Big Should Fail* ideology disappeared. Explanations for this are as follows:

1. *The Big Should Fail* was not supported by the self-discipline ideology in the 90s, and this ideology focused only on government officials.
2. *The Big Should Fail* was not supported by State-Confucianism in the 90s, while the latter focused only on being a moral paragon.
3. The Self-discipline ideology, instead of becoming more prevalent in the 2000s, became even more scarce. To resist the Wilsonian approach, Chinese media reports chose to normalize *GuanXi* and de-ethicize more white collar crime than they did in the 90s.

4. Affected by Hamiltonians, the Chinese government focused more on reputation and investment confidence than corporate regulation. The crackdown initiated by the government aimed to save face for the Chinese stock market, not to regulate corporations. The Big Government ideology did not lead to harsh punishment. A perfect example of this is that in 2015, Chinese authorities arrested 197 journalists and investors for "spreading rumors online about the stock market crash" (BBC, 2015). In this regard, even investors could be fraud offenders, which is indicative of the Chinese trend of reputation-oriented law enforcement.
5. In the end, restitution was just the final nail in the coffin—the action negating the ideology of *The Big Should Fail*. Chinese individualism also contributed to the power of restitution, as illustrated in chapter 7.

Thus, the demise of *The Big Should Fail* was destined.

The Spectrum of Ideologies

Neoliberalism is not solely to blame for corporate non-punishment, as a comparison of the U.S. and China proves that ideological effects are far more complicated than scholars previously thought (see Figure 8.8).

In the 90s, the rise of Hamiltonian and Wilsonian approaches in the media created a generally friendly attitude towards big corporations while framing foreign countries as enemies. However, the Wilsonian human rights approach had the potential to create backlash in China, as China refused to recognize *GuanXi* as an issue and focused only on individual corrupt officials who were responsible for bank fraud. Despite the reality that corrupt officials, rather than big corporations, were over-emphasized, traditional Chinese values did not recognize *Too Big to Fail* in the 90s, instead asserting that big corporations should fail if they commit serious fraud.

In the 2000s, America experienced further de-criminalization of corporate fraud. Foreign countries were still enemies, and corporations were friends that fought against fraud. The privatization of justice arose for both FCPA violations and corporate fraud cases, ruining the nature of the adversarial legal system in the U.S. and blurring the image of victims. The idea of restitution made non-punishment prevalent, and victims became part of the larger idea of "investment confidence"—a vague term that failed to contribute to corporate criminality. The role of the government became merely about imposing punishment, and even though corporations entered the penal radar, the formal legal system tended to quote the semi-legal system—business ethics—that the privatization of justice shaped. Bad-apple framing that blamed only one or two offenders became frequent, and this explains both why big corporations received DPA and NPA often and why some lower-level executives were occasionally harshly punished.

However, Chinese ideologies differ from their U.S. counterparts in several ways. First, the privatization of justice did not gain importance in China. Second, it was also difficult for the Chinese government to promote a small government ideology. In this regard, the de-criminalization process in China was a different story. The idea of self-discipline (ethicizing) dominated the sphere of white-collar punishment in China, and State-Confucianism enhanced the execution of punishment. However, in the 2000s, China chose an approach to de-ethicizing corporations and bank officials that resulted from the normalization of *GuanXi*. One possible explanation for this is that although neoliberalism and Hamiltonian ideas prevailed, the Chinese government was reluctant to accept a small government ideology that would challenge its authority and legitimacy. Thus, without separating politics and finance, the Chinese media chose to de-ethicize corporations, making the framing of self-discipline disappear in the field of corporate fraud. Although a victims' rights movement could lead to public requests for punishment, the idea

of restitution and Chinese individualism stymied legal mobilization. In the end, the crackdown led by the Chinese Justice Department was superficial: it focused only on saving face for the nation, and victims were marginalized in the rhetoric of "tough on crime."

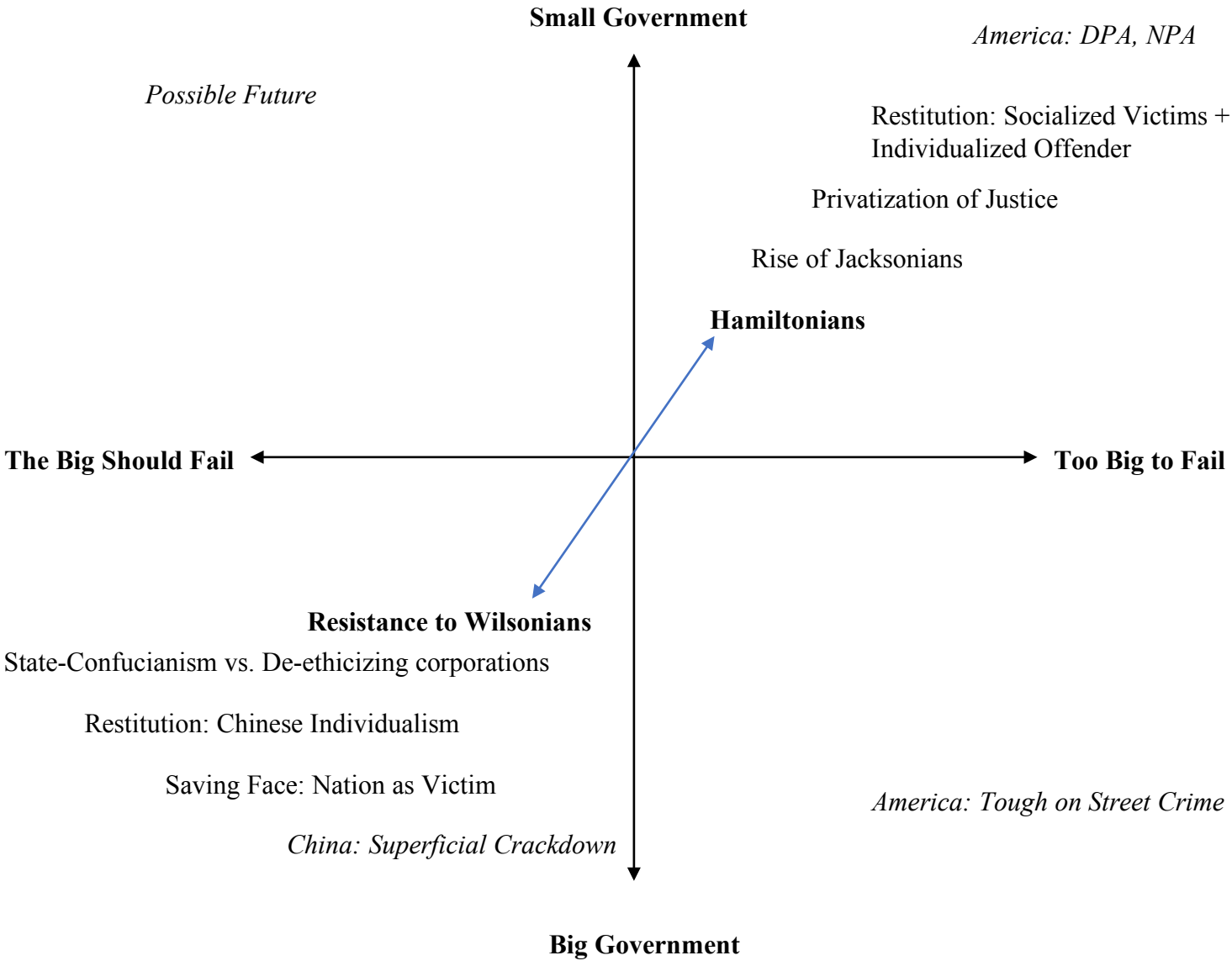


Figure 8.8: The ideology framework after 2000

This chapter, however, is not suggesting that a certain model is better than another. America had a rather healthy self-regulation system in comparison to China, but the idea of *too big to fail* rendered the legal system a form of bureaucratic inertia. Chinese supervision of the stock market was weak, but its *The Big Should Fail* ideology had great potential to create corporate criminality. Thus, without making claims that a certain framework should be prioritized, this paper aims to redefine and moderate existing ideologies that could help both nations establish a healthy financial system. My suggestions and proposals are discussed in the conclusion.

Chapter 9: Conclusion

Different Ideologies, Similar Results

It is common for China to criticize the American laissez-faire financial system, and America also denounces China for not being liberal enough to embrace its financial ideals (Z. Chen, 2010). This disagreement may partially reflect the financial systems of these two countries, but America may be less neoliberal than we think, and China may be more market-oriented than we assume. As this study reveals, the American media actually promoted *re-regulations* in the 90s, and although regulations were soon replaced by business ethics, the term "privatized rules" became an important reference to the formal legal system. On the other hand, the Chinese media was actually amenable to the laissez-faire market as long as it did not challenge Big Government ideology, and even though the Chinese media retains the Big Government ideology to this day, the role of government was reduced to that of mere punishment in the 2000s.

Despite the different ideological development in these two countries from the 90s to the 2000s, two similar results stand out in the world of corporate punishment: (a) with more law on the books, there was less enforcement in practice, and (b) the power of the government was diminished.

Weak Law Enforcement in the U.S.

In the famous book *Freer Markets, More Rules*, Steven Vogel accurately indicates that *deregulation* is an inappropriate term for describing the free market (Vogel, 1996). From the 80s onward, more and more regulations were created in order to foster competition and liberalization. This is also true in securities law when regulations are devised to ensure stock market transparency, to prevent insiders from taking advantage of information available to them, and to prohibit market manipulation (Cioffi, 2010). However, when securities legislation reached its peak in 2002 with

the emergence of the Sarbanes-Oxley Act, the prevalent usage of DPA and NPA also emerged in 2003, which is the penal turn this dissertation introduced in chapter one. Corporate liability, therefore, was not established with these legislative efforts.

Thus, the research question here is not about reregulation or deregulation, but about weak law enforcement that provided rent-seeking opportunities (Macey, 2010). Law on the books may have changed due to corporate scandals like Enron, but if ideologies and institutional restraints remain unchanged, any crisis-driven reform will only be symbolic, allowing the gap between the law on the books and law in action to be maintained. This dissertation thereby observes the ideological change in the media from the 90s to the 2000s in an effort to understand the ideologies that may contribute to recent weak law enforcement for corporations.

First, this dissertation reveals that the American media created a rather business-friendly atmosphere for trans-national corporations by depicting foreign officials as enemies and companies as victims in the 90s, and with the rise of Wilsonian ideas, this attitude was gradually applied domestically. Although securities litigation was prevalent in the early 90s (Seligman, 1996), in the 90s, the media started to emphasize neoliberal ideas such as *cooperation* and *supervision* to minimize corporate fraud. It came as no surprise that the Private Securities Litigation Reform Act of 1995 (PSLRA) was pushed by conservative Republicans, who asserted that the government should discourage and curtail the usage of litigation against corporations. The media, although often promoting the stories of corporate fraud victims and compensation, gradually chose the conservative side, as chapter 4 illustrates.

Second, privatization of justice in the 2000s, although hindered by the enactment of the Sarbanes-Oxley Act, negated governmental intervention of fraud. Corporate fraud was normalized by the media even under the shadow of the Enron crisis. Public insecurity regarding the financial

market indeed led to the enactment of laws, but it did not change the media's attitude toward big companies. In fact, the media reported *less* on victims after the Enron crisis—a counterintuitive result this dissertation reveals. Instead of reporting on victims, victims were socialized and converted into an abstract idea called *investment confidence*, and instead of being portrayed as perpetrators, companies were depicted as being on the same side as victims, protecting investment confidence. As a result, the company was not blamed, but instead cooperated with; the consequence of this cooperation was the privatization of justice, in which privatized rules were the norm. In this regard, any violation of so-called rules became a privatized, ethical issue, and the criminality of violations was minimized. Moreover, as chapter 5 shows, offenders were individualized in media reports with emphasis on *conflict of interest*, which is the idea that blames individual analysts instead of companies themselves. Corporate liability was therefore minimized, and the only task left for the government was to punish lower-level individuals who were reckless. The justice department's punishment role tended to be small in the 2000s, and the idea of *too big to fail* is thereby prevalent.

The public anxiety about the stock exchange market after Enron was strong, and neoliberalism lost some of its luster politically, leading to the Sarbanes-Oxley Reform (Roe, 1991). However, as Cioffiti correctly indicates, reform was just an interregnum of interest group politics when the Democrats used the scandal as ammunition against the Republicans and the Republicans sought to delay structural reform in legislation (Cioffi, 2010). The Enron crisis weakened interest group politics and eventually led to legislative reform, but the crisis did not change the cultural and political structure of law enforcement. Legislative reform was presented to the public as a form of morphine that failed to challenge the media's corporate punishment framing.

Thus, even though the Sarbanes-Oxley Reform centralized corporate governance and neoliberalism lost its place in law on the books in the 2000s (Cioffi, 2010), the neoliberalist's legacy—generated and created in the 90s—persisted. Real reform in law enforcement did not take place.

In 2003, a year after the passing of the Sarbanes-Oxley Reform, business elites started to criticize it as "a criminalization of corporate risk taking, which is the same as criminalizing capitalism" (*Wall Street Journal*, July 22, 2003). In addition, when the SEC tried to push for a change in proxy rules to give investors more power in the mid-2003s, the proposed reform was heavily criticized by corporate lawyers and business groups; in fact, the SEC received 13,000 letters of complaint, which was unprecedented in SEC history. In the end, the idea of the victim gradually vanished in media reports, and the U.S. faced increased usage of DPA and NPA for big companies. Apparently, not only institutional constraints—but also political-economic ideas and ideologies—contributed to the non-punishment of corporations in the U.S.

Weak Law Enforcement in China

This dissertation has analyzed Chinese media reports published both before and after 2002. The YiGuangXia case, also termed "the Chinese version of Enron," took place in 2000, and numerous reforms, like the Sarbanes-Oxley Reform in America, followed in the early 2000s. The result of the observed ideological change in the Chinese media was very different from the American ideological change, but both eventually led to a similar result.

Unlike the U.S., China has a history of challenging corporations and therefore promoting the idea *The Big Should Fail*. However, in the 90s, this ideology became shaky because of numerous challenges. First, the framing of bank fraud, not securities fraud, set the tone for the media's attitude toward corporate liability. State-Confucianism in the 90s made the media focus

on political corruption instead of corporate liability, and the over-intervention of the CCDI also contributed to over-emphasis on s*elf-discipline* and *surveillance* that was supposed to solve the issue of *GuanXi*. With the help of 90s-era Wilsonian ideas overseas, it became apparent to the media that corrupt officials, not corporations, were the enemy of the financial market. As a result, the media focused more on corruption than on illegal corporate activities. Moreover, although the media often denounced corporations for committing fraud, the actual punishment for big companies was symbolically light, especially when compared to the punishment for corrupt officials.

Thus, the ideas of *The Big Should Fail*, Big Government, neoliberalism, State-Confucianism, and *GuanXi* clashed in the 90s. Big Government entailed market intervention, while neoliberalism operated in an opposite fashion. The *GuanXi* problem signaled the separation of politics and the market, while State-Confucianism proposed the separation of corrupt officials and the market.

These ideological clashes were not ideal for state governance, and the Stability Maintenance Innovation (SMI) in the 2000s certainly viewed this instability as an issue. As chapter 8 contends, continued assertions about *GuanXi* problems would eventually lead to the separation of politics and market, and it is plausible that this is not the result China wanted due to its belief in state capitalism. What happened in the 2000s proves this point; the media started to normalize *GuanXi* as normal business practice in a way similar to how the American media normalized fraud. When the CBRC and CSRC replaced the CCDI in criminal investigation during the 2000s, the ideas of self-discipline and surveillance no longer were present in media reports. *GuanXi* was no longer an issue addressed by the media, and corporate liability was again minimized due to this ideological change.

The *Big Government* ideology persisted in midst of this change. However, since surveillance was no longer the focus, the role of *Big Government* focused only on punishment, not intervention. The media portrayed the nation (PRC) as a victim in the 2000s, and white-collar criminals were punished because they betrayed the nation, not because they harmed investors. This "losing face"-driven punishment was superficial and only served as a means of deterring crime symbolically and assuaging public anger, which may explain the "Strike Hard" campaign that occurred in China every three to four years. In regard to corporate fraud in the 2000s, the media started to blame brokerage firms rather than any government agencies and asserted that the problem of crime could be solved with solid law enforcement, which eventually only punished lower-level executives (Cheng, 2016).

Both the normalization of *GuanXi* and the superficial crackdown inspired by the Big Government ideology contributed to the minimization of corporate liability. Therefore, although the legacy of *The Big Should Fail* existed, it seldom translated into real punishment for big companies. A possible way to re-establish corporate liability could be some bottom-up, grassroots efforts that aim to protect victims, but the media did not take advantage of this approach. The legal mobilization initiated by "Right Defender Lawyers" was limited, and as chapter 7 indicates, Chinese individualism, which focuses only on self-justice, also hindered the creation of corporate criminality.

In the end, neoliberalism changed form as a result of the ideological clashes from the 90s to 2000s. Indeed, the term *investment confidence* was used differently in Chinese media than in American media. While the Chinese media used investment confidence as an excuse for the existence of *Big Government*, the American media applied the term to stress the importance of market autonomy. However, both countries faced the same scenario at the end of 2000: the

minimization of corporate liability. Ironically, both countries asserted that they would undertake "war on corporate crime" in the 2000s. While China utilized this war as part of a political agenda, America made the concept a law on the books assertion that was never actualized.

Limitations

This dissertation, while informative, does include a number of limitations that should be discussed.

First, the media analysis utilized in this study targets only certain aspects of ideological change. The media is just the distributor and partial creator of ideologies, and whether or not ideological change was "accepted" by society and the public during the discussed eras is not addressed by this dissertation. Moreover, the media not does not merely distribute ideologies, as it also reflects existing ideologies. In this regard, the observed ideological change in this dissertation is incomplete due to the fact that it does not include analysis of public survey documentation.

Second, the media analysis of this dissertation is limited to newspaper data and therefore does not include important aspects of media like televised news and social media. However, since social media was not popular before 2008, I do not believe that a lack of social media analysis adversely affects the presented findings.

Third, the big and small government ideologies this dissertation introduces are quite narrow in scope. This dissertation does not focus on the *front door* of the criminal justice system—which includes the concepts of law-making, lobbying, and administrative rules—and thereby does not analyze neoliberalism's impact on Congress and American political agenda. Instead, this dissertation focuses only on the *back door* (law in action) in regard to punishment—particularly

where prosecution is concerned. In this regard, this dissertation doesn't concern itself with holistic representation of big and small government; instead, this study refers only to the government's attitude toward *punishment*. To include *both* the front and back ends of the criminal justice system, the exploration of neoliberal and other ideological effects on law-making is necessary, and definitions of *Big Government* or *small government* within the criminal justice system can only be expounded upon in future study.

Forth, although a comparative work is informative, it is also important to note that the two countries have different media institutions. The players that participate in American media reports are various, including, but not limited to, government, lawyers, experts, and professors, but the players in the Chinese media are much more limited due to censorship. The Golden Age of media in China (2000-2008) partially lessened the impact of this problem since more players were involved in this era, but overall, it can be said with certainty that the media serves a different purpose in America and China, especially considering that the media in the latter country is part of the Party's propaganda apparatus. This dissertation strives to limit the scope of study to the ideologies that are disseminated by the media and tries to introduce the players in all media reports to allow for equal comparison, but this particular limitation of comparative studies cannot be ignored.

Policy Implications and Future Studies

The widening social inequality and wealth gap between the rich and the poor have been serious problems in both American and China, and neoliberalism is a factor contributing to this inequality (Harvey, 2013). Although how neoliberalism functions in promoting inequality is beyond the scope of this dissertation, this study aims to add a layer of analysis to the way neoliberalism establishes corporate liability in regard to punishment for white-collar crime. As this

dissertation reveals, neoliberalism has been moderated by local ideologies, and it contributes to different forms of corporate liability minimization. According to my analysis, America and China would each need to undergo different ideological changes to re-structure their response to corporate criminality.

Policy Implications. In America, the minimization of corporate liability does not occur in consumer fraud cases, and the reason for this is investigated in chapter 5. NGOs were ready to confront consumer fraud in the 60s before neoliberalism dominated America, and the media's framing of consumer fraud, which set the tone early, did not fit the rhetoric of "fair compensation" and "restitution." The media focused too much on restitution in 1990s corporate fraud cases, then turned to the idea of *investment confidence,* which replaced the idea of victimization of investors, in the 2000s.

To alter the framing of future corporate cases, it is important to bring victims back into the discussion—the strategy proposed by the Obama administration that led to the Dodd–Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) in 2010 (Barak, 2012). The Dodd-Frank law authorized the enactment of the Consumer Financial Protection Bureau (CFPB), the agency advocated by Senator Elizabeth Warren. The CFPB aims to protect consumers in the financial sector, and by using the term *consumers* rather than *investors,* the law equalizes the status of common consumers and investors in order to confer identical protections.

Although the CFPB is heading in the right direction, actual ideological change can be more complicated than the law assumes. The role of the SEC and its ideologies does not fundamentally change because of Dodd-Frank. While the FTC asserts that its role is "on the side of angels" to avoid bipartisan criticism, the SEC is clearly on the corporate side. Moreover, the criminality of consumer fraud was rigid because of the ideology of "quality of life," which aggressively created

the criminality of consumer fraud in the 90s. However, this ideology does not apply to corporate fraud at all.

Thus, in addition to legal change on the books, other ideological changes are imperative. First, the term *investment confidence* should be deconstructed, and the media should not let the term kidnap the idea of victimization. Second, even if the victims are inserted back into the discussion, this would not prioritize restitution, which is described in chapter 5. Instead, restitution and punishment should be emphasized simultaneously, and reparations for victims should not exclude prosecution and penalties. The idea of restorative justice does not exclude the idea of redemption, so in addition to proper compensation, appropriate punishment for corporations should be implemented.

To accomplish this last point, the media should de-construct the idea of business ethics in two ways. First, business ethics should be enacted into the law, accompanied by legal details so that the use of vague terms such as *honesty* and *recklessness* can be avoided. This does not necessarily contradict the current trend of privatized justice; to expand system capacity, privatized justice could help in implementing appropriate rules and ethics. However, privatized players should only be law *enforcers*, not law *creators*. In other words, privatized players should not enact rules and ask the justice system to respect them. Instead, the justice department should establish clear rules and present charges based on the law instead of judging a case using business ethics created by corporate lawyers. This will lead to the second step of deconstruction: to re-establish the SEC's role of law-making. Once the SEC is on the side of law-making, the prosecutors can then establish their own judgment in regard to prosecution.

In sum, in detaching the role of law-making from privatized actors, the SEC could *supervise* the financial industry without being friends with big companies. What President Donald

Trump is doing right now is quite the opposite, as he appointed big companies' CEOs to government positions and plans to replace Dodd-Frank with weaker financial supervision. Although he challenged the Establishment and Wall Street during his campaign, which may prove to shake the current problematic criminal justice system, it seems that his actions are merely symbolic. With the rise of Jacksonian politics, the establishment of corporate punishment has a long way to go, and the idea of *too big to fail* may become stronger than before—even given the Occupy Wall Street movement.

In China, the most crucial thing needing to be done is to fully establish the idea of *the Big Should Fail*. The idea of corporate punishment is not new in China, and with proper ideological adjustment, China could establish an appropriate corporate punishment framework.

First, the idea of surveillance needs to shifted. In the 90s, national surveillance focused on Party discipline, which is not the solution to the *GuanXi* issues. In the 2000s, CCDI surveillance was replaced by the CBRC and CSRC, which are departments that care less about corporate governance. Treatment from both institutions is too extreme, and to determine a more practical path, it is crucial for the government to supervise the financial market without applying Party discipline. In other words, the Party should be separated from the financial market supervision. In this regard, the rule of law could triumph over Party discipline and reach the goal of establishing corporate governance, and without involvement of Party discipline, focus will shift from government officials and "saving face" polices to corporations' criminality—the perpetrator in the world of finance.

However, what current president Xi Jinping does is antithetical to this idea. He advocates State-Confucianism to stress the ideal of the moral leader who should lead the country in all aspects, which implies counterproductive, continued focus on officials, not corporations. Also, the CCDI

is again participating in the crackdown on governmental corruption, but as some researchers note, this anti-corruption campaign only serves as a weapon with which to disempower Xi's political opponents (Cheng, 2016).

Moreover, in 2017, the chairman of the CSRC, Liu ShiYu, said that corporate governance should be reconstructed using Party discipline (*China Economics*, Feb 26, 2017), which is a sign that the Party is reluctant to take its hand off the rule of law in the financial market. If this is the case, then Xi and Liu have attempted to revert society to what it was like in the 90s, a time in which punishment focused only on corrupt government officials instead of corporations. The direction China was heading in the 2000s was not effective, but going back to the 90s would be even worse.

The current weak supervisory framework in China cannot not be fixed solely by the crackdown on corruption. It is true that corrupt officials could ruin the market, but even without corruption, a dysfunctional supervision framework and weak punishment system can still jeopardize it. As this dissertation indicates in chapter 8, China already possesses the law on the books, and the real issue is not just corruption, but weak law enforcement. Thus, in addition to getting rid of the idea of Party discipline, it is crucial that China ethicizes corporate fraud again by adding a virtue violation status to corporate fraud, which would be a way to establish criminal liability. With a re-ethicizing process in place, the CSRC may have more courage to implement the three-strikes ideology—the concrete rule of law that cemented the *Big Should Fail* ideology.

Chinese corporations are now entering the U.S. stock exchange market, and vice versa. Although it is plausible that Chinese companies are facing more rigid rules in the orbit of U.S. securities law than they did in China, as this dissertation reveals, both countries have suffered from a weak supervisory framework and law enforcement. In this regard, without several proper

ideological changes, both countries will face more financial crises due to their combined international market, especially given their current administrations.

Future Studies. Several issues raised by this study can hopefully be addressed in future studies. The most obvious follow-up study would be one that analyzes public opinion. With surveys, interviews, and social media analysis (e.g., Weibo, Facebook, Twitter, etc.), a more complete depiction of ideological change from the 90s to the 2000s could result. In addition, further media study could also reveal ideological change after 2010, which is especially relevant because of the Great Recession.

Also, a study of government documents—such as public hearings, memorandums, and legislative records--is also important in explaining "the Culture of No Control." Since this dissertation only researches the back end—the punishment side of criminal justice system—a comparative study conducted on the front end—Congress—could help researchers develop a clearer framework for current weak social corporate control.

Lastly, a study focusing on other forms of white-collar punishment may further illuminate the current trend of corporate punishment, especially in regard to environmental crime. Similar to consumer fraud cases, environmental crime cases can also make the "Quality of Life" argument to establish corporate liability, and the process of criminalizing corporations in environmental crime may shed light on solutions for "Culture of No Control" complications in the financial market.

Final Words

In conclusion, this dissertation discusses ideological changes from the 1990s to the 2000s to explore the significant ways cultural elements hinder the application of justice. Overall, the ideological changes observed in media reports reveal the significant problem of non-punishment

for corporations. Although different ideological trends are present in America and China, corporations have long been able to avoid criminality in both nations, which begs the question of what may happen next. Positive ideological change might be possible, and with globalization becoming more of a force now than ever before, reform is indeed imperative.

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