The Science of Deception: The Human Sciences, the Law, and Commercial Culture in America, 1860s-1920s

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Abstract

This dissertation investigates the cultural meanings ascribed to the mental processes of deceiving and being deceived in America from the end of the Civil War to the outset of the Great Depression. I pay particular attention to the interplay between the sciences, the law, and commercial culture and how their changing relationships were constitutive of new 'historical ontologies' of deception. For much of the nineteenth-century, the showman P. T. Barnum had publicly displayed fraudulent objects, arguing that they honed the individual's commercial sensibilities and hence served the public good. I use the 1869 anthropological hoax known as the Cardiff Giant to investigate the unmaking of Barnum's world of humbugs. Next, I take seriously the commentary of historical observers who claimed that the confidence man was both a commercial swindler and pioneer of 'mass psychology.' During this same period, psychologists like Hugo Münsterberg and Joseph Jastrow developed public identities for themselves as experts in human deception. Furthermore, I investigate the failed attempt by experimental psychologists to introduce laboratory measurements into legal cases to determine whether or not consumers were likely to be deceived by acts of trademark infringement. I end with the melding of psychological techniques and Progressive Era policing, exploring the concept of a 'pathological liar' and its counterpart the supposedly normal individual whose lies could be detected through physiological measurements. A reoccurring theme is how psychological investigations into the deceptive people and things constituted an array of the bio-political strategies for regulating the marketplace.

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Tables of Contents

Introduction:
The Sciences of Deception and the Bio-Politics of the Marketplace

In the past two decades, a number of researchers at the crossroads of psychology, biomedicine, and policing have revived attempts to pin down the physiological and neurological processes at work in the human body when a person lies or deceives. Employing medical technology such as functional magnetic resonance imaging (fMRI) and the electroencephalograph (EEG), these investigators argue that they can tie the act of lying to predictable brain activity. Using technologies that register the electrical voltage of various activities of the brain, they contend that certain changes in voltage correspond to the mental activity of concealing knowledge. According to these advocates, the complex act of deceiving has distinguishable patterns and is localized in specific areas of the brain, namely the parietal cortex.[1]

The potential power of this investigative technique is its ability to provide scientific evidence of a crime where material traces may not exist. As L. A. Farwell and S. S. Smith, two of the researchers advocating this approach, argue, while physical evidence may be absent, "the brain of the criminal is always there, recording the events, in some ways like a video camera."[2] This telling turn of phrase illuminates the utopian vision in having the criminal's own body testifying as a transparent and reliable witness against itself. Advocates situate their science as a potential anticipatory forensics, one that could detect crimes in the mind of perpetrator before they are even committed. This approach to the problem of human deceit becomes thinkable in relationship to developments within the biomedical sciences. The authenticity of such findings is rooted in a deeper faith in a mechanical model of

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[1] See Robin Marantz Henig, "Looking at the Lie," *New York Times*, February 5, 2006.
[2] L. A. Farwell and S. S. Smith, "Using Brain MERMER Testing to Detect Knowledge Despite Efforts to Conceal," *Journal of Forensic Science* (2001) 46(1): 135-143, 135.

objectivity for ascertaining truth. In this view, to arrive at the essential nature of things, the idiosyncratic judgments of individuals ought to be subservient to the regular processes and exacting measure of the machine.[3] Beyond an implicit commitment to mechanical objectivity, this research is tied to the principle of brain localization: that discrete portions of the physical brain correspond in a predictable manner with specific mental processes and phenomena. Although currently in ascendancy in the form of neuroscience, brain localization has had a controversial history, intimately braided to the phrenology movement of the nineteenth-century and the therapeutic practice of lobotomy in the twentieth.[4]

These epistemological and ontological commitments about scientific method and the 'nature' of the brain are nested within networks of economic and political power and influence. While investigators have pursued this research program since the late 1980s, these projects have garnered increased attention and funding in recent years under the rubric of 'credibility assessment' or the preemptive interrogation of suspected terrorists. For example, a recent National Academy of Science study sponsored by the US Department of Energy was developed to evaluate a number of recently developed lie detection procedures in light of the polygraph's failure to secure consistent legal admission.[5] Lawrence Farwell, developer of what he calls 'brain fingerprinting,' has received more than a million dollars from the Central Intelligence Agency to fund his research. These examples of increased interest have less to do with sudden advances in knowledge than a transformation of political context: this research has taken on new political urgency within the framework of the United States government's 'War on Terror.' While researchers are developing these new technologies,

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[3]Lorraine Daston and Peter Galison, "The Image of Objectivity," *Representations* 40 (1992): 81-128. Although Galison has argued that technologies like EEG are grounded in a different epistemology, that of the expert's trained yet subjective judgment, I would argue that the appeal of these tests as tools of governance is due to an ideal of mechanically measuring deception. See Peter Galison, "Judgment against Objectivity," in Caroline A. Jones and Galison (eds.), *Picturing Science, Producing Art* (New York: Routledge, 1998), 327-59, 252.
[4]Joseph Dumit, *Picturing Personhood: Brain Scans and Biomedical Identity* (Princeton: Princeton University Press, 2004).
[5]*The Polygraph and Lie Detection* (Washington: National Academies Press, 2003).

older methods of measuring 'deception complexes' in the body have become increasingly visible in state-level policing despite the government's public skepticism about their effectiveness. For example, the Justice Department administered polygraph examinations of hundreds of employees at facilities where anthrax is stored in order to uncover those responsible for the mail threats of 2001. The FBI has announced that it plans to investigate its own agents using the polygraph to uncover moles like Robert Hanssen, the Cold War era spy finally uncovered years too late. Scientific researchers in the detection of deception themselves acknowledge that the new political climate has stimulated funding for their projects.[6]

While these most recent technologies have yet to emerge from a laboratory setting, like most scientific techniques adapted for legal and policing projects, the instituting of these tests will undoubtedly be highly contested. As historians and legal scholars have noted, the use of forensic identification sciences such as handwriting analysis, fingerprinting, and DNA identification consistently met with controversy when first introduced, controversy that frequently continues for years after their standardized application.[7] Such contestation is structural and key to the transmission of scientific knowledge into the public arena. It has frequently been the case that non-scientific authorities use the legal system as an opportunity to express their anxieties and influences concerning novel scientific techniques.[8] While all these techniques have faced skepticism, fingerprinting and DNA analysis have attained

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[6]For an early self-assessment see Theodore R. Bashore and Paul E. Rapp, "Are There Alternatives to Traditional Polygraph Procedures?" *Psychological Bulletin* (1993) 113(1): 3-22. On the proliferation of government financial and intellectual investments in these technologies see Polly Shulman, "Liar, Liar, Pants on Fire" *Popular Science Monthly* 24 July 2002; Malcolm Ritter, "Liar, Liar Brain on Fire," *Ottawa Citizen* (February 2, 2006): E1-E4; Henig, "Looking at the Brain." Sarah Sturman Dale, "Climbing Inside the Criminal Mind," *Time*, November 26, 2001 reports on Farwell's funding from the CIA.

[7]See Michael J. Saks, "Merlin and Solomon: Lessons from the Law's Formative Encounters with Forensic Identification Science," *The Hastings Law Journal* 49(4) (1998): 1069-1141; Simon Cole *Suspect Identities: A History of Fingerprinting and Criminal Identification* (Cambridge: Harvard University Press, 2001); and Jennifer Mnookin, "Scripting Expertise: The History of Handwriting Identification Evidence and the Judicial Construction of Reliability," *Virginia Law Review* 87(8) (2001): 1723-1845.

[8]Sheila Jasanoff, *Science at the Bar: Law, Science, and Technology in America* (Cambridge: Harvard University Press, 1995).

considerably wider legal acceptance than the claims to have scientifically detected a measurable 'deception complex' in the mind or body. Although exhibiting considerable cultural resonance, for example in its near daily use on sensational television day time talk shows, evidence from a polygraph examination, the most prominent deception test, can only be admitted in most American courts if both sides consent.

While the long-term success for these recent techniques of mapping lies onto specific areas of the brain remains uncertain, they mark but the latest attempt to demarcate 'deception' as a distinct, measurable object of inquiry. Present-day techniques are developed in the hope of surpassing the polygraph or lie detector developed in the 1910s and 1920s. The polygraph represents but one example of the psychological, legal, and commercial understandings of human deception. Previous projects of developing a coherent and uncontroversial science of deception have met with frustrations and deception, as an epistemic thing, has repeatedly eluded precise definition. The notion of an epistemic thing connotes a material object scrutinized through research, embodying what one does not yet know and hence attracting concern.[9] Therefore the inability to strictly delineate deception is not because it does not exist, that it is fictional or fetish. Deception operates as what the anthropologist of science Bruno Latour has called a "matter of concern" and not a "matter of fact." Such a designation draws attention to the multiple ontologies of things, how collected within them are ever-present contestations, how things embody many different connotations simultaneously, how they operate differently across a variety of fields, and are bound in a

[9]See Hans-Jörg Rheinberger, *Toward a History of Epistemic Things: Synthesizing Proteins in a Test Tube* (Stanford: Stanford University Press, 1997). Rheinberger has repeatedly stressed that his approach is intended to assign a constitutive function to the agency of material things in a post-constructivist account of knowledge production. See Rheinberger, "A Reply to David Bloor: 'Toward a Sociology of Epistemic Things," *Perspectives on Science* 13(3) (2005): 406-410. For this reason the phrase is apt in describing the process of deceiving or being deceived. While few would deny that there is a psychological or even physiological process at work in deception, its precise locus and nature remains contested.

network with a heterogeneous array of actors.[10] The failure of deception to coalesce into a single object has only been exacerbated by the fact that deception crosses a series of arenas. 'Deception' has been variously defined within the realms of commercial spectacles, experimental psychology, and jurisprudence. The unstable contours of deception are largely due to the obstacles in creating a durable object that would translate easily across such arenas.[11]

In what follows, I explore a series of attempts to assemble a 'science of deception' set within the context of the commercial economy that transformed the United States between the end of the Civil War and the beginning of the Great Depression. While the anti-terrorist policing of the U. S. federal government served as the spur for the most recent research, historically the regulation of the marketplace has been the major inspiration for developing a science of deception. It is no accident that a series of theories and technologies explaining human deception emerged just as the 'well-ordered,' island communities of the antebellum era were dissolving in the face of a nationally integrated economy.[12] While the emerging commercial culture offered many opportunities, it also generated considerable anxiety centering of questions of identity, appearance, and trust.

These earlier sciences of deception crystallized during a phase in the development of capitalism when many Americans were acutely preoccupied by how appearances could no longer be trusted. If there was a force particularly identified with deception, it was the

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[10]See Bruno Latour, "Why Has Critique Run out of Steam? From Matters of Fact to Matters of Concern," *Critical Inquiry* 30(2) (2004): 225-248.

[11]My formulation here draws on the work of Adele Clarke for whom these various realms would constitute relatively autonomous social worlds that intersect through arenas by having in common matters of concern, such as deception. See Clarke, *Disciplining Reproduction: Modernity, American Life Science, and 'the Problem of Sex'* (Berkeley: University of California Press, 1998).

[12]The notion of island communities derives from Robert H. Wiebe, *The Search for Order, 1877-1920* (New York: Hill and Wang, 1967). It signifies the overwhelmingly local character of nineteenth-century life with the relative isolation and autonomy of the majority of American cities and towns prior to their integration through networks of commerce and transportation. On the common law regulation of the local community and its postbellum dissolution, see William Novak, *The People's Republic: Law and Regulation in Nineteenth Century America* (Chapel Hill: University of North Carolina Press, 1996).

marketplace, increasingly organized into corporations that flooded the nation with mass-produced consumables. The corporation with its stockholders, investors, and chains of managerial hierarchy emerged as the dominant form of enterprise largely eclipsing businesses run by individuals or a single family.[13] The creation of a professionally trained, mobile managerial bureaucracy created new class relations, divorcing the manufacturing workforce from the supervising corporate hierarchy. Using an array of techniques and technologies, these managers sought to rationalize both the production and consumption of goods. Such a strategy required constructing an economy of distance that dissolved the existing, locally oriented markets of the nineteenth-century town in favor of a national one.[14] Changes in transportation and communication technologies eroded traditional conceptions of 'distance' by tearing down old spatial barriers.[15] These new spatial relations facilitated new patterns of criminality, especially fraud, rooted in the opportunities of an economy of distance and anonymity.[16]

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[13]This is not to deny the presence of certain forms of capitalism during the early republic but it is important to recognize the new form it took in the final decades of the nineteenth-century. The classic work that posits a stable liberal-capitalist order throughout American history is Louis Hartz, *The Liberal Tradition in American: An Interpretation of American Political Thought since the Revolution* (New York: Harcourt Brace, 1955). More recent scholarship has pointed to the historical transformation of American capitalism, especially in relationship to the polity. These historians stress the deep anxieties and suspicions of the vagaries of commerce among the founders of the republic. Most historians point to the 1830s as the time when market capitalism took off in the United States. See Sean Wilentz, *Chants Democratic: New York City and the Rise of the American Working Class, 1788-1850* (New York: Oxford University Press, 1984); Charles Sellers, *The Market Revolution: Jacksonian America, 1815-1860* (New York: Oxford University Press, 1991); Alan Taylor, *William Cooper's Town: Power and Persuasion on the Frontier of the Early Republic* (1995); Walter Johnson, *Soul by Soul: Life Inside the Antebellum Slave Market* (Cambridge: Harvard University Press, 1999); Edward J. Balleisen, *Navigating Failure: Bankruptcy and Commercial Society in Antebellum America* (Chapel Hill: UNC Press, 2001).

[14]Wiebe, *The Search for Order*; Alfred D. Chandler, Jr., *The Visible Hand: The Managerial Revolution in American Business* (Cambridge: Harvard University Press, 1977); Alan Trachtenberg, *The Incorporation of America: Society and Culture in the Gilded Age* (New York: Hill and Wang, 1982); Olivier Zunz, *Making America Corporate, 1870-1920* (Chicago: University of Chicago Press, 1990); William Cronon, *Nature's Metropolis: Chicago and the Great West* (New York: Norton, 1991); Richard White, "Information, Markets, and Corruption: Transcontinental Railroads in the Gilded Age," *Journal of American History* 90(1) (2003): 19-43; Elspeth H. Brown, *The Corporate Eye: Photography and the Rationalization of American Commercial Culture* (Baltimore: Johns Hopkins University Press, 2005).

[15]See Stephen Kern, "Distance," *The Culture of Time and Space, 1880-1918* (Cambridge: Harvard University Press, 1983), 211-240.

[16]Lawrence Friedman, "Crimes of Mobility," *Stanford Law Review* 43 (1991): 637-658.

If the corporate order was producing a new geography of capital, dissolving the island communities where judgment based on one's established moral character could be exercised, its consumer culture offered new opportunities for pleasure and styles for self-making. Increasingly mass-produced and sold relatively inexpensively commodities, such as shoes, clothes, and cosmetics worked to disguise the ethnic and class origins of individuals. These consumption patterns were abetted by new definitions of success and self-fashioning that stressed the possibility of cultivating and transforming one's personality.[17] Embraced as dynamic avenues for social mobility by some, such patterns of self-making were viewed by others as crafting an inauthentic selfhood. This period was an era of great anxiety about confidence men, grafters, and those who succeeded in racial passing. No longer could a person's etiquette, manners, and dress be read as reliable indexes of their inner moral character.[18] The period between the Civil War and the Great Depression, then, was a period marked by concern for both deceptive things and deceptive persons.

In tandem with these concerns about deceptive social performances and the artifice of commerce, America's traditional elites felt a hollowness at the center of their culture and

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[17]Warren Susman, Roland Marchand, *Advertising the American Dream*; Kathy Peiss, *Cheap Amusements: Working Women and Leisure in Turn-of-the-Century New York* (Philadelphia: Temple University Press, 1986); Lizabeth Cohen, *Making a New Deal: Industrial Workers in Chicago, 1919-1939* (Cambridge: Harvard University Press, 1990), 100-158; Olivier Zunz, *Making America Corporate, 1870-1920* (Chicago: University of Chicago Press, 1990); William Leach, *Land of Desire: Merchants, Power, and the Rise of a New American Culture* (New York: Vintage, 1993); Lynn Dumeil, *The Modern Temper: American Culture and Society in the 1920s* (New York: Wang and Hill, 1994), 56-97; T. J. Jackson Lears, *Fables of Abundance;* James Livingston, *Pragmatism and the Political Economy of Cultural Revolution, 1850-1940* (Chapel Hill: University of North Carolina Press, 1994); Kathy Peiss, *Hope in a Jar* (New York: Metropolitan Books, 1998); Lauren Rabinovitz, *For the Love of Pleasure: Women, Movies, and Culture in Turn-of-the-Century Chicago* (New Brunswick: Rutgers University Press, 1998); Lendol Calder, *Financing the American Dream: A Cultural History of Consumer Credit* (Princeton: Princeton University Press, 1999); Nan Enstad, *Ladies of Labor, Girls of Adventure: Working Women, Popular Culture, and Labor Politics at the Turn-of-the-Twentieth Century* (New York: Columbia University Press, 1999).

[18]On the everyday practice of semiotics, see John Kasson, *Rude and Civility: Manners in Nineteenth-Century Urban America* (New York: Hill and Wang, 1990), 5. See also Karen Haltunnen, *Confidence Men and the Painted Women: A Study of Middle-Class Culture in America, 1830-1870* (New Haven: Yale University Press, 1982); Judy Hilkey, *Character is Capital: Success Manuals and Manhood in Gilded Age America* (Chapel Hill: University of North Carolina Press, 1997); Ardis Cameron, "Sleuthing Towards America: Visual Detection in Everyday Life," in Cameron (ed.), *Looking for America: The Visual Production of Nation and People* (Malden, Mass: Blackwell, 2005), 17-41. On racial passing, see Elizabeth Grace Hale, *Making Whiteness: The Culture of Segregation in the South, 1890-1940* (New York: Vintage, 1998); Matthew Frye Jacobson, *Whiteness of a Different Color: European Immigrants and the Alchemy of Race* (Cambridge: Harvard University Press, 1998).

pursued what they felt were more intense, authentic experiences. For example, many Protestants found that the liberalization of their faith, with the expulsion a strong sense of predestination and Hell, combined with challenges to their belief from the natural and social sciences, left them with a sense of spiritual weightlessness. While the sciences had undercut the authority of the church, their probabilistic method and ever-changing knowledge base led many to worry that they would not produce a stable foundation of belief.[19] Seeking intense and authentic worldly experiences, the upper class intelligentsia looked to antimodernist modes of expression such as the glorification of artisan crafts, militarism, and the idealization of primitive, 'oriental' cultures.[20] A similar quest for intense, authentic experience occurred in the realm of aesthetics, where the refined genteel tradition was rejected in favor of the gritty and grisly vision of realism.[21] The political movement known as Progressivism that sought to regulate the frauds produced by modern capitalist relations mirrored these cultural negotiations of the meaning of deception.

The various "Progressive" reform movements coalesced around a series of issues centering on the interrelated problems of urban disorder, corporate power, and political corruption. Historians have long pointed to the Progressive Era, roughly the first two decades of the twentieth-century, as a period that witnessed a major transformation in the political configuration of the state, the economy, and the individual. They have also largely

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[19]On the probabilistic revolution in the sciences, see especially Theodore Porter, *The Rise of Statistical Thinking, 1820-1900* (Princeton: Princeton University Press, 1986); Lorraine Daston, *Classical Probability in the Enlightenment* (Princeton: Princeton University Press, 1988); Ian Hacking, *The Taming of Chance* (New York: Cambridge University Press, 1990). In America, the Pragmatists articulated this concern with uncertainty most clearly. See Paul Jerome Croce, *Science and Religion in the Era of William James: Eclipse of Certainty* (Chapel Hill: University of North Carolina Press, 1995).

[20]T. J. Jackson Lears, *No Place of Grace: Antimodernism and the Transformation of American Culture, 1880-1920* (New York: Pantheon, 1981), 32-47.

[21]Trachtenberg, *The Incorporation of America*, chapter 3; Gary Lindberg, *The Confidence Man in American Literature* (New York: Oxford University Press, 1982); Miles Orvell, *The Real Things: Imitation and Authenticity in American Culture, 1880-1940* (Chapel Hill: University of North Carolina Press, 1989); David Shi, *Facing Facts: Realism in American Thought and Culture, 1850-1920* (New York: Oxford University Press, 1995).

dismissed the notion of a coherent and cohesive Progressive Movement.[22] In its place, they highlight the activities of several smaller organizations on a series of interrelated projects that ultimately brought forth a more activist, regulatory state.[23] An older generation of New Left critics saw in Progressivism only the realization of the dreams of Gilded Age capitalists, the hegemony of the marketplace with the mere varnish of social justice to diffuse the threat of socialism.[24] A more sympathetic reading of early twentieth-century liberalism has challenged this view by stressing that the Progressive vision was a social order where "not everything belonged in the market."[25] In contrast to the laissez faire ideology of the Gilded Age that emphasized social atomism and personal uplift, the new liberalism paid greater attention to the societal origins of inequality and injustice and the need for more collectivist

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[22]On the disunity among the Progressives, see Arthur S. Link, "What Happened to the Progressive Movement in the 1920's?" *American Historical Review* 64 (1959): 833-851; David P. Thelen, "Social Tensions and the Origins of Progressivism," *Journal of American History* 56 (2) (1969): 323-341; Peter G. Filene, "An Obituary for 'The Progressive Movement,'" *American Quarterly* 22 (1) (1970): 20-34.

[23]See Daniel T. Rodgers, "In Search of Progressivism," *Reviews in American History* 10(4) (1982): 113-132 and Michael Willrich, *City of Courts: Socializing Justice in Progressive Era Chicago* (Cambridge: Cambridge University Press, 2003). Feminist scholars have been prominent among these revisionists emphasizing how a cohort of socially committed women managed to mobilize through civil organization to push towards a more conscientious statecraft. See Katherine Kish Sklar, "Hull-House in the 1890s: A Community of Female Reformers," *Signs* 10(4) (1985): 658-677; Linda Gordon, "Family Violence, Feminism, and Social Control," *Feminist Studies* 12(3) (1986): 453-478; Robyn Muncy, *Creating a Female Domain in Reform, 1890-1935* (New York: Oxford University Press, 1991); Theda Skocpol, *Protecting Mothers and Soldiers: The Political Origins of Social Policy in the United States* (Cambridge: Harvard University Press, 1992); Glenda Gilmore, *Gender and Jim Crow: Women and the Politics of White Supremacy in North Carolina, 1896-1920* (Chapel Hill: University of North Carolina Press, 1996); Victoria Getis, *The Juvenile Court and the Progressives* (Urbana: University of Illinois Press, 2000).

[24]See Gabriel Kolko, *The Triumph of Conservatism: A Reinterpretation of American History, 1900-1916* (New York: Free Press, 1963); James Weinstein, *The Corporate Ideal in the Liberal State, 1900-1918* (Boston: Beacon, 1968); Anthony Platt, *The Child Savers: The Invention of Delinquency* (1969; Chicago: University of Chicago Press, 1977); David F. Noble, *America by Design: Science, Technology, and the Rise of Corporate Capitalism* (New York: Knopf, 1977). Although distinct in their political values, an analogous argument about the elite orientation of Progressivism can be found in Richard Hofstadter, *The Age of Reform, Bryan to FDR* (New York: Knopf, 1955) and Robert Wiebe, *The Search for Order, 1877-1920* (New York: Hill and Wang, 1967).

[25]Daniel Rodgers, *Atlantic Crossings: Social Politics in a Progressive Era* (Cambridge: Harvard University Press, 1998), 29. See also Alan Dawley, *Struggles for Justice: Social Responsibility and the Liberal State* (Cambridge: Harvard University Press, 1991); Elizabeth Saunders, *Roots of Reform: Farmers, Workers, and the American State, 1877-1917* (Chicago: University of Chicago Press, 1999); Robert Johnson, *The Radical Middle Class: Populist Democracy and the Question of Capitalism in Progressive Era Portland, Oregon* (Princeton: Princeton University Press, 2003).

solutions.[26] This collectivism was not socialist in orientation but rather aimed at a regulatory state bent on heightening business competition while trying to insulate its citizens from the excesses of capitalism. Fraud, corruption, and deception played a key role in the political imagination of these Progressives.[27]

My research supplements the existing insightful literature on the evolution of American regulation of food, drugs, and cosmetics. Focusing on government policy and professional institutions, this historiography addresses the increased vigilance towards the patent medicine industry and other commercial frauds. Such an approach rightly points to increased government activity in this area through the creation of regulatory agencies. It intersects with the history of science in its concern with the regulation of undesirable therapeutic treatments and in studying the work of government scientists working under the auspices of organizations like the Department of Agriculture.[28] Nonetheless, the aims of these histories of regulatory policy are ultimately quite different in orientation than my own. Taking deception, and not regulation, as my primary object of concern encourages a different perspective. I define and investigate 'deception' more broadly and locate it at the interplay between deceptive persons, deceptive things and the purchasing public. To understand these relationships requires paying attention to such topics as the work of psychologists in regulating the marketplace, the theories of selfhood deployed by jurists, and juxtaposing the

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[26]On laissez faire liberalism, see Richard Hofstadter, *Social Darwinism in American Thought, 1860-1915* (Boston: Beacon, 1955); Dorothy Ross, *The Origins of American Social Science* (Cambridge: Cambridge University Press, 1991); Sven Beckert, *The Monied Metropolis: New York City and the Consolidation of the American Bourgeoisie, 1850-1896* (New York: Cambridge University Press, 2001); Sven Beckert, "Democracy and its Discontents: Contesting Suffrage Rights in Gilded Age New York," *Past & Present* (174) (2002): 116-57.

[27]See Samuel P. Hays, "The Politics of Reform in Municipal Government in the Progressive Era," *Pacific Northwest Quarterly* 60 (1964): 157-169 and Paul Boyer, *Urban Masses and Moral Order in America, 1820-1920* (Cambridge: Harvard University Press, 1978).

[28]James Harvey Young, *The Toadstool Millionaires: A Social History of Patent Medicines in America before Federal Regulation* (Princeton: Princeton University Press, 1961;Young, *The Medical Messiahs: A Social History of Health Quackery in Twentieth-Century America* (Princeton: Princeton University Press, 1967); Coppin, Clayton A. and Jack C. High. *The Politics of Purity: Harvey Washington Wiley and the Origins of Federal Food Policy* (Ann Arbor: University of Michigan Press, 1999).

regulation of trade with the emergence of technologies like the polygraph. My interest is not in the legislative or policy history as in end in itself but rather in exploring how they explicate the epistemological commitments that made such legislative reform both more thinkable and doable. I excavate these submerged ideas about both consumers and the marketplace that served as a precondition to the regulatory state.

Building on this powerful literature on the liberal state, my research focuses on the question of what kind of 'selves' were embodied in such a project. I am interested in how models of the interior, subjective processes of the mind were used to negotiate and regulate the complexities of the marketplace. My object of study is how the mentality of the purchasing public became articulated as simultaneously a thing to be regulated and as a lens through which economic regulation was achieved in the arenas of law, science, and commerce. Focusing a series of American case studies, this dissertation explores how the concept of 'deception' became intertwined with biopolitical strategies for coming to grips with the expanding commercial culture of the Gilded Age and Progressive Era. I elucidate some of the surprising ways that the psychological self has been embedded in 'Progressive' attempts to regulate the marketplace: to demonstrate the interrelated shifts that occurred in tandem in the economy, the law, the sciences, and popular culture that made new understandings of deception specifically, and human nature more broadly, thinkable.

The Bio-politics of the Marketplace

To properly understand the aims and intentions of this study, it is helpful to view it within the scholarly tradition that the French thinker Michel Foucault called bio-politics. Much of Foucault's later work concentrated on studying how modern forms of governance and power were constituted in relationship to the everyday management and protection of life. Where the early modern sovereign's power over his subjects lay in his ability to apply

capital punishment, modern governance revolves around the state's maximization of its population's productivity, health, and resources. Foucault identified two key processes through which biopower manifested itself: the anatomo-politics over the control of individual bodies and the bio-politics exerted over a population as unified object. Power is not understood here in a negative fashion, as brute form of domination, but rather as a positive force that sustains certain forms of life.[29] I use his terminology because it elegantly captures aspects of American governance that are important to my analysis and signals the centrality of ideas about human nature, taking both words seriously, to modern political activity. Bio-politics emphasizes that the techniques of self-governance and the legal modalities of rule that I discuss were intended to be both calibrated to and constitutive of subjects who were living and breathing persons with perceived psychological and physiology capacities.

Scholars inspired by his research have augmented Foucault's account. In particular, Ian Hacking and Nikolas Rose make a strong case for considering the mind as a third, and equally important, site for the exercising of biopower in modern times. In his archaeology of multiple personality disorders, Hacking sees the emergence in the final decades of the nineteenth-century of a new way of conceiving and governing individuals that he labeled 'memoro-politics,' echoing Foucault. Hacking's concern is how discussions about abuse were no longer framed in terms of a moral right or wrong but rather as an empirical of question of whether it occurred and its effects on memory and personality. Memoro-politics is meant to signify how the brain, mind, and memory had simultaneously become objects of empirical inquiry about how they functioned and sites in political struggles in search of authenticity.[30] In a complimentary fashion, Rose has argued for the centrality of

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[29]Michel Foucault, "Right of Death and Power over Life," *The History of Sexuality: An Introduction*, translated by Robert Hurley (New York: Vintage, 1978) and "Governmentality" in Graham Burchell, Colin Gordon, and Peter Miller (eds.), *The Foucault Effect: Studies in Governmentality* (London: Harvester, 1991), 87-104.
[30]Ian Hacking, *Rewriting the Soul: Multiple Personality and the Sciences of Memory* (Princeton: Princeton University Press, 1995), 210-220.

psychological expertise to the project of liberal governance since the mid-nineteenth-century. For Rose, the therapeutic and vocational salves proffered by the psychological sciences were emblematic of a liberal style of governance that stressed individual liberty and self-rule in exchange for personal restraint and self-discipline in interactions with others. Rose's work is far from a state-centered approach; rather he is interested in how psychological technologies of liberal responsibility are diffuse in institutions like the workplace and the school as well as the courtroom and prison.[31] In contrast to scholars studying France and the British Commonwealth, until very recently, few historians studying the United States have pursued fully the implications of Foucault's work on bio-politics.[32]

To extend this approach to the American case, I would argue that one would have to pay close attention to two institutions in particular: the law and the psychological sciences. Bio-politics is here understood not only in relationship to governable subjects but also to the dynamics of the marketplace. To come to grips with the bio-politics of the marketplace, one has to address the centrality of the law as an institution through which the polity is constituted. In particular when thinking about commerce and the economy, the law has been the key network in the production of what was possible and allowable. As the legal historian Michael Willrich argues in a sympathetic gloss on Foucault, contrary to the vision presented in *Discipline and Punish* (1975), the American law did not wither away in the face of competing disciplinary technologies but remained the preeminent site of regulation. The law became the motor in the production of the 'social' sphere through its incorporation of

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[31]Nikolas Rose, *Governing the Soul: The Shaping of the Private Self* (London: Routledge, 1990); Rose, *Inventing Ourselves: Psychology, Power, and Personhood* (Cambridge: Cambridge University Press, 1996); Rose, *Powers of Freedom: Reframing Political Thought* (Cambridge: Cambridge University Press, 1999).
[32]Drawing Foucault, Elizabeth Lunbeck has written insightfully about the gendered power relations at the heart of Progressive Era psychiatry. See Lunbeck, *The Psychiatric Persuasion: Knowledge, Gender, and Power in Modern America* (Princeton: Princeton University Press, 1994). More studies more explicitly grounded in Foucault's governmentality writings include Matthew G. Hannah, *Governmentality and the Mastery of Territory in Nineteenth Century America* (New York: Cambridge University Press, 2000); Nayan Shah, *Contagious Divides: Epidemics and Race in San Francisco's Chinatown* (Berkeley: University of California Press, 2001); Michael Willrich, *City of Courts: Socializing Justice in Progressive Era Chicago* (Cambridge: Cambridge University Press, 2003).

therapeutic-disciplinary tools such as psychology and social work.[33] The importance of psychological knowledge and the centrality of the mind in regulating commerce is not self-evident. This was not always the case, for one need only recall the purchase that competing models of the mind had on the development of mid-nineteenth-century British political economy. Where John Stuart Mill understood political economics as moral science grounded in introspection, William Stanley Jevons modeled economics on the natural sciences. One of the crucial differences was that Jevons understood the human mind in terms of a psychophysical machine making a natural scientific model an appropriate resource for studying economic behavior.[34] While later economists did not ground their models and theories of the psychological sciences to the extent that Mill and Jevons did in mid-Victorian Britain, models of the mind continued to play an integral role in the governance of the economy into the early decades of the twentieth-century.

My approach is to explore how the purchasing public has been constituted as a psychological population in a variety of bio-political strategies. The projects of mapping and policing deception occurred in what I am identifying as a 'psychological moment' in American governance that flourished from the late Gilded Age but had transmuted into new forms and in important ways dissipated by the 1930s. As a style of bio-politics, the science of deception targeted a particular population: the collective of minds that formed the purchasing public. Whether it be patrician, historian, and diplomat Andrew Dickson White

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[33]See Willrich, *City of Courts*, xxvii-xxix. Michel Foucault, *Discipline and Punish: The Birth of the Prison*, translated by Alan Sheridan (1975; New York: Vintage, 1977). On the role the law as a modality of American governance, I have been particularly influenced by Morton J. Horwitz, *The Transformation of American Law, 1780-1860* (Cambridge: Harvard University Press, 1977); Christopher Tomlins, *Law, Labor, and Ideology in the Early Republic* (New York: Cambridge University Press, 1993); Novak, *The People's Republic*; Barbara Young Welke, *Recasting American Liberty: Gender, Race, Law, and the Railroad Revolution, 1865-1920* (New York: Cambridge University Press, 2001); Markus Dirk Dubber, *The Police Power: Patriarchy and the Foundations of American Government* (New York: Columbia University Press, 2005). Two older, insightful studies that I found particularly useful in this project are Ernst Freund, *The Police Power: Public Policy and Constitutional Rights* (Chicago: Callahan, 1904) and Walton H. Hamilton, "The Ancient Maxim of Caveat Emptor," *Yale Law Journal* 40(8) (1931): 1133-1187.

[34]See Harro Maas, *William Stanley Jevons and the Making of Modern Economics* (Cambridge: Cambridge University Press, 2005).

depressed over the popular enthusiasm for a wondrous hoax, a swindler attempting to convince a housewife to purchase a pair of glasses whose rims are fake gold, or a judge arbitrating whether two companies named Pillsbury infringed upon the other's trademark, the mind of the consumer is central to how historical actors conceived of a functioning economy.[35] The mental state of being deceived was closely linked to the effects of commerce on the individual and the shadow of fraud in the expanding economy. Most importantly, the initial legal and political responses to these commercial problems carved out a special place for the mind in their solutions.

To illustrate the particularity of the historical moment detailed here, it is helpful to briefly pursue the federal regulation of trade into the New Deal period. When the U. S. Senate initially sought to extend the police powers to prevent the adulteration, misbranding, and false advertisement of foods, drugs, cosmetics with the Tugwell Bill in 1933, false advertisement was defined by its capacity to create a "misleading impression" among the purchasing public. This legislation built upon a tradition that defined commercial deception in terms of the subjective effect it had on a supposedly 'ordinary purchaser.' The perceived psychological qualities that the product imbued and radiated were seen as paramount. A very different logic operated in the final legislation as passed in the Wheeler-Lea Bill (1938). Gone were the always difficult to prove psychological effects of the product, which were replaced by a different legal standard: whether in "a material respect," the representations

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[35] I would still concur with the current scholarly consensus that holds that the protection of actual consumers did not become institutionalized within the American state until the New Deal. See Meg Jacobs, "'How About Some Meat?': The Office of Price Administration, Consumption Politics, and State Building from the Bottom Up, 1941-1946," *Journal of American History* 84(3) (1997): 910-941; Charles McGovern, "Consumption and Citizenship in the United States, 1900-1940" and Lizabeth Cohen "The New Deal State and the Making of Citizen Consumers" in Charles McGovern, Susan Strasser, and Matthias Judt (eds.), *Getting and Spending: European and American Consumer Societies in the Twentieth Century* (Cambridge: Cambridge University Press, 1998), 37-58 and 111-125; Lawrence B. Glickman, "A Strike in the Temple of Consumption: Consumer Activism and Twentieth-Century American Political Culture," *Journal of American History* 88(1) (2001): 99-128.

made by the advertisement could be proven false.[36] One can see similar trends in the criminal law, with the Progressive Era reformers vision of psychology offering a therapeutic, social justice solution to the problems generated by capitalist organization giving way to harsher views on individual responsibility by the mid-1920s. With increasing public concern with organized crime and racketeering, the Progressive's desire for psychological therapeutics was eclipsed by crime control campaigns that stressed punishment over treatment.[37]

The key to understanding the bio-politics of the mid-nineteenth-century American marketplace is the showman P. T. Barnum. At the heart of Barnum's exhibits lay a complex assemblage of objects, human labor, the mind of the spectator, legal doctrines, and the market. From 1835 until the late 1860s, Barnum made a considerable fortune exhibiting a sequence of fraudulent objects that tested the individual spectator's observational abilities. Key to the entertainment value of such humbugs was the audience's right to determine the truth of the object for themselves. Much like wonder in an earlier era, in this context the potential for deception served as a spur for further contemplation and investigation as the epistemological trick was intended to awaken critical faculties.[38] During Barnum's tenure as a public icon, the audience for humbugs was not constituted as a gawking mass, easily deceived, but as individualized Yankees capable of reaching the truth for themselves. As historian James W. Cook has argued, Barnum successfully played off public anxieties

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[36]On these changes I have been greatly informed by old advertising textbooks. See especially C. H. Sandage, *Advertising: Theory and Practice* (1939; Chicago: Richard D. Irwin, Inc., 1945) 47-8. See also Earl Kintner, *A Primer on the Law of Deceptive Practice: A Guide for Businessmen* (New York: Macmillan, 1971).

[37]On Progressive Era therapeutics, see Arthur E. Fink, *Causes of Crime: Biological Theories in the United States, 1800-1915* (PhD Dissertation, University of Pennsylvania, 1938); Anthony Platt, *The Child Savers: The Invention of Delinquency* (1969; Chicago: University of Chicago Press, 1977); Victoria Getis, *The Juvenile Court and the Progressives* (Urbana: University of Illinois, 2000); Anne Meis Knupfer, *Reform and Resistance: Gender, Delinquency, and America's First Juvenile Court* (New York: Routledge, 2001). On the shift from social justice to crime control, see Willrich, *City of Courts*, 282-308.

[38]Lorraine Daston and Katherine Park, *Wonders and the Order of Nature, 1150-1750* (New York: Zone Books 1998). In the case of the Cardiff Giant discussed in the first chapter, wonder and deception in fact commingled in the public's reception of the spectacle.

surrounding commercial fraud and transformed these worries into a style of public amusement that middle class audiences found acceptable. Within the confines of his American Museum and related spectacles, deception had positive moral connotations that served to bolster the judgment of the viewer, reaffirming their abilities to detect deception and navigate the terrain of the market economy.[39]

Building on the existing literature on Barnum but pushing it further, I would argue that his humbugs ought to be understood as hybrids or what William Cronon identified as 'second nature.'[40] With the seams occasionally on view for the careful, incredulous observer to detect, humbugs combined supposedly natural objects ingeniously crafted through deliberate human labor into artifacts that attempts to disguise their origin. Humbugs were more than material things; they integrated within them a specific conception of the audience's mind and observational capabilities. As literary critic Buford Adams argues, Barnum as an entertainer lay at the cusp of the emergence of a distinctly mass culture in America.[41] Engrained in these humbugs was a prototypical constitution of the consuming public as a collective audience, as a kind of population. In Barnum's case, he played off the rhetoric of Jacksonian democracy stressing individualized autonomy and responsibility. Furthermore the staging of his humbugs was carefully framed within the confines of temperance reform, morally uplifting dramas, exposés of medical quackery. Barnum's exhibitions also drew upon nineteenth-century legal practice for his commercial fakery was

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[39]James W. Cook, *The Arts of Deception: Playing with Fraud in the Age of Barnum* (Cambridge: Harvard University Press, 2001). See also Neil Harris, *Humbug: The Art of P. T. Barnum* (Boston: Little Brown, 1973); A. H. Saxon, *P.T. Barnum: The Legend and the Man* (New York: Columbia University Press, 1989); Buford Adams, *E Pluribus Barnum: The Great Showman and the Making of U.S. Popular Culture* (Minneapolis: University of Minnesota Press, 1997); Andrea Stulman Dennett, *Weird and Wonderful: The Dime Museum in America* (New York: New York University Press, 1997); Benjamin Reiss, *The Showman and the Slave: Race, Death, and Memory in Barnum's America* (Cambridge: Harvard University Press, 2001); Michael Leja, *Looking Askance: Skepticism and American Art from Eakins to Duchamp* (Berkeley: University of California Press, 2004).

[40]Bruno Latour, *We Have Never Been Modern*, translated by Catherine Porter (Cambridge: Harvard University Press, 1993) and Cronon, *Nature's Metropolis.*

[41]Adams, *E Pluribus Barnum.*

grounded in commercial law that stressed the imperative of caveat emptor or buyer beware.[42] By the late nineteenth-century, however, such confidence in the individual's capacity to master and overcome deception had been considerably eroded. The scientific and legal techniques herein explored consist of a series of attempts to develop means to insulate both the consuming public and the polity from the risks of commercial deception.

The Historical Ontology of Deception

Borrowing the term from the late writings of Michel Foucault, Ian Hacking advocates 'historical ontology' as way of conceiving of scientific phenomena that avoids the undesirable dichotomy between constructivist and realist understandings of phenomena. It refers to the contextual study of the temporal coming into being of scientific objects and allows us to conceive of these objects as both historically contingent while still exerting real effects. For Hacking, the ways in which we name, organize, and use objects have a fundamental influence on their existence; indeed a looping effect exists between the human sciences and the individuals they study and categorize.[43] By grounding my study of deception in the methodology of historical ontology, I want to emphasize how the concept of deception integrates the three axes of genealogy identified by Foucault and Hacking: knowledge, power, and ethics.[44] By the 1880s deception became an object of scientific investigation within the discipline of psychology. In terms of power, the fourth chapter with the unwary purchaser and the final one exploring police technologies explain how legal notions of deception played a key role in the emergence of a regulatory, 'progressive'

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[42]Cook, *Arts of Deception*, 117-118.
[43]Ian Hacking, "Historical Ontology," in his *Historical Ontology* (Cambridge: Harvard University Press, 2002). For Foucault's notion of a "historical ontology of ourselves," see Michel Foucault, "What is Enlightenment?" trans. Catherine Porter, in Paul Rabinow, *The Foucault Reader* (New York: Pantheon Books, 1984), 32-50, 49. See also Lorraine Daston, "Introduction: The Coming into Being of Scientific Objects," in Daston (ed.), *Biographies of Scientific Objects* (Chicago: University of Chicago Press, 2000), 1-14.
[44]Michel Foucault, "On the Genealogy of Ethics: An Overview of a Working in Progress," in Rabinow (ed.), *Foucault Reader,* 340-372 especially 351-352.

statecraft. The third axis of historical ontology cannot be neglected, as lies, deception, and fraud have distinct moral connotations. They are objects produced in relationship to our ethics as much as they are the results of knowledge or the exercise of power. The various sciences of deception offered certain modes of being in the world that were both ethical and prudent. Epistemological questions of what kind of habits, people, or things produce or induced deception were intimately braided to political ones of how to police such objects, questions which in turn were bound to ethical imperatives of how individuals ought to interact with others.[45]

To understand how the ethical stakes of deception shifted over time, I situate it within an evolving moral economy. According Lorraine Daston, a moral economy is a network of collective norms that sustains and valorizes certain objects and practices with a particular community. Central to a moral economy are a historically specific array of emotions, values, and affections. Although worked out in terms of the history of science, I would argue that her understanding of moral economies also applies to other cultural practices.[46] Over time, the very emotions associated with the mental state of deception changed dramatically. During Barnum's era deception was tied to pleasure and excitement, a connotation it retained even in relationship to the corrupting confidence man who could deceive his victims precisely due to his manipulation of their desire. Residuals of such an understanding can be found among early psychological understandings of deception, which linked it to comforting beliefs.

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[45]My approach differs from the agnatology recently championed by Robert Proctor and Londa Schiebinger. Agnatology or ignorance lore is concerned with using fraud and deception as transhistorical categories of analysis to explain the delayed development of certain branches of science and the general public's denial of available knowledge. They seek to centralize this approach within science studies, arguing that scholars have overly stressed the production of knowledge, avoiding the symmetrical topic of the production and maintenance of ignorance. Although I am sympathetic with such corrective measures, my interests here are distinct. In contrast to Proctor and Schiebinger, I historicize their primary analytic, to investigate how particular conceptions of deception came into being. See especially, Robert Proctor, "Anti-Agate: The Great Diamond Hoax and the Semiprecious Stone Scam," *Configurations* 9 (2001): 381-412. See also Schiebinger, *Plants and Empire: Colonial Bioprospecting in the Atlantic World* (Cambridge: Harvard University Press, 2004).

[46]See Lorraine Daston, "The Moral Economy of Science," *Osiris* 10 (1995): 3-24. This definition is quite different from E. P. Thompson, "The Moral Economy of the English Crowd in the Eighteenth Century" *Past & Present* 50 (1971): 76-136, 78-79.

Many psychologists spurned these conforming, dogma-inducing emotions but the historian cannot ignore that here too deception was linked to pleasure. It was only when deception entered the purview of urban policing that psychologists came to associated it with trauma, pain, and anger, while only tacitly acknowledging the ways in which deception could bring pleasure and delight to their subjects. Tied to these emotional connotations was a shift in where the detection of deception ought to be accomplished. For Barnum and his generation, the frauds of the marketplace, both persons and things, could be detected through the consumer's prudence and good judgment. The legal arbitration of trademark infringement, the pathological liar diagnosis, and the polygraph all represent the conviction that deception is instead properly perceived and policed in more austere, controllable environments whether they be the courtroom or the clinic. Within this consensus, however, different disciplinary communities argued that their particular ascetic locals and approaches guaranteed more reliable results.

This study takes up Hacking's suggestion that non-scientific objects could be analyzed using his similar approach.[47] This study follows the mental phenomena associated with the process of being deceived across the arenas of the market, the law, and science. My research takes seriously the distinct ontologies developed for deception within commercial culture and legal deliberations arguing that such configurations have had as much influence of everyday experiences of deception as scientific definitions have. My aim is to introduce historical ontology to the writing of American history while simultaneously broadening the objects and arenas it investigates.

Many scholars that have pursued the historical ontology of the sciences have been concerned with the emergence of the ideal of objectivity. Traditionally objectivity has been understood as a 'view from nowhere' and has been linked to realism in the form of an

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[47]Hacking, "Historical Ontology," 26.

unmediated truth to nature. More recent works have demonstrated that objectivity cannot be reduced to a single method or procedure but rather continues to operate as a series of overlapping ideals centering on notions of impartiality and fairness. Central to this new definition is the insight that objectivity is a cultivated form of self-discipline that the experts instill in themselves. In the nineteenth-century, scientists operating in observatories and laboratories embraced the notion of mechanical objectivity, where they modeled their behavior of the regularity of the machine. To be objective required the restraint of one's personal idiosyncratic judgments with the hope of making the body into a recording instrument. Quantification emerged as another technology of trust among experts because the intricacies of mathematics required rigorous training while providing a common language to speak across disciplines. Rather than being the preserve of a dominating elite, objectivity is particularly appealing among groups of experts adapting their knowledge to the criticisms of suspicious outsiders. We have come to understand objectivity no longer as a fixed, universal method for studying nature and society but rather as an array of technologies for reigning in the subjectivity.[48] To better understand objectivity now requires scholars to investigate those historically specific things against which it was constituted. Historians of science need to take seriously the historicity of deception. A major claim of this study is that just as objectivity is now understood as a complex assemblage so too deception has a multiplicity and durability that has resisted strict delineation and conquest.

In his *Philosophical Investigations*, the philosopher Ludwig Wittgenstein made a powerful critique of essentialism. Using the example of the concept of a 'game,'

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[48]See especially Theodore Porter, *Trust in Numbers: The Pursuit of Objectivity in Science and Public Life* . (Princeton: Princeton University Press, 1995). See also Lorraine Daston, "Objectivity and the Escape from Perspective," *Social Studies of Science* 22 (1992): 597-618; Daston and Galison, "Image of Objectivity"; Daston, The Moral Economy of Science"; John Carson, "Army Alpha, Army Brass, and the Search for Army Intelligence," *Isis* 84(2) (1993): 278-309; Galison, "Judgment against Objectivity"; Ken Alder, "French Engineers Become Professional, or, How Meritocracy Made Knowledge Objective," in William Clark, Jan Golinski, and Simon Schaffer (eds.), *The Sciences in Enlightened Europe* (Chicago University of Chicago Press, 1999), 94-125; Galison, "Image of Self" in Lorraine Daston (ed.), *Things that Talk: Object Lessons from Art and Science* (New York: Zone Books, 2004), 257-294.

Wittgenstein demonstrated what united our various definitions of games was not an a priori essence but rather the family resemblances among the particular phenomena.[49] "For if you look at them you will not see something that is common to *all*, but similarities, relationships, and a whole series of them at that."[50] For Wittgenstein, the meaning of epistemic things lies not in some eternal essence that unites them but rather the mundane relationships that connect them. In a similar fashion, the philosopher Anne-Marie Mol and historian Michelle Murphy argue that diseases like sclerosis and sick building syndrome are not singular entities but rather refer to a heterogeneous cluster of phenomena. The sclerosis of the clinician was distinct from that of laboratory technician that differed again from the everyday experience of the sufferer.[51]

I would argue that the failure to institute a successful and stable science of deception has similar roots. As these various cases studies will illustrate, there was virtually no consensus, no common referent, when various historical actors were referring to the mental act of being deceived or deceiving. Rather each pointed to a distinct aspect of a closely interrelated assemblage of concepts and objects. One of the key differences that distinguishes a disease like sclerosis, for examples, from a mental phenomena like deception as an epistemic thing was that while the definition of the disease required the coordinated action of an array of actors, they did have a similar goal in mind. In contrast, actors from an even wider number of social worlds, whose intentions and desires not only differed and also who did not particularly desire coordination, utilized deception. In order to stabilize 'deception,' its meaning had to be secured within psychological science, legal circles, and commercial

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[49]Ludwig Wittgenstein, *Philosophical Investigations*, trans. G. E. M. Anscombe (Oxford: Blackwell, 1953), paragraphs 65-76.
[50]Wittgenstein, *Philosophical Investigations*, 66.
[51]Anne Marie Mol, "Missing Links, Making Links: The Performance of Some Arteriosclerosis," in Marc Berg and Anne Marie Mol (eds.), *Differences in Medicine* (Durham: Duke University Press, 1998) and Michelle Murphy, *Sick Building Syndrome and the Problem of Uncertainty: Environmental Politics, Technoscience, and Women Workers* (Durham: Duke University Press, 2006).

life. Achieving this coordinated action remains elusive, as present-day experimenters are acutely aware.

Deception as an epistemic thing continues to attract the concern of scientists while its exact parameters remained uncertain. Psychologists like Hugo Münsterberg and William Marston, drawing on the scientific ideal of objectivity, tried to institute quantitative measures to better comprehend the nature of human deception. Whether calculating points of visual similarity among competing brands or tracing elevated pulse and breathing rates, both psychologists wanted a numeric standard in order to make sense of deception and render it legible. When such quantifiable scales were introduced into the legal system they were met with skepticism. For the period I discuss, in the realm of the law, personally crafted judgment trumped a mechanical model of objectivity.[52] Ironically, Peter Galison argues that judgment came to eclipse mechanical objectivity in the sciences in the same era when I would argue that quantified measure had a somewhat increased purchase in the regulation of trade but at the cost of excluding the psychological question as to whether purchasers were actually or likely to be deceived. Deception has lived on as an uncertain, amorphous object whose effects are nevertheless felt. Its meaning has been the product of judgment rather than quantification and measure. Unlike microbes that have had a fairly solid existence since the victories of Pasteur in Third Republic France, deception remains open to redefinition and relocation as the rise of MERMER and fMRI maps in recent years indicates.[53]

My historical ontology of deception begins with the unmaking of Barnum's social world and the decline of humbug as a form of popular culture using the 1869 controversy over the Cardiff Giant as a lens. Designed by George Hull, a tobacconist from upstate New York, the statue simulated the appearance of a fossilized, potentially Biblical, giant man. In

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[52]See Galison, "Judgment against Objectivity."
[53]On Pasteur's microbes, see Bruno Latour, *The Pasteurization of France* (Cambridge: Harvard University Press, 1988).

accounts of the public's reception of the giant, the sentiment of wonder played a crucial role in guaranteeing the figure's authenticity. I examine the process through which this initially wondrous authenticity became redefined as a form of credulous deception on the part of the audience. I take the relatively rapid exposure of this particular hoax, combined with Barnum's withdrawal from the humbug trade, as an index of changing cultural sensibilities and a crucial redefinition of the public meaning of deception. I close the chapter by investigating the breakdown in the relationship between Barnum, the late-in-life trafficker in exotic animals, and the scientists working out of the Smithsonian Institution in Washington. Although initially Barnum forged a mutually beneficial connection with these scientists, his crafty manipulation of his animals' corpses ultimately alienated him from his former allies.

Next I focus on Barnum's more socially dubious counterpart, the confidence man, to explain the historical meaning of fraud and deception during the booming economic expansion of the Gilded Age. The confidence man was an important negative other through which many members of the nineteenth-century American middle-class constructed their identity.[54] Using contemporary exposés and confessions as my primary evidence, I explore the interaction between the swindler and the so-called self-made man. My central argument is that this relationship was primarily *psychological*. The threat posed by the confidence man was that he was a master in the emotions and desires of others and that he could manipulate the hidden vices of apparently virtuous citizens and make them servants to him and their base passions. The swindler's deceptive schemes were threats to individual liberty and independence in a society where such ideals were highly prized as markers of manliness.

Building on the psychological meanings of deception previously investigated in the world of commerce, I turn to the work of experimental psychologists. The most important

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[54]Karen Halttunen, *Confidence Men and the Painted Women: A Study of Middle-Class Culture in America, 1830-1870* (New Haven: Yale University Press, 1982).

figures for this chapter are Hugo Münsterberg and Joseph Jastrow. Drawing on the epistemic authority granted to them as practitioners of experimental science, these authors frequently addressed the question of human deception. Their popular psychology was both a venue for exploring the ways in which the mind was deceived and a means of communicating psychological knowledge to transform the observational habits of the consuming public. In this scheme, the circulation optical illusions play an important role, coexisting as both popular amusements and psychological tools.

This intersection of psychology, consumption, and governance comes to fruition in the legal fiction of the unwary purchaser prone to deception. Just as the human sciences have embedded within them certain understandings of the self, so too does the law. In most nineteenth-century jurisprudence, the ideal of individual self-reliance and responsibility was paramount. My investigation of cases of trademark infringement and deceptive advertising revealed a legal tradition that limited personal responsibility and suspended the notion of caveat emptor in order to protect the interests of established businesses. Although unevenly applied, the vision of the ordinary purchaser as an unwary one easily deceived played a critical role in the legal regulation of the economy. Experimental psychologists sought to supplement the empirical basis on which this legal assemblage of the consuming subject rested. Using an array of laboratory tests, psychologists attempted to construct a standardized, objective measure for the point at which the average consumer was likely to be deceived. In the end, judges were skeptical of this psychological approach and it was the legal rather than experimental conception of the unwary purchaser that became institutionalized in the regulatory apparatus of the American state, especially in the police powers to prevent fraud and the creation of the Federal Trade Commission.

The final chapter details the tentative institutionalization of two psychological tools for detecting deception within the police work and the justice system during the 1910s and

1920s. First, I explore the introduction of 'pathological lying' as a psychiatric diagnosis into American jurisprudence. The central figures are William and Mary Healy, as well as their institutional place at the psychology laboratory attached to Chicago's juvenile court. Just as the Healys were developing a notion of pathological deception, a series of psychologists and policemen were developing a test to detect deception in 'normal' individuals.[55] To this day, William Marston's polygraph remains the most iconic means of detecting deception appearing in court cases, government investigations, and sensationalistic talk shows. Despite, or perhaps because of, this cultural currency the lie detector has never been authenticated as either a legitimate scientific or legal tool. Instead, following its rejection as a widely accepted police tool, Leonarde Keeler developed profitable commercial applications of the technology. While dismissed by courts as an unreliable index for asserting the interior mental states of criminals, corporations began using the test to screen employees.

The historical ontology of deception was tied to transformations in the marketplace. Barnum's trickster games, carefully stage-managed to simultaneously stimulate and satiate middle class concerns about commercial fraud, represented an initial response to the perceptual challenges of a society increasingly organized around anonymous commercial exchange. The forms of judgment humbugs instilled in the consumer-observer were appropriate to the era of the American system of production and the political organization of the well-ordered society of local governance. Although artful deception remained an important resource until the century's end, already by the early postbellum years, individuals sensed its adequacy. The sciences of deception represented a response tailored to a period of mass production and national integration, a time when localized judgments could no longer manage the problem of fraudulent appearances. Actors in a variety of arenas called upon and

[55]The idea of contrasting these two techniques, one targeting normal lies and the other pathological ones, was inspired by Georges Canguilhem, *The Normal and the Pathological*, translated by Carolyn Fawcett (1946; New York: Zone, 1989).

developed a psychological understanding of the consuming, commercial self; they assembled a series of techniques and technologies around this self in the hope that a well-regulated purchasing public could solve the crisis of appearances brought about by corporate capitalism's reordering of social life.

Chapter 1
"The Joy in Believing": The Cardiff Giant, Commercial Deceptions, and Styles of Observation in Gilded Age America

For several months in late 1869, Cardiff, New York became the site of one of the most infamous hoaxes in nineteenth-century America when a local farmer claimed to have discovered the fossilized remains of a prehistoric, potentially Biblical, giant on his property. The discovery aroused considerable attention and soon thousands of visitors were flocking to the farm to get a glimpse of the natural wonder. Although rumors of its fraudulent nature circulated from the beginning, the giant remained a popular attraction operating within cultural norms that stressed every viewer's right to decide such questions for themselves. Soon a team of naturalists and geologists descended on the farm and announced that the giant was a mere statue. While their opinion was widely circulated, their expertise had to compete with alternative epistemologies grounded in religious belief and commercial transactions. Many reformers in the sciences were concerned by how these popular forms of empirical observation could reinforce undesirable varieties of credulity. This controversy provides an opportunity to explore the interaction among popular and scientific styles of observation and spectatorship, the co-production of expert and vernacular interpretations of an object. My concern here is to elucidate the norms, values, and emotions that sustained specific understandings of the natural order, and to explore the conscious project of remaking these associations.[1]

George Hull, a tobacconist from rural New York, devised a hoax that would make

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[1]On the history of observation, see Jonathan Crary, *Techniques of the Observer: On Vision and Modernity in the Nineteenth Century* (Cambridge, Mass.: MIT Press, 1990); Lorraine Daston, "Attention and the Values of Nature in the Enlightenment," in Lorraine Daston and Fernando Vidal (eds.), *The Moral Authority of Nature* (Chicago: University of Chicago Press, 2004), 100-126; Ardis Cameron (ed.), *Looking for America: The Visual Production of Nation and People* (Oxford: Blackwell, 2005). On the visual pedagogy of nineteenth-century popular science, see Bernard Lightman, "The Visual Theology of Victorian Popularizers of Science: From Reverent Eye to Chemical Retina," *Isis* 91(4) (2000): 651-680.

him rich, challenge Christian orthodoxy, and spectacularly stage the principle of the uncertainty of knowledge. At a time when Christian revivalists were preaching across the country, Hull was a skeptic and an atheist who greatly admired unorthodox sciences though he lacked any formal education. In 1866 while collecting a debt owed to him in Hardin County, Iowa, Hull met a Methodist minister, Reverend Turk. The two got into an argument concerning a passage in the Old Testament referring to the giants of the earth. Taking a literalist interpretation of the Bible, Turk and his supporters claimed that giants had roamed the earth and that eventually the necessary physical evidence would come to light. While he felt that Turk's faith challenged good reason, Hull was outnumbered at the time and lost the argument. According to an early exposé of the hoax, Hull was "excited by the discussion and convinced of the inordinate credulity of mankind."[2]

Hull developed a plan that required time, money, and effort, and began a search for the right kind of stone and proper workmen in order to make his very own 'petrified' giant. He found the proper stone in Montana and then had it shipped to Chicago where he employed skilled sculptors to fashion the creature, using his own body as a model. The finished giant stood over ten and a half feet tall and weighed close to three thousand pounds. Originally the statue was to have had hair but in conversing with a geologist, Hull learned that hair fibers were not expected to fossilize so that detail was eliminated. Certain other anatomical features like the ribs and penis were visible and quite detailed. However Hull remained unsatisfied, believing that the object looked too new for fossilized remains. With a sponge, water, and sand, he worked to wear down the creature's appearance. Rivulets were carved out to give the impression that the body had been exposed to water erosion. Finally complete, Hull's Goliath was ready to be uncovered by a public eager both to be entertained and to learn more

[2]W. A. McKinney, "The History of the Cardiff Giant Hoax," *The New Englander* 34 (1875): 759-769, 759.

about the natural world. Hull decided that the best place to unearth his creation would be near his birthplace in upstate New York. Through a series of secretive train and wagon shipments the giant was brought to Cardiff, New York and buried on the property of William Newell, one of Hull's in-laws. On October 16th 1869, while supposedly digging for a well on his property, two employees of Newell made the remarkable discovery. In what was thought to be the site of an ancient swamp, there lay buried the body of a petrified giant. Newell quickly spread the word of his supposed discovery throughout the area and by the end of the day the giant had already attracted an audience.[3]

By examining popular expressions of conviction concerning the giant's authenticity, much can be learned about the complicated means through which individuals ordered their world. For many spectators, the giant was understood within the framework of wonder, in which extraordinary objects that seemed to transcend the laws of nature were valued and appeared authentic for precisely this reason. Across the social spectrum, from farmers paying fifty cents to view the statue to the transcendentalist philosopher Ralph Waldo Emerson who viewed the giant in Boston, expressions of respectful wonder were heard. Wonder as a sentiment of inquiry had been central to reforms in natural philosophy during the seventeenth century but had subsequently been expelled from the domain of proper science.[4] The events at Cardiff highlight that even though most practicing scientists had disowned wonder as a scientific emotion, when operating in the public realm it was something they had to contend with and diffuse: to remake wondrous belief into deceptive

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[3]McKinney, "Cardiff Giant Hoax," 766.

[4]Lorraine Daston and Katherine Park, *Wonders and the Order of Nature, 1150-1750* (New York: Zone Books 1998). On the persistence of this sentiment in American commercialized displays of science, nature, and religion, see John F. Sears, *Sacred Places: American Tourist Attractions in the Nineteenth Century* (New York: Oxford University Press, 1989), David E. Nye, *American Technological Sublime* (Cambridge: MIT Press, 1995), Andrea Stulman Dennett, *Weird and Wonderful: The Dime Museum in America* (New York: New York University Press, 1997), Eric Leigh Schmidt, *Hearing Things: Religion, Illusion, and the American Enlightenment* (Cambridge: Harvard University Press, 2000), and Fred Nadis, *Wonder Shows: Performing Science, Magic, and Religion in America* (New Brunswick: Rutgers University Press, 2005).

credulity.[5]

This study is inspired by recent research that emphasizes how popular science ought to be understood as a distinct historical phenomenon with its own cultural meanings.[6] To understand the giant as a sensational public event in the history of observation, I draw on the insights of the historian Alain Corbin. He stresses the importance of exploring "abrupt confrontations of systems of perception and emotion" arguing that in such encounters subterranean and implicit modes of perceiving can be made more explicit.[7] This draws attention to the interaction among 'high' and 'low' forms of knowledge, a heuristically useful approach for historians of science who still tend to focus on the experiences and beliefs of elites. In particular, the historiography concerned with science in America has traditionally been oriented towards debates over the emergence of scientific professionalization. More recently, scholars have correctly highlighted the diffusion of illustrated works on natural history, the study of nature in the middle class parlor, and other forms of edification that framed the American public's understanding of and enthusiasm for nature.[8] Museums and

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[5]I have greatly benefited from two earlier accounts of the hoax, both rich in detail: Barbara Franco, "The Cardiff Giant: A Hundred Year Old Hoax," *New York History* 50(2) (1969): 421-440 and Elizabeth Pritchard Stewart, "Who Shall Decide when Doctors Disagree? Hoaxes and American Men of Science in the Nineteenth Century," (PhD dissertation, American University, 2003), 169-242. Franco's aim was to situate the event in the region's history. While Stewart suggestively discusses how the giant could have been used by Americans to negotiate the meaning of Darwinian evolution, her analysis tends to place hoaxing too firmly in a teleology towards professionalization.

[6]Roger Cooter and Stephen Pumfrey, "Separate Spheres and Public Places: Reflections on the History of Science Popularization and Science in Popular Culture," *History of Science* 32(3) (1994): 237-267. For Britain, see Bernard Lightman, "'Voices of Nature': Popularizing Victorian Science," in Lightman (ed.), *Victorian Science in Context* (Chicago: University of Chicago Press, 1997); Alison Winter, *Mesmerized: Powers of Mind in Victorian Britain* (Chicago: University of Chicago Press, 1998); James A. Secord, *Victorian Sensation: The Extraordinary Publication, Reception, and Secret Authorship of* Vestiges of the Natural History of Creation (Chicago: University of Chicago Press, 2000). For the American case, see Gregg Mitman, *Reel Nature: America's Romance with Wildlife on Film* (Cambridge: Harvard University Press, 1999) and Katherine Pandora, "Knowledge Held in Common: Tales of Luther Burbank and Science in the American Vernacular," *Isis* 92(3) (2001): 484-516.

[7]Alain Corbin, "A History and Anthropology of the Senses," in *Time, Desire, and Horror: Towards a History of the Senses*. Translated by Jean Berrill (1991; Cambridge: Polity Press, 1995), 181-195, 186.

[8]Sally Gregory Kohlstedt, "Parlors, Primers, and Public Schooling: Education for Science in Nineteenth-Century America," *Isis* 81(308) (1990): 425-445; Margaret Welch, *The Book of Nature: Natural History in the United States, 1825-1875* (Boston: Northeastern Press, 1998); Christopher Irmscher, *The Poetics of Natural History: From John Bartram to William James* (New Brunswick: Rutgers University Press, 1999); Philip Pauly,

public exhibits were highly contested sites in the representation of the natural order with certain curators like Charles Wilson Peale stressing the need for enlightenment at his Philadelphia Museum while other exhibitors stressed a more populist, entertainment-oriented strategy.[9]

It is helpful to situate the Cardiff Giant controversy in what historian James W. Cook refers to as "the Age of Barnum."[10] This designation draws attention to the centrality of artful deception and out-right fraud to American society and selfhood in the middle decades of the nineteenth-century, during the booms and busts of the market revolution. The showman P. T. Barnum epitomizes these years, achieving national celebrity as the self-proclaimed prince of humbugs. In his American Museum in New York City, he intermingled natural objects with deceptive artifacts and called upon the audience to distinguish one from the other. Humbuggery as a form of entertainment and commercial epistemology required that the audience not simply be passive viewers but active participants. The ontological status of the objects on display was in question: were they natural entities or carefully crafted artifacts of human labor designed to mimic nature and deceive the senses? Answers were not immediately apparent and audience members were required to make their own decision. Barnum's humbugs ranged from a supposed mermaid - in fact the bodies of a monkey and a fish stitched together – to the repugnant racial spectacle of the 'What Is It,' an African American man dressed in furs displayed as a potential missing link between animals and humans. The historian Neil Harris has labeled this style of entertainment in which the

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Biologists and the Promise of American Life: From Meriwether Lewis to Alfred Kinsey (Princeton: Princeton University Press, 2000).

[9]Sally Gregory Kohlstedt, "Curiosities and Cabinets: Natural History Museums and Education on the Antebellum Campus," *Isis* 79(298) (1988): 405-426; Joel J. Orosz, *Curators and Culture: The Museum Movement in America, 1740-1870* (Tuscaloosa: University of Alabama Press, 1990); Dennett, *Weird and Wonderful*; Steven Conn, *Museums and American Intellectual Life* (Chicago: University of Chicago Press, 1998).

[10]James W. Cook, *The Arts of Deception: Playing with Fraud in the Age of Barnum* (Cambridge: Harvard University Press, 2001).

audience examines how the exhibit functions in order to develop their own interpretation the 'operational aesthetic' and has argued persuasively for its centrality in nineteenth-century amusements.[11]

By stressing individual competency, these attractions performed considerable ideological work in a society that prided itself on its (albeit still limited) democratic character. As Harris and Cook have argued, Barnum forged a new understanding of deception wherein its deployment in the context of spectacular popular displays served to buttress the virtues of the republican citizenry, namely its epistemological independence and the ability of judge for oneself. Barnum's public amusements were centered on certain implicit convictions about the nature of human subjectivity. For his humbugs to function as proper commercial amusements, individuals had to possess the abilities and skills to successfully detect frauds and illusions. The audience members for his American Museum were not credulous gawkers but skeptical Yankees able to navigate the perilous terrain of the market economy.[12] Although Donna Haraway has argued that these hoaxes were more democratic sites of inquiry compared with the public displays of modern biology, as this case will illustrate, certain elites had both cultural and financial incentives in deferring epistemic authority to the 'people.'[13]

Science, especially natural history and anthropology, held an ambiguous place in the world of humbug. Its authority was often invoked, because the natural status of many of the objects involved was precisely what was in question, but the naturalists themselves rarely controlled the situation. For example, while touring the Feejee Mermaid in 1842, Barnum

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[11]Neil Harris, *Humbug: The Art of P. T. Barnum* (Boston: Little Brown, 1973).
[12]Other key studies of Barnum include A. H. Saxon, *P.T. Barnum: The Legend and the Man* (New York: Columbia University Press, 1989); Buford Adams, *E Pluribus Barnum: The Great Showman and the Making of U.S. Popular Culture* (Minneapolis: University of Minnesota Press, 1997); Benjamin Reiss, *The Showman and the Slave: Race, Death, and Memory in Barnum's America* (Cambridge: Harvard University Press, 2001).
[13]Donna Haraway, *Primate Visions: Gender, Race, and Nature in the World of Modern Science* (New York and London: Routledge, 1989), 279-280.

would often elicit scientific testimonials for and against the object to arouse controversy and sell more tickets. To make his show a commercially successful enterprise required altering "the general incredulity in the existence of mermaids, so far as to awaken curiosity to see and examine the specimen." He enlisted an accomplice, posing as 'Dr. Griffin' of the Lyceum of Natural History in London, to commence displaying the object in Charleston where it became a focal point in a heated public debate over scientific authority and Southern honor among the local natural history community disseminated. 'Dr. Griffin' began to filter these stories of the remarkable artifact with a potentially fraudulent nature back into the New York press. Although naturalists publicly condemned the mermaid, they did not succeed in dissuading public enthusiasm for the exhibit. Rather the highly public scientific controversy was perpetuated to maximize Barnum's personal gain.[14]

The success of such a strategy hinged largely on societal norms that placed relatively little value in the final authority of expertise. For many Americans interested in such exhibits, making the final judgment for themselves was paramount. As historian Lawrence Levine has argued, for much of the nineteenth-century our modern common sense hierarchies of high versus popular culture did not exist. Attending a performance of Shakespeare was a spectacle for both the merchant and the laborer. Plebian attendees had distinct expectations about such performances and they passionately expressed their views. An actor who confounded them risked a barrage of vocal criticism, and in the case of the Astor Palace Riots, outright violence. Similar cultural norms centering on a diffuse epistemological authority sustained the proliferation of alternative medicine and delayed the reception of laboratory methods in American medicine. At mid-century, Americans favored a medical epistemology grounded in common experience rather than scientific expertise, fearing that

[14]P. T. Barnum, *The Life of P. T. Barnum* (New York: Redfield, 1855) 230-242, 232. See also Harris, *Humbug,* chapter 3 and Cook, *Arts of Deception,* chapter 2.

the 'professional mystery' based upon laboratory knowledge was more susceptible to defrauding an excluded public.[15]

By century's end, the hierarchy between refined and mass culture was more firmly in place. The failed radicalism of Reconstruction combined with the increasing mobility, anonymity, and self-making permitted by a nationally integrated economy posed a serious challenge to established elites. In reaction, much of late nineteenth-century political culture was typified by an anti-democratic impulse. For example, the New York City bourgeoisie attempted to restrict the suffrage among males, to reinstate property ownership as a marker of freedom.[16] The Cardiff Giant Controversy and the decline of humbugs as morally uplifting activities can be taken as indices in the unmaking of the earlier world. It would be erroneous to associate this transformation with secularization as Christian beliefs proved to be quite amenable to the mechanisms of a mass-produced culture of the Gilded Age. Furthermore, mass consumption and specifically the department store with its colorful and spectacular window displays did much to reinstate a sense of awe in a supposedly secular world.[17]

The Cardiff Giant emerged out of this complex nexus of deceptive spectacles, commercialized faith, and embryonic scientific institutions. Onondaga County was an ideal locale to find such a prehistoric man. The stone in the region was incredibly fossil rich, and as large tracts of surrounding area had been recently excavated in order to construct the Erie Canal, locals had a good deal of experience in discovering fossilized remains. This was a

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[15]Lawrence Levine, *Highbrow/Lowbrow: The Emergence of Cultural Hierarchy in America* (Cambridge: Harvard University Press, 1988) and John Harley Warner, "The Rise and Fall of Professional Mystery: Epistemology, Authority, and the Emergence of Laboratory Medicine in Nineteenth Century America," in Andrew Cunningham and Perry Williams (eds.), *The Laboratory Revolution in Medicine* (New York: Cambridge University Press, 1992).

[16]Sven Beckert, "Democracy and its Discontents: Contesting Suffrage Rights in Gilded Age New York," *Past & Present* 174 (2002): 116-157 and Levine, *Highbrow/Lowbrow.* On the elitist orientation of American social thought, see Dorothy Ross, *The Origins of American Social Science* (New York: Cambridge University Press, 1991).

[17]William Leach, *Land of Desire: Merchant, Power, and the Rise of a New American Culture* (New York: Vintage, 1993) and David Morgan, *Protestants and Pictures: Religion, Visual Culture, and the Age of American Mass Production* (New York: Oxford University Press, 1999).

crucial environmental factor in making the giant a more believable object. Due to geological conditions, locals would have encountered fossils in their everyday experience, though admittedly much less dramatic than that of the giant. Furthermore, these individuals lived at the epicenter of the market revolution transforming American society while engaging in the passionate evangelical Christian revivals of the Second Great Awakening as well as the founding of Mormonism.[18]

As soon as the giant was uncovered, a variety of opinions concerning its nature began to circulate. A local dentist, who had once given public lectures on chemistry, examined the body and pronounced that in his opinion it was indeed the remains of a fossilized man. Next, Dr. John F. Boynton, a naturalist from nearby Syracuse, argued that the body was not in fact a fossil but a statue, probably one carved by Jesuit missionaries three hundred years previously. In a widely reprinted letter to Henry Morton at the University of Pennsylvania, Boynton wrote: "It is positively absurd to consider this a 'fossilized man.' It has none of the indications that would designate it as such, when examined by a practical chemist, geologist or naturalist."[19] Boynton invoked his scientific expertise to refute the opinion of the interested amateur. Although Boynton's opinion was widely cited, his superior credentials did not definitively refute earlier interpretations. Instead the scientific opinion coexisted with vernacular ones in the early weeks of the controversy.

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[18]On the market revolution, see Charles G. Sellars, *The Market Revolution: Jacksonian America, 1815-1846* (New York: Oxford University Press, 1991) and Carol Sheriff, *The Artificial River: The Erie Canal and the Paradox of Progress, 1817-1862* (NY: Hill and Wang, 1996). On its relationship to the rise of evangelical Christianity, see Whitney Cross, *The Burnt-Over District: The Social and Intellectual History of Enthusiastic Religion in Western New York, 1800-1850* (Ithaca: Cornell University Press, 1950); Paul Johnston, *A Shopkeeper's Millennium: Society and Revivals in Rochester, New York, 1815-1837* (New York: Hill and Wang, 1978); Richard L. Bushman, *Joseph Smith and the Beginnings of Mormonism* (Urbana: University of Illinois Press, 1984). On the persistence of religious belief, see James B. Gilbert, *Redeeming Culture: American Religion in an Age of Science* (Chicago: University of Chicago Press, 1997) and Jon Butler, "Jack-in-the-Box Faith: The Religion Problem in Modern American History," *Journal of American History* 90(4) (2003): 1357-1378.

[19]"Letter of Dr. Boynton," Syracuse *Daily Standard* October 21 1869, Onondaga Historical Association topical files of newspaper clippings, hereinafter cited as OHA files. The letter is reprinted in *The American Goliah* [sic]*: A Wonderful Geological Discovery* (Syracuse: Redington and Howe, 1869), 6.

With the divergent opinions established, the giant functioned as a true nineteenth-century humbug. The nature of the object was in question; it was now left to the individual audience members to use their own senses and faculties of judgment to determine the true nature of the mysterious body. On the day of its 'discovery' the locals who gathered on Newell's farm were able to view the body for free. By the next, a system had been set up so that the partially excavated body was covered by a tent and individuals had to pay fifty cents for a fifteen minute viewing. In the first week of business, the average daily audience ranged between three to five hundred people. As the proprietors of the exhibit later claimed in the publicity pamphlet, *The American Goliah* [sic], the intended audience was to include all members of the community: "Old and young, male and female, people of the community rush in a constant stream to view the immense curiosity."[20] The editors of the Syracuse *Journal* concurred, reassuring their readers that there was "nothing shocking, or repulsive even, in the spectacle" and that the gathered crowds were respectable.[21] Like Barnum's humbugs, the Cardiff Giant was designed to attract a white audience of the middling sort. To ensure respectability, one of the first guests invited to view the giant on the day of its discovery was John A. Clarke, who had come to Cardiff the night before to lecture on temperance.[22] Although the publicity surrounding the exhibit suggested the potential for deception, it did so in a respectable manner. After all, in terms of entertainment, what was more democratic than discerning for oneself the nature of a questionable artifact?

Such an enthusiasm is not surprising considering how the bodies and artifacts of ancient peoples played an important role in nineteenth-century American nationalism. Even before the publication of Darwin's *The Origin of Species* (1859), the predominant strain in

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[20] *American Goliah*, 10.
[21] "The Lafayette Wonder," Syracuse *Daily Journal* October 22 1869, OHA files.
[22] "A New Wonder! Petrified Giant," Syracuse *Daily Standard* October 18 1869, OHA files. For his status as respected temperance advocate, see "Obituary – John A. Clark," Syracuse *Daily Journal* September 21 1872, OHA files.

nineteenth-century European thought was historicism; the conviction that the world as it currently existed was the product of a long historical development.[23] In response, American intellectuals grappled with questions concerning both the origins of humanity and the earliest history of their continent. Most naturalists were simultaneously committed to demonstrating that New World artifacts were not inferior to European ones while persistently challenging the priority of Native Americans on the land. In constructing such claims, the disciplinary identity of the anthropologist was intimately tied to digging for bones, their identification, and measurement. Such practices were grounded in the desecration of Native burial grounds and the projection of racial hierarchies onto material artifacts. For example, the *Crania Americana* (1839) of Philadelphia's Samuel Morton helped legitimate the hierarchical political order, arguing for the inferior mental capacity of Native Americans based on their supposedly smaller skulls. Such practices persisted late into the nineteenth-century with even Franz Boas, widely identified as an anti-racist and cultural relativist, claiming that grave robbing was an unfortunate necessity of anthropological research.[24] The initial reception of the giant played into this tradition of collecting and classification, with early observations noting what contemporaries perceived as its distinctly Caucasian features. Handbills

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[23]Maurice Mandelbaum, *History, Man, and Reason: A Study of Nineteenth Century Thought* (Baltimore: Johns Hopkins University Press, 1971).

[24]Stephen Jay Gould, *The Mismeasure of Man* (New York: Norton, 1981), 30-72; Robert Rydell, *All the World's a Fair: Visions of Empire at America's World Exhibitions, 1876-1916* (Chicago: University of Chicago Press, 1984); Robert E. Bieder, "The Representations of Indian Bodies in Nineteenth-Century American Anthropology," *American Indian Quarterly* 20(2) (1996); 165-179; Curtis M. Hinsley, "Digging for Identity: Reflections on the Cultural Background of Collecting," *American Indian Quarterly* 20(2) (1996): 180-196; Stewart, "Who Shall Decide when Doctors Disagree?" 178-194; Megan Highet, "Body Snatching and Grave Robbing: Bodies for Science," *History and Anthropology* 16(4) (2005): 415-440. See also Andrew Zimmerman, *Anthropology and Antihumanism in Imperial Germany* (Chicago: University of Chicago Press, 2001).

advertising the giant detailed its measurements from its overall length to minute calculations its facial dimensions.[25]

The human body was not the exclusive domain of anthropologists, for medical reformers were contemporaneously working to raise people's awareness of the anatomical body. Just as anthropologists sought to demystify the bones of Natives, medical reformers propagated a naturalistic, physiological vision of the white, bourgeois body. Classroom pedagogy and public lectures helped form a new bourgeois identity tied to a medical understanding of the self.[26] The same month that C. O. Gott photographed the giant and offered the images for sale in his Syracuse studio, he provided the illustrations for a series of popular Franklin Institute lectures on human physiology and anatomy under the title "Man Know Thyself!"[27] Such spectacles turned the ordinary human body into a site of wonder, amusement, and edification.

When examining the recorded audience responses to the giant, it is striking how prominent the sentiment of wonder was in its reception. Both promotional pamphlets and newspaper reports explicitly referred to the object as a 'wonder.' A contemporary observer perceptively described the feeling as the "joy in believing" in the purported status of the creature's origins.[28] In contemplating the giant, knowledge and emotion were not distinct but rather reinforced each other. For many viewers, it appears that the giant's extraordinary nature made it more credible; how could an object that evoked such wonder be fraudulent?

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[25]"The Lafayette Wonder: Results of Further Investigation," Syracuse *Daily Journal* October 10 1869, OHA files and the undated handbill *Dimensions of the Great Onondaga Giant* in Cardiff Giant Records 2002.84, folder 1, Onondaga Historical Association.
[26]Charles Rosenberg, "Catechism of Health: The Body in the Prebellum Classroom," *Bulletin of the History of Medicine* 69(2) (1995): 175-197; Michael Sappol, *A Traffic in Dead Bodies: Anatomy and Embodied Social Identity in Nineteenth-Century America* (Princeton: Princeton University Press, 2002); Margaret Lock, *Twice Dead: Organ Transplants and the Reinvention of Death* (Berkeley: University of California Press, 2002).
[27]See "Amusements: Franklin Institute Lectures," Syracuse *Daily Standard*, November 11 1869, OHA files.
[28]Andrew Dickson White, "The Cardiff Giant: The True Story of a Remarkable Deception," *Century Magazine* 1902: 948-955, 951.

In the debates surrounding the giant, wonder and belief were connected to an empiricist style of observation, one accessible to all and in which sensory experience trumped other kinds of knowledge.[29] In this logic, the immediately visual was privileged over abstract or formal scientific knowledge. As a doctor of theology from Syracuse rhetorically asked: "Is it not strange that any human being, after seeing this wonderfully preserved figure, can deny the evidence of his senses, and refuse to believe what is so evidently the fact that we have here a fossilized human being, perhaps one of the giants mentioned in Scripture?"[30]

The overwhelming power of sublime sentiments to frame the reception of the Cardiff Giant is elegantly captured by a skeptical correspondent for the New York *Sun*. Conveying his impressions of the audience upon first viewing the giant, he "noticed on the faces of all a momentary spasm of awe, a short involuntary holding of breath, as their gaze fell upon what they firmly believed to be the stony remains of an American Goliath."[31] Earlier the Syracuse *Journal* observed how "[m]any visitors gaze for an hour or two, scanning every feature keenly and revolving within their minds the evidences touching the origin of the wonder."[32] Many of the individuals who did not consider the giant to be a natural object still experienced it with reference to wonderment. Although he believed the giant was a statue, General E. W. Leavenworth, the former mayor of Syracuse, observed that he had not seen anyone "who entertained doubt of its great antiquity, after looking at that wonderful and inexplicable figure." Its sublime nature ensured that it was "a serious and most remarkable reality."[33] Similarly, the somewhat skeptical John Boynton still described the artifact as a "wonderful

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[29]For a sense of the disparate historical meanings of experience see Peter Dear, *Discipline and Experience: The Mathematical Way in the Scientific Revolution* (Chicago: University of Chicago Press, 1995) and Michelle Murphy, "Immodest Witnessing: The Epistemology of Vaginal Self-Examination in the U.S. Feminist Self-Help Movement," *Feminist Studies* 30(1) (2004): 115-147.
[30]White, "Cardiff Giant," 950-951.
[31]"Elaborate Description of the Cardiff Colossus," reprinted in Syracuse *Daily Standard*, November 30 1869, OHA files.
[32]"The Lafayette Wonder," Syracuse *Journal* October 22 1869, OHA files.
[33]*The American Goliah*, 30.

curiosity" that evoked in him a "feeling of awe."[34]

These evocations of the sentiment of wonder are significant when viewed within the context of the history of science. As Lorraine Daston and Katherine Park argue, wonder had played a crucial role in the epistemology of the seventeenth-century's new natural philosophy. Wondrous objects that seemed to defy established natural laws were valorized as the mechanisms to transform scientific practice. At a time when reformers of natural philosophy like Francis Bacon and René Descartes sought to discredit their Aristotelian predecessors, empirical objects that contradicted ossified theories were more valued than theories in and of themselves. Although crucial to the reformed natural philosophy, wonder, as a psychology of inquiry, remained problematic owing to its associations with enthusiastic religious and superstitious belief at a time when practitioners of science were attempting to distance themselves from the divisive impact of denominational, religious conviction. Consequently, this epistemology of wonder came under severe attack during the eighteenth century and its connection to scientific research was severed. Instead of a spur to curiosity and investigation, wonder came to connote a passive gawking.[35] Although formally expunged from honest science, wonder as a sentiment of inquiry persisted outside of the halls of established scientific societies. This sentiment would come to trouble a new set of scientific reformers as they reflected back upon the Cardiff Giant.

Not all spectators shared this wondrous intensity of experience. The Syracuse *Journal* noted how many others only looked for a few minutes before engaging in debates or visiting the restaurants erected on the site.[36] Some readers would write the local papers condemning

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[34]*The American Goliah*, 5.
[35]Daston and Park, *Wonders and the Order of Nature, 1150-1750.*
[36]"The Lafayette Wonder," Syracuse *Journal* October 22 1869, OHA files.

them for encouraging belief in the spectacle.[37] Certainly the anonymous author of *The Autobiography of the Great Curiosity* did not interpret the giant in a pious or wondrous framework. The *Autobiography* consists of irreverent parody of religious credulity, commercial culture, and Mormonism by retelling the giant's former life complete with his flirtation with Eve, the resulting fistfight with Adam, his collecting of specimens for both Noah's ark and P. T. Barnum, a spell with the Mormons in Salt Lake City, and a twenty-four hour marriage in Chicago which is "considered a successful union in that village."[38] Yet even its harshest critics conceded that something extraordinary lay at the root of the giant. An early argument for the statue's recentness centered on the rumor that a monomaniacal, migratory, French Canadian laborer had carved it during a fit of compulsive madness. Initially, even the crafting of the giant could not be comprehended as a rational act but rather as a form of emotionally disturbed insanity.[39]

Despite various obstacles to belief - for example, the object included more than the remains of bone, raising the issue of how human flesh could petrify - for those who wished to believe in the veracity of the local giant, such objections were not particularly convincing. For Cardiff, it was soon remembered, was a truly miraculous place. In recent memory, a number of wondrous phenomena had violated the supposedly immutable order of nature. Newell's father-in-law, former owner of the farm in question, recalled that there was a spring on the farm that had the power to turn gravel and sand into solid stone. Others recalled that during the construction of the railroad twenty miles away, workers had uncovered five other skeletal giants, one nearly eleven feet tall. Here, undoubtedly, was further evidence that a race of giants roamed these parts millennia ago. Furthermore, the petrified flesh seemed

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[37]"From a Reader of the *Standard*," Syracuse *Standard* November 20 1869, OHA files.
[38]*The Autobiography of the Great Curiosity. The Cardiff Stone Giant, Lately Discovered on the Newell Farm*, 2nd edition (Syracuse: Hitchcock & Smith, nd [1869]), 13.
[39]"The Onondaga Giant," Syracuse *Journal* October 26 1869, OHA files.

authentic. Some claimed that in the possession of the Onondaga Historical Society there was a foot-long fossilized fish that was the same color as the giant. There was even more recent evidence to support the claim that the giant was an authentic creature. In the past fifteen years, there had been at least three documented cases of rapid petrification of human remains soon after burial.[40] While flesh might not petrify under normal conditions, the soil of miraculous Cardiff was an exception. As the November 1st editorial of the Syracuse *Standard* argued: "Geology is quite a new science. It depends on observation and all that it teaches us is that a Fossil Giant never was discovered until William C. Newell dug his well at Cardiff."[41]

The persistence of local credulity towards the giant was not entirely naïve. In fact many influential locals had not only emotional but also considerable economic interests in the giant. After a few days, Newell followed through on Hull's instructions and sold the petrified man to a group of regional businessmen: an agent for the American Express company, a wealthy dentist, and a number of bankers from Syracuse. Although there was a clause in the contracts promising the investors the return of their money if the giant proved fraudulent or of recent origin, it is unclear whether these merchants genuinely believed in the authenticity of the giant or whether this was even of much concern to them.[42] It was not simply this small cohort that profited from the giant's presence in Onondaga County. With literally thousands of tickets being sold daily and increased national publicity for the event, the entire economy of the region was profiting from the influx of visitors flocking to the miracle of Cardiff.

After Boynton's initial report on the artifact, a remarkable list of experts was invited

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[40]"The Petrified Giant," Syracuse *Daily Standard* October 19 1869, OHA files.
[41]"How the Giant was Petrified," Syracuse *Daily Standard* November 1 1869, OHA files.
[42]See the contracts in Cardiff Giant Records 2002.84, folder 9, Onondaga Historical Association.

to examine the body. Louis Agassiz, the most renowned living naturalist in America, was invited but never participated. On November 3rd, Professor James Hall, the state geologist, and S. B. Woolworth of the State University of New York arrived to give their professional opinions. Before they inspected the body, local patrician Andrew Dickson White, the founding president of Cornell University, greeted them. Although a historian and diplomat by profession, White was especially interested in the establishment of higher education on a non-sectarian footing.[43] He had been away when the controversy had first broken out, but upon his return, he had been taken aback by the response it received. White assumed that the majority of the population would have dismissed the giant as a joke but the opposite had been the case. Aural elements played a key role in White's evaluation of the situation: he was struck by the absence of incredulous laughter and was overwhelmed by the silence of solemnity. Years later, reflecting back on the controversy while composing his memoirs, he recalled that few visitors spoke above a whisper in the presence of the giant.[44] Due to this intensity of popular belief, to take the Cardiff Giant too lightly would be a grievous error. He urged Hall and Woolworth to not be cavalier in their association with the spectacle.

Where Barnum had forged certain alliances between public entertainers and men of science, White felt that the relationship must be sundered to ensure the propriety of science. White warned of the danger of conceding scientific principles to popular opinion. Science did not have sufficient stability or respectability to take too many chances when operating in the public domain. As a result, scientists must be especially cautious when associating themselves with potential frauds. The connection risked sending the whole scientific and

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[43]For White's struggle to establish Cornell University as secular and non-sectarian see White, *My Reminiscences of Ezra Cornell: An Address Delivered before the Cornell University on Founder's Day, January 11th, 1890* (Ithaca: Cornell University, 1890). See also James R. Moore, *The Post-Darwinian Controversies: A Study of the Protestant Struggle to Come to Terms with Darwin in Great Britain and America, 1870-1900* (Cambridge: Cambridge University Press, 1979), 30-36.

[44]White, "Cardiff Giant," 949.

educational enterprise into disrepute. Since the government offered some support for education and scientific research, the intermingling of science and fraud may undermine people's opinion of the state.[45] Rather than science serving as the unquestioned arbiter of epistemological controversies, White recognized that it was still competed with other authorities. As a result, scientists must act in a more restrained and limited fashion when their practices were on public display.

The local press excitedly described the procedure that these gentlemen of science undertook in examining the body. The Syracuse *Journal* had earlier noted how local professional men "were obliged to content themselves with such observations as they could obtain from positions in the mass of eager, crowding spectators at the outside of the wooden railing which prevents nearer approach than four or five feet."[46] Such restrictions were lifted for Hall and Woolworth. The Syracuse *Daily Standard* emphasized how these "examiners soiled their linen in groping in the clay and water underneath his giantship."[47] As the exhibitors had kept previous audiences members at a distance to heighten the ambiguity of the object, the presence of dirt on the scientific investigators' clothing gave their opinion added authority.

Ultimately, Hall and Woolworth did not endorse the idea that the object was a petrification.[48] Both opted for the middle path, arguing that the body was a statue carved out of gypsum of some antiquity while being cautious not to dismiss it as a hoax. Furthermore, James Hall, in a letter reprinted in the local press, emphasized the need for civility between scientific investigators and commercial showmen. Although he and the other scientists had been permitted to observe the giant away from other audience members, when he realized

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[45]White, "Cardiff Giant," 950.
[46]"Lafayette Wonder," Syracuse *Journal* October 22 1869, OHA files.
[47]"The Stone Giant," Syracuse *Daily Standard* November 4 1869, OHA Files.
[48]White, "Cardiff Giant," 950.

"that the crowd outside were enough to twice fill the tent, and all desirous of seeing, and that the receipts of the owner for tickets were $26 per hour, it seemed scarcely civil to occupy a longer time."[49] While Hall and Woolworth wanted to investigate the giant, they thought it improper to interfere with the showmen's profit making.

Another investigator who took an ambiguous stance towards the giant, the agricultural scientist George Geddes, blamed any potential errors and inaccuracies on the proprietors of the exhibit. He held that he was never given the opportunity to perform a proper scientific study due to the presence of the crowds and the viewing time of fifteen minutes.[50] These complaints illustrate an element in the growing divide between accredited scientific investigators and popular showman. Geddes implied that such a public venue was not an adequate site for a proper and accurate scientific investigation although he did concede that the proprietors had politely answered his inquiries. Such were the tensions at the heart of the public debates over natural objects initiated by P. T. Barnum's successes in setting various naturalists against one another in order to publicize his Feejee Mermaid in the 1840s.[51]

Henry Ward, a naturalist from Rochester, concurred with the statue theory. Even this experienced naturalist shared certain common sentiments with the lay audience: "All of one's *feelings* persuade to accept it was a real human being."[52] Despite the power of such sentiments, Ward sided with the growing scientific consensus in arguing that although not a fossil, the statue was worthy of archaeological attention. Ward did contribute to dismantling the popular notion of Cardiff as a site of miracles. Advocates of the giant had cited the fact

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[49]"The Onondaga Giant," Syracuse *Journal* October 26 1869, OHA files. On the ideal of civility in early modern scientific interactions, see Steven Shapin, *A Social History of Truth: Civility and Science in Seventeenth Century England* (Chicago: University of Chicago Press, 1994).
[50]"Letter of Hon. Geo. Geddes," Syracuse *Standard* October 21 1869, OHA files.
[51]Barnum, *The Life of P. T. Barnum*, 230-242.
[52]*American Goliah*, 27.

that a large fish composed of similar stone was on display at the local historical society. Convinced that the body was a statue, Ward decided to investigate another of Cardiff's miraculous fossils. Ward dismissed the possibility that the item was a genuine fossil, arguing that it was simply ordinary limestone shaped by natural processes like erosion. The naturalist suggested that Cardiff was not so wondrous a place after all.[53]

A paleontologist based at Yale University, Othniel C. Marsh, carried out the most sustained scientific criticism of the Cardiff Giant. Whereas the other scientists had been ambivalent about dating the actual sculpting of the body, Marsh had no reservations. On November 25th, he published his opinion in the Buffalo *Courier*: "it is of very recent origin and a decided humbug."[54] He noted that it was composed of gypsum, the wrong kind of rock type for fossilization. Boynton's theory that the statue was of Jesuit origins was dismissed as Marsh found that the markings on the statue were not sufficiently worn away, indicating that it had been carved out in the recent past. Furthermore, someone had chiseled ruts into the statue in order to simulate the appearance of erosion. Marsh declared that the giant was of no scientific interest.

If science had been the ultimate arbiter of things natural, the controversy surrounding the giant may have ended with Marsh's pronouncements. Certainly his authority had purchase and his viewpoint was in ascendancy but showmen attuned to the epistemologies of the market managed to bolster wondrous belief in the object for several more months. As the giant became a national sensation, P. T. Barnum himself arrived in Cardiff.[55] While the proprietors of the giant borrowed heavily from his promotional methods, they were unwilling to share the revenue or collaborate with Barnum, and his offer to purchase a share in the

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[53]"The Stone Giant," Syracuse *Daily Standard* November 10 1869, OHA files.
[54]Cited in White, "Cardiff Giant," 951.
[55]"The Onondaga Giant," Syracuse *Daily Standard* November 11 1869, OHA files.

Giant was refused. This lack of cooperation did not trouble Barnum deeply; he simply purchased a copy of the giant from a local sculptor. He began displaying his copy at Wood's Museum in New York City by December 1869, while the proprietors of the original giant attempted to bolster its scientific credibility by having it displayed at the State Geological Hall in Albany. When the owners of the original Cardiff Giant moved their show to New York City, there existed two blocks from one another, two 'Cardiff Giants' competing for audience members. Barnum had the audacity to circulate the original advertising pamphlets from upstate and even publicly denounced the Syracuse men for exhibiting a "counterfeit giant." Owing to Barnum's established reputation and superior showmanship, the forgery of the fraud managed to do better business than the 'true' fossilized giant.[56]

Initially the proprietors of the original Cardiff Giant sought to discredit the authenticity of Barnum's exhibit through publicity. For example, they wrote a letter to the *New York Times* explaining the fraudulent nature of Barnum's duplicate.[57] When such techniques failed to detract Barnum's audiences, they sought a legal remedy. They filed an injunction against Barnum in the hopes of preventing him from exhibiting his copy. Interestingly the suit failed because the presiding judge argued that he could not enforce a ruling unless the litigants could guarantee the authenticity of the original Cardiff Giant. The proprietors dropped their suit.[58] Science had a limited ability to regulate and reign in such frauds but the law operated with different canons of evidence. In order to win their legal case, the owners of the original giant would have had to prove that their giant was an

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[56]McKinney, "Cardiff Giant Hoax," 768.
[57]Amos Gillett, D. H. Hannum, W. C. Newell, A. Westcott, "The Cardiff Giant Not in Town – Card to the Public," *New York Times* December 13 1869, 8.
[58]McKinney, "Cardiff Giant Hoax," 768.

authentic artifact of nature with no taint of fraud.[59]

Just as the controversy was beginning to die down in New York, the original giant was moved to Boston where it once again caused a sensation. The audience there reportedly included such cultural luminaries as the sculptor Cyrus Cobb, the philosopher Ralph Waldo Emerson, and the noted medical doctor Oliver Wendell Holmes. In spite of their education and social standing, the response of the Boston Brahmins was reminiscent of the populist sentiments expressed in Onondaga County. Emerson's response, in particular, echoes the sense of wonder and awe that was central to the original reception. He "pronounced it beyond his depth, astonishing, and undoubtedly ancient." In a surprising reversal in expert opinion, Cobb, as an expert in the sculptor's craft, "declared that any man who called the giant a humbug 'simply declared himself a fool.'"[60]

Although credulity was briefly renewed when the giant toured Boston, its humbug status stuck. In counterpoint to the proliferating giants in New York City, newspapers began to report that George Hull had publicly confessed his role in the affair in mid-December.[61] Rather than surrendering to overwhelming criticism, Hull's confession was made with another goal in mind. Late into his own life, Hull would recount and restage the controversy, playing up the fact that the sculpture was a constructed fake. Hull consistently refused to concede mastery over his hoax to others. In interviews decades later, he still bragged about

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[59]It appears that no scientific experts testified at the trial but rather the court's decision was grounded in its own legal epistemology. On the law's knowledge practices, see Mariana Valverde, *The Law's Dream of a Common Knowledge* (Princeton: Princeton University Press, 2003).

[60]Emerson and Cobb are cited in McKinney, 768 and G. A. Stockwell, MD, "The Cardiff Giant, and Other Frauds," *Popular Science Monthly* 1878 13: 197-203, 200.

[61]"The Cardiff Giant," Syracuse *Daily Standard* December 11 1869, OHA files. A more detailed account was provided in the anonymous *The Cardiff Giant Humbug: A Complete and Through Exposition of the Greatest Deception of the Age* (Fort Dodge, Iowa: North West Books and Job Printing Establishment, 1870). Elizabeth Stewart insightfully suggests that Barnum, for the sake of publicizing the New York exhibits, may have orchestrated Hull's confession. See Stewart, "Who Shall Decide When Doctors Disagree?" 127.

his abilities in "fooling the world with the big stone man."[62] In such pronouncements one can see the performance of the aggrandizing aspects of nineteenth-century commercial self-making for he proudly played up his achievements as a confidence man.[63] Even when scientific experts publicly uncovered his hoax, Hull did not submit to their authority but rather boasted that his aim all along had been the exposure of American credulity. He emphasized his religious skepticism and he used this stone statue as a hammer against established faiths. That the Christian community's credulity could be so easily manipulated by a humbug showed the inherent weaknesses of its faith. Back in 1866, the Methodist minister's uncritical faith in the scriptural dictates that giants had once roamed the earth had inspired Hull to expose the vulnerabilities of the fundamentalist beliefs. As one contemporary remarked, one of Hull's primary goals was to put the religious world "into a vortex of doubt and controversy."[64]

When the scandal itself received a systematic exposure in an article by G. A. Stockwell, medical doctor, published in *Popular Science Magazine* in 1878, other lessons were intended. The article, which focused upon the definition of impropriety and fraud in science, was placed by the editor between an article by F. W. Clarke on the need for reform in the structure of scientific education in America and one of Charles Sanders Peirce's essays on the proper use of scientific method. Furthermore, Stockwell concludes his article by evoking a deceptive Asiatic other in connection with scientific fraud. He claimed to be surprised that with all their skill and cunning ingenuity, the Chinese had yet to duplicate such

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[62]"Made the Cardiff Giant," New York *Sun* December 24 1898, OHA files. See also the interview published in Arthur T. Vance, *The Real David Harum* (New York: The Baker and Taylor Co., 1900), 76-90. The titular character in E. N. Westcott's novel *David Harum* (1898) was based on one of the investors in the giant while another investor was own Westcott's father. The giant is not mentioned in the novel.
[63]On the confidence man, see Karen Halttunen, *Confidence Men and the Painted Women: A Study of Middle-Class Culture in America, 1830-1870* (New Haven: Yale University Press, 1982).
[64]Stockwell, "The Cardiff Giant," 200.

a deception.[65]

Such racialized associations were not unique to Stockwell. In only the second volume of the journal *Science* (1883) an anonymous editorial entitled "From Superstition to Humbug" sets out to distinguish humbug from science, beginning the definition of humbug in a surprising place: the British colonization of India. According to the author, because of the British's superior technological power, the 'ignorant' natives "exalt them [the British] as more than human beings" so that the Indian "turns from its own hazy gods to new and visible wonder-workers."[66] Thus, humbug is not identical to religion or superstition. Rather, humbug is understood here as an intermediate stage between superstition and 'true' scientific knowledge. Unlike the ancient gods, these new deities are at least material and visible in this world. In light of the discourse of civilization that was so prominent in late nineteenth century America, such a rhetorical strategy is significant. For the audience reading *Science*, civilization was coded as refined, respectable, and white, though its status was insecure.[67] For those who may have felt that Barnum's humbugs were harmless fun, the association with Indian primitives would have been disconcerting. That one could be so easily duped challenged the notions of racial superiority that was central to their identity. While the author reassures the reader that the scientific charlatan is "not dangerous" and "nearly always amusing," the connection with a colonized, unfree people sends a different message. In this sense, the article is a call to expel humbug from Western society in the name of the highly prized goals of rationality and civilization.

The editorialist's purpose was not to insult his audience but to promote his own cause: the wider participation in and funding for the professional study of science. The

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[65]For his surprise that the Chinese have yet to forge a copy of the giant see Stockwell, "Cardiff Giant," 203.
[66]"From Superstition to Humbug," *Science* 2(41) (November 16, 1883): 637-639, 637.
[67]See Gail Bederman, *Manliness and Civilization: A Cultural History of Gender and Race in the United States, 1880-1917* (Chicago: University of Chicago Press, 1995).

problem facing America was not superstition but 'half-knowledge,' much like the Indian upon first encountering the British. The older dogmas have been broken, the false gods dead; the problem is that a surrogate rather than proper rationality has replaced them. People have some knowledge of scientific ideas and therein lay the problem. They possess a "childlike confidence" in those who evoke scientific rhetoric without understanding science's true causes or methods.[68] Charlatans can use the rhetoric of science to pass off humbugs because the general populace is ignorant of the methods of science and are therefore unable to properly judge or criticize the impostor. The general public is getting its information about science from the wrong sources: newspapers, public lectures by unqualified persons, and popular books, rather than from practicing scientists. According to the author, the best solution to this problem consisted in a greater exposure of lay people to the practices of laboratory science so that the general public could better distinguish between true science and fraud. Since the author is skeptical of the ability of the majority of the citizenry to regularly engage in such practices, he argues that America's schools are in need of serious reforms concerning the science component of the curriculum.

Despite such anxieties, deception and fraud were not things that could be eliminated from the practice of science during these years. Soon after condemning the Cardiff Giant as a shallow humbug, Othniel Marsh began his journey westward where he became one of the leading paleontologists in the country, gathering an enormous amount of dinosaur bones. An integral aspect of these successes was Marsh's very public dispute with E. D. Cope, a rival paleontologist, during which charges of priority of discovery, theft, and outright fraud were frequently leveled in the press.[69] Other naturalists found it difficult to distance themselves

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[68]"Superstition," 637.
[69]Mark Jaffe, *The Gilded Dinosaur: The Fossil War between E. D. Cope and O. C. Marsh and the Rise of American Science* (New York: Crown: 2000).

from commercial showmen like Barnum. Henry Ward, who had been uneasy about the crowds at Cardiff, later worked as a taxidermist for Barnum, including the preparation of body of the famous elephant, Jumbo.[70]

Similarly, researchers based at the Smithsonian Institution kept Barnum in their network of associates. In preparing traveling shows, Barnum would often request loans of duplicate Native American artifacts from the museum. In exchange, Barnum instructed his circus managers to telegraph the Smithsonian whenever an animal died to see if they wanted its remains for display.[71] The former exhibitor of fraudulent humbugs was accepted among the ranks of scientists as a patron though not a fellow practitioner. For example in 1882, the Smithsonian Institution commissioned an artist to sculpt a bust of Barnum "to be placed in [its] series of representations of men who have distinguished themselves for what they have done as promoters of the natural sciences."[72] That same year, Barnum donated thirty thousand dollars to Tufts College in Massachusetts, to create the Barnum Museum of Natural History.[73] His role as science patron allowed Barnum to craft an identity that was more refined and learned than the typical Gilded Age bourgeois. In his correspondence with various members of the Smithsonian, Barnum was at great pains to distinguish himself from his business partners, especially in instances when his managers failed to deliver the desired animals corpses. In a letter to Spencer Baird, Barnum wrote: "I try hard to beat it into my partners' heads that your institution *must* have all you want that dies on our hands, & I will

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[70]See for example, letter from Barnum to Henry Ward, 24 October 1885 in A. H. Saxon (ed.) *The Selected Letters of P. T. Barnum* (New York: Columbia University Press, 1983), 274. On the naturalist as entrepreneur, see Mark V. Barrow, "The Specimen Dealer: Entrepreneurial Natural History in America's Gilded Age," *Journal of the History of Biology* 33(3) (2000): 493-534.
[71]Barnum to Joseph Henry, 17 April 1873, in Saxon (ed.) *Letters*, 175.
[72]Spencer F. Baird to Barnum, 1 May 1883, in Saxon (ed.), *Letters,* 238. See also Barnum to Baird, December 9 1884, Smithsonian Institution Archives, U.S. National Museum Permanent Administration Files, 1877-1975, Record Unit 192, box 637, file # 209237.
[73]"Agreement for the Barnum Museum of Natural History," in Saxon (ed.), *Letters,* 235.

keep trying – but they are *showmen*, intent only on *pushing* the show to a profit."[74] Although the relationship was often strained by Barnum's deceptive attempts to play off a number of institutions against one another, these connections illustrate the problem with teleologies that assert that nineteenth-century scientists were on a direct road to professionalization.[75] Similarly, historian Daniel Goldstein has emphasized how socially and geographically porous American scientific networks were during these years, with research institutions relying upon correspondents and contributions from numerous avocational sources. While these arrangements were necessary for the practice of field sciences, they risked facilitating the frauds of confidence men.[76]

Furthermore, scientific experts failed in completely eliminating wondrous objects from vernacular understandings of nature. At the same time that the Cardiff Giant was being dismantled as a wonder in America, from the supposed apparition of the Virgin Mary at Lourdes in France emerged a vibrant commercial industry where tourism, faith, and medical healing commingled.[77] The shroud of Turin is a clear example of an object whose contested authenticity is co-produced at the unstable boundaries among science, religion, and empirical investigation. Archaeology as a discipline has been particularly open to myths of lost peoples, contact with extraterrestrial life, and the fabrication of fraudulent objects.[78] It should be noted that in all these cases, it was not simply a question a science versus religion. In fact, commercial relations and interests frequently play a crucial mediating factor.

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[74]Barnum to Baird, 11 April 1883, in Saxon (ed.) *Letters,* 233. Emphasis is in original.
[75]See J. B. Morrell, "Professionalization," in R. C. Olby, G. N. Cantor, J. J. R. Christie, and M. J. S. Hodge (eds.), *Companion to the History of Modern Science* (London and New York: Routledge, 1990), 980-989.
[76]Daniel Goldstein, "'Yours for Science': The Smithsonian Institution's Correspondents and the Shape of Scientific Community in Nineteenth-Century America," *Isis* 84(4) (1994): 573-599.
[77]Ruth Harris, *Lourdes: Body and Spirit in the Secular Age* (London: Allen Lane, 1999) and Suzanne K. Kaufman, *Consuming Visions: Mass Culture and the Lourdes Shrine* (Ithaca: Cornell University Press, 2005). On the giant as an analogous site of miraculous healing, see "Letter from Cardiff," Syracuse *Daily Standard* October 10 1869, OHA files.
[78]Patricia C. Click, "High Technology Meets the Spiritual: Objectivity, Popular Opinion, and the Shroud of Turin," *The Journal of Popular Culture* 21(4) (1988): 13-23 and Stephen Williams, *Fantastic Archaeology: The Wildside of North American Prehistory* (Philadelphia: University of Pennsylvania Press, 1991).

The difficulties posed by such associations were on the mind of Andrew White when he published his account of the controversy in 1902. A third of a century after the event, White was still troubled by how easily his neighbors had been deceived. In true patrician style, he noted that "particularly American superstition that correctness of belief is decided by the number of people who can be induced to adopt it - that truth is a matter of majorities." What was needed was the "healthful skepticism" of well-educated individuals like O. C. Marsh to combat the naïve belief in popular humbugs. White was troubled by his fellow citizens, for prior to Hull had not many of them fallen victim to that other "tricky creature," falsifier of ancient objects, the founder of that heresy Mormonism, Joseph Smith? For White, a man who had dedicated much of his life and career to 'elevating' popular belief by way of expert knowledge and distinguishing superstition from science, that humbugs and a commitment to wonders persisted into his own lifetime and so close to home was an ominous sign about the nature of his fellow countrymen. While composing his memoirs, White noted that "[a]t no period in my life have I ever been more discouraged regarding the possibility of making right reason prevail among men."[79]

Although evolution and natural selection were virtually never mentioned explicitly in accountings for the giant's origins, the emergence of scientific naturalism was also part of the controversy. Scientific Naturalists embraced positivism as an epistemology and enthusiastically debunked the wondrous and miraculous seeking wholly naturalistic explanations for phenomena. T. H. Huxley would attack naturalists with ecclesiastical support like Richard Owen and St. George Jackson Mirvart, Francis Galton would empirically calculate the inefficiency of prayer, and John Tyndall would polemically chastise religiously oriented education. In Britain, scientific naturalism was closely associated with a

[79]White, "Cardiff Giant," 951, 953, 950-51.

generational cohort that sought to break the Anglican clergy's control over scientific institutions and hoped to professionalize the sciences.[80] In the United States, no single church possessed the comparable predominance of the Church of England, although reformers were acutely concerned by the denominational orientation of education. Similarly, the powerful professionalizing dynamic that marked the British scene was also quite different in America, where the proudly uneducated George Hull would also embrace naturalism. While men like Marsh and White were certainly reluctant to recognize any such affinity with the swindler, in practice, the hoax was a performance of scientific naturalism not so different from the debunking staged by the likes of Huxley, Galton, and Tyndall. In fact, one of the rare instances when Darwinian evolution was explicitly mentioned was in connection to Hull's supposed enthusiasm for it. Stockwell observed that by the 1870s, Hull was focused on "the pursuit of experimental chemistry, and taught by the popular views of Darwin, as expounded by the public press, he began to astonish the good people of the United States."[81]

To understand the intensity of the emotional investment in the hoax among scientific reformers it is helpful to make reference to what the current day anthropologist of science, Bruno Latour, calls 'the Modern Constitution.' For example, Andrew Dickson White was a strict adherent and even a champion of this belief that modernity guaranteed the absolute distinction and even polarity among such realms as science, religion, and society.[82] His masterpiece, *The Warfare of Science and Theology in Christendom* (1896), is a manifesto for the need to distinguish between and purify the separate discourses of modernity. Questions of religious dogma are ontologically different from the scientific investigation of nature. The

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[80]See Frank Turner, *Contesting Cultural Authority: Essays in Victorian Intellectual Life* (New York: Cambridge University Press, 1993), 151-200.

[81]Stockwell, "The Cardiff Giant," 200. In contrast, Stewart sees the giant and related anthropological hoaxes as populist parodies of naturalism that scientific professionalism ultimately shut down. See Stewart, "Who Decides When Doctors Disagree?" 231-233.

[82]Bruno Latour, *We Have Never Been Modern,* trans. Catherine Porter (Cambridge: Harvard University Press, 1993), 13-48.

work seeks to illustrate the inexorable damage done by dogmatic theology when it is uncontained in its proper realm of spiritual belief. The great error of past societies was to fail to distinguish between religious belief and natural knowledge. Because of his conviction in the separation of the worlds of God and humanity, White held that natural knowledge cannot do harm to Christianity. On the other hand, when theology oversteps its properly bounded modern limit, it can colonize natural knowledge and do unquestionable damage.[83]

From this perspective, one can see how the Cardiff Giant must have appeared truly monstrous. Just as Latour has argued for other objects, the giant could not be successfully purified - in its very existence it intermingled nature, society, and God. It was simultaneously a commercial amusement, physical evidence for the literal truth of biblical revelation, an example of Christian gullibility and naïveté, a statute carved of gypsum, a crude hoax. Its various connotations, roles, and identities cannot be distinguished from one another; it refuses to sit easily in either pole of the Modern Constitution but conflates them. The giant was virtually incomprehensible to those who shared White's sensibilities while also threatening one of their most cherished principles. The controversy surrounding the giant did not merely stage uncertainty about religious matters but also questioned the methods, certainty, and authority of the sciences and scientific naturalism by their very association with the hoax.

The Cardiff Giant controversy highlighted the problem of fraud and deception across the supposed divide between science and society. In addition to religious belief, scientific knowledge had to compete with authorities grounded in the epistemologies of commerce, the law, and democracy. While it was the apparent conflict between science and religion that received its canonical articulation during these years, modes of perceiving grounded in the

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[83]Andrew Dickson White, *A History of the Warfare of Science with Theology in Christendom,* 2 Vol. (New York: D. Appleton and Company, 1896), Vol. I, viii.

marketplace proved equally challenging. Where humbugs had once reaffirmed that individual viewer's ability to determine the truth for themselves, the controversy undercut such confidence. Although wonder persisted as an experience, the concerns of Gilded Age elites about fraud and deception tempered earlier configurations of the sublime as a virtuous, republican sensibility. Because of the potential for inducing deception, many individuals no longer considered certain wonders to be proper sites for contemplation and consumption. This restaging of the Enlightenment, which is a continual and unfinished project, paved the way for new understandings of the processes behind human deception and credulity.

The project ultimately made the pleasurable deceptions exhibited by Barnum unthinkable for those who lived in the first decades of the twentieth-century. Reflecting on this legacy in the 1930s, the medical doctor Richard C. Cabot expressed the incommensurability that he sensed between his own generation and that of Barnum:

> The shams and tricks of April Fool's Day, the practical jokes *so dear to many Americans in the last century* and to some families today, do not get confused with swindling unless they are carried out on the scale of P. T. Barnum's 'Feejee Mermaids.' Displayed on the posters they were combing their hair and disporting their charms. After you had paid your fifty cents and gone in they had collapsed into a hideous little patchwork of money's body sewed to fish's tail, black, shriveled, and repulsive. Was this a joke or a swindle? Barnum's public swallowed both aspects and asked for more, but I doubt if we should do so today.[84]

Although the legend of the Feejee Mermaid persisted a century after its exhibition, Cabot quite literally could not get the joke.[85] Although he could recognize it, he was unable to share in the pleasure that an earlier generation derived from potentially deceptive public spectacles. Such a hoax could provide neither entertainment nor edification; all he could detect was a callous act of deceptive advertising. While he noted that an earlier generation

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[84]Richard C. Cabot, *Honesty* (New York: Macmillan, 1938), 23-24. Emphasis added.
[85]On the historical specificity of humor as an access point in understanding past cultures, see Robert Darnton, *The Great Cat Massacre and Other Episodes in French Cultural History* (New York: Vintage, 1984), 75-106.

eagerly flocked to such shows, from his own historical standpoint he could only see in them a criminal swindle. Similarly, the experimental psychologist Joseph Jastrow wrote to the *New York Times* in 1935 to express his unease with a reviewer's assertion that his most recent book reaffirmed Barnum's contention that deception was essentially harmless. Rather "indulgence in such beliefs, far from being innocent, makes for a flabby, uncritical mentality, and, carried far enough, rots the mind."[86]

Such incommensurability did not come about by chance but was the product of a conscious project that linked deception to the bio-political regulation of the marketplace.[87] Consumer capitalism, operating in its embryonic form in Barnum's commercial hoaxes, was understood as preying upon a vulnerable population of easily deceived subjects. Psychological tools developed by laboratory investigators, clinicians, as well as lay experts such as judges were used to mediate and regulate the deceptions produced in the marketplace. The collective minds of the purchasing public became the object of this psychologically oriented governance. To understanding this bio-politics of the marketplace, I next investigate how Barnum's criminal counterpart, the confidence man, claimed to use a form of psychological expertise in honing his trade.

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[86]Joseph Jastrow, "Letter to the Editor," *New York Times* June 9, 1935, BR 20. See Isabel Proudfit, "More Confirmation of Barnum: Dr. Joseph Jastrow's *Wish and Wisdom* Shows How Our Desires to be Fooled Sway our Lives as of Old," *New York Times* May 12, 1935, BR5.

[87]On the historical production of incommensurability as a conscious project, see Mario Biagioli, *Galileo, Courtier: The Practice of Science in the Culture of Absolutism* (Chicago: University of Chicago Press, 1993), 211-244.

Chapter 2:
'Graft is the Worst Form of Despotism':
Swindlers, Commercial Culture, and the Liberal Self

The grafter attracted J. P. Johnston's attention soon upon entering his jewelry clearance store in late nineteenth-century Chicago. Although the tall man dressed in overalls, a blouse, stogy boots, and a cap had the appearance of a laborer, Johnston recognized him as a former business acquaintance. The young gentlemen had previously held a managerial position of some responsibility with a dried goods firm, had graduated from Yale, and came from a reputable family. For these reasons, Johnston, himself an itinerant merchant and self-described hustler, was taken aback that the man was passing himself off as a potato seller in the streets outside his shop. What would motivate a gentleman to embrace such a position, far beneath his social station?

The young man explained that he was not a street hawker but rather a self-identified grafter and eagerly described his current scheme to Johnston. His targets were the women of the middle and upper classes who maintained respectable houses in the city and yet were in search of a good bargain. He would travel door to door on the pretense of selling potatoes in order to gauge the household's income. Upon ascertaining its wealth, the man would then produce a set of spectacles that had the appearance of gold but were in fact made of a near worthless metal alloy that would turn green with oxidization after a few days. Claiming to have found them in the street and that they were of no use to him, he would offer to sell his new client the spectacles at below the market cost for gold. He would vary the asking price based on the woman's outer appearance and their conversation about the sale of potatoes. By the time the woman would detect the deception, the grafter would have moved onto another neighborhood to ply his trade. The young man found what he could make through the graft

greatly exceeded the paltry amount of his former fixed salary. Furthermore, he explained that his rich father had recently passed away and that the estate had become so entangled that its legal fees were greater than it was worth. The grafter's appearance was pliable; several days later, he reappeared in Johnston's store, this time dressed in a fashionable business suit. He explained that this day he was targeting his spectacle scheme towards the professional men in the street.[1]

Johnston's anecdote about the grafter illuminates the late nineteenth-century vision of the swindler. The confidence man's success hinged upon a certain social fluidity, anonymity, and an abundance of commercial ventures, all opportunities promised by the marketplace. Like the grafters whose tales he related, Johnston had experienced the unstable nature of commercial life in late nineteenth-century America himself. Throughout his lifetime, this jack-of-all-trades had engaged in several rather dubious enterprises, although he insisted in demarcating himself from the swindlers he exposed in his books, presenting their stories as moral tales revealing the potentials and pitfalls of modern commercial life. For example, when recounting this particular tale, he noted that he was later informed that the young man would come to spend some time in a penitentiary for his dishonesty. Despite these warnings to readers, there lurked a certain admiration for the swindler's great aptitude in moneymaking and commercial self-fashioning. Carefully noting the grafter's deceptive outward appearance, Johnston appreciated his honed ability of class passing.[2] Additionally, to be a

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[1]J. P. Johnston, *Grafters I have Met* (Chicago: Thompson and Thomas, 1906), 28-38. For Johnston's self-presentation as a hustling itinerate trader, see Johnston, *Twenty Years of Hus'ling* (Chicago: Hallet, 1888) and Johnston, *How to Hustle* (Chicago: Thompson and Thomas, 1905).

[2]On the notion of class passing, see Mark Pittenger, "What's on the Worker's Mind: Class Passing and the Study of the Industrial Workplace in the 1920s," *Journal of the History of the Behavioral Sciences* 39(2) (2003): 143-161. Class passing was one many forms of cultural 'impersonation' occurring at the time. See Matthew Frye Jacobson, *Whiteness of a Different Color: European Immigrants and the Alchemy of Race* (Cambridge: Harvard University Press, 1998); Philip Deloria, *Playing Indian* (New Haven: Yale University Press, 1998); Laura Browder, *Slippery Characters: Ethnic Impersonators and American Identities* (Chapel Hill: University of North Carolina Press, 2000).

successful grafter required that the practitioner become a master of human psychology. Those who worked these schemes boasted of their superior knowledge of human nature, of people's desires and fallibilities. Although morally ambiguous, the confidence man was a professional whose trade was intimately geared towards a world of consumption.[3]

This chapter investigates what kind of self the confidence man symbolized and his relationship to the commercial and political culture of Gilded Age and Progressive Era America. The confidence man was a morally dangerous figure, for his trade denied the Protestant values of hard work, productivity, and thrift. Although the corporate culture of the Gilded Age had eroded the power of these republican virtues, the transformation was far from complete. People worried about the ability of the grafter to encourage others, honest self-made men, to act in a similar fashion: to take unwarranted financial risks, make frivolous, unwise purchases, and participate in illegal schemes. The threat posed by the confidence man belongs to a realm that we presently call the psychological: the swindler was acutely aware of the importance of confidence, trust, and emotional relations in the realm of commerce. The threat presented itself on three levels: his own behavior, the behavior he induced in others, and his expertise in consumer psychology. Furthermore, with his false outer appearance and hidden inner psyche, the swindler was psychologically complex in contrast to nineteenth-century middle-class norms that emphasized transparency and sincerity.

Most importantly, the confidence man, as both admirers and critics noticed, was a pioneer in what they understood as "mass psychology." As E. G. Redmond noted in his exposé *The Frauds of America* (1896), what he termed the 'bunco-steerer' "is an almost

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[3]For example, in the Soviet Union's economy of scarcity, confidence men flourished as experts in seeking out luxurious goods. See Sheila Fitzpatrick, "The World of Ostap Bender: Soviet Confidence Men in the Stalin Period," *Slavic Review* 61(3) (2002): 535-557.

infallible judge of human nature and rarely makes a mistake in selecting his subject."[4] Due to his powerful force of 'personality,' he was capable of projecting his will onto his victim who was "amazed at the temporary paralysis of volition that afflicted him."[5] To properly understand the cultural meanings assigned to the confidence man, one should take this description seriously. My approach is to open up a view of psychology not as a body of theories espoused by scientists, philosophers, and theologians but rather as a collective of techniques assembled around a configuration of the subject.[6] The confidence man uses his knowledge of human nature in the pursuit of profit; he preys on virtuous citizens and plays upon their repressed and base natures, their hidden avarice, desire, passion, and draws these emotions out into the public sphere. This process was thought to ultimately make the bourgeois self a slave to his or her passions, resulting in a loss of self-control, autonomy, and independence. This lay psychology of the consumer is not inconsequential for the historian of the human sciences. The kind of emotional relationships cultivated by the grafter were in turn studied by experimental scientists and, as discussed in the next chapter, incorporated into their own psychology of deception.

Furthermore, addressing the psychological nature of the conman demonstrates how he functioned symbolically in the renegotiation of nineteenth-century ideals of manliness. As historian Peter Filene noted, for much of the nineteenth-century the normative vision of white manliness was defined as "self-reliant, strong, resolute, courageous, honest." There is a long tradition of identifying women as emotional and deceitful in firm contrast to the rational,

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[4]E. G. Redmond, *The Frauds of America: How They Work and How to Foil Them* (Chicago: Francis Book Co., 1896), 168.
[5]Redmond, *The Frauds of America*, 170.
[6]See Roger Smith, "Does the History of Psychology have a Subject?" *History of the Human Sciences* 1(2) (1988): 147-177.

objective male.[7] Thus the male swindler is of particular interest as the prominence of this type in American history demonstrates that there existed a powerful convention of associating deception and emotionality with men. The confidence man attracted considerable attention because he undercut the self-reliance and self-mastery at the heart of the manly ideal of liberal self-governance with his ability to bend the will of others. The swindler anticipated the aggressive masculinity that eclipsed the refined Victorian vision of manliness. Where historian Gail Bederman located the roots of this ideological shift primarily in cultural representations of race, the market economy was an equally important source.[8]

As the fallout over the Cardiff Giant Controversy indicates, the moral economy and cultural meanings surrounding deception had changed in the final decades of the nineteenth-century.[9] As discussed in the previous chapter, P. T. Barnum created a public space where the traffic in potentially deceptive objects could serve the public good. In examining his humbugs, Barnum's audience refined and exercised their critical judgment and commercial sensibilities. In this chapter, I will evaluate the unmaking of Barnum's morally esteemed style of deception. Just as scholars have explored the intersection of Barnum's humbugs with the broader ideological orientation of the Jacksonian market revolution, this

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[7]See especially Donna J. Haraway, "Modest Witness: Feminist Diffractions in Science Studies," in Peter Galison and David J. Stump (eds.), *The Disunity of Science: Boundaries, Contexts, and Power* (Stanford: Stanford UP, 1996), 428-441. As Geoff Bunn and Ken Alder have suggested, early proponents of the lie detector explicitly used such assumptions in the legitimation of the technique. By studying nineteenth-century swindlers, one can see how the polygraph represented as much a renegotiation the gendered vision of deception as reaffirmation of it. See Geoff Bunn, "The Lie Detector, *Wonder Woman*, and Liberty: The Life and Work of William Moulton Marston," *History of the Human Sciences* 10 (1997): 91-119 and Ken Alder, "A Social History of Untruth: Lie Detection and Trust in Twentieth-Century America," *Representations* 80 (2002): 1-33, 9.

[8]See Peter G. Filene, *Him/Her/Self: Gender Identities in Modern America*, 3rd edition (1974; Baltimore: Johns Hopkins University Press, 1998), 74-99, quote 75; E. Anthony Rotundo, *American Manhood: Transformations in Masculinity from the Revolution to the Modern Era* (New York: Basic Books, 1993); Gail Bederman, *Manliness and Civilization: A Cultural History of Gender and Race in the United States, 1880-1917* (Chicago: University of Chicago Press, 1995); Martin Berger, *Man Made: Thomas Eakins and the Construction of Gilded Age Manhood* (Berkeley: University of California Press, 2000).

[9]Lorraine Daston, "The Moral Economy of Science," *Osiris* 10 (1995): 3-24.

transformation of deception, inscribed onto the person of the confidence man and his all too willing victims, ought be placed in a wider context.[10]

Concerns about fraud tend to be historically specific and often reflect anxieties about new forms of economic exchange. In the present-day, the style of fraud that attracts the most media attention is undoubtedly 'identity theft': the ability of thieves to gain access to one's personal information such as a credit card or social security number in order to acquire goods and services via electronic forms. Identity theft reflects worries about a new form of the economy – one of virtual, electronic money that seems intangible.[11] Portrayals of the confidence man around the turn-of-the-century exhibit a definite and distinct shift. While the nineteenth-century swindlers tended to target small time victims, to fleece a farmer or a merchant, the twentieth-century swindler attacked established financial institutions like banks, law firms, or insurance companies. Worse still, the practices of larger corporations were seen as increasingly resembling the illegal tactics of confidence men. Like the nineteenth-century confidence man, modern enterprise was contingent upon the trust of strangers and uncertain speculation.[12]

The shifting representations of the swindler are not accidental; they reflect worries about the rise of the large corporation, a paper currency whose worth was no longer tied directly to the market value of its material substance, and increased levels of consumption.

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[10]As Janet Davis has recently commented, by the late nineteenth century humbug was an "ostensibly dying cultural form." See Davis, "Freakishly, Fraudulently Modern," *American Quarterly* 55(3) (2003): 525-36, 36. Similarly Gary Cross has noted that historians have yet to "explain the decline of the popular fascination with deception" and the complexities of its critique. See Gary Cross, "Review of Cook, *Arts of Deception* and Reiss, *The Showman and the Slave*," *Journal of American History* 89(3) (2002): 1035-1037.

[11]Furthermore, the elderly are the portion of the population most often depicted as the victims of fraud. Demographic shifts in the North American population have ensured that the elderly are a more populous and politically important segment of the population than ever before but they are also conceived as a social group with particular needs and vulnerabilities. See Betty Sowers Alt and Sandra K. Wells, *Fleecing Grandma and Grandpa: Protecting against Scams, Cons, and Fraud* (Westport, Conn.: Praeger, 2004) and Charles C. Sharpe, *Frauds against the Elderly* (Jefferson, North Carolina: McFarland, 2004).

[12]On this shift, see especially Edward H. Smith, *Confessions of a Confidence Man: A Handbook for Suckers* (New York: Scientific American Publishing Co., 1923), 5-29.

While historians have argued that early twentieth-century Americans embraced a new culture of mass consumption as a therapeutic salve that quenched their anxieties about the erosion of traditional sources of authority, the new economy continued to generate unease.[13] In other words, concerns about the marketplace's dependence upon speculation, trust, and deception were never fully sated and the figure of the swindler was never completely incorporated into the culture of American capitalism.[14]

Tracking down these articulations of the self requires a close reading of the rather inglorious literary tradition of confessions and exposés concerning confidence men. These works fall into a number of genres: short, ephemeral pamphlets aimed at visitors to urban centers, local businessmen, or farmers; longer exposés published by police officers, mail inspectors, or agricultural newspapers; amusing and colorful recollections produced by confidence men or detectives at the end of their careers detailing their exploits. Many of these works were published by small time publishers, far from metropolitan centers and tailored to local concerns or problems. The memoirs of confidence men, written frequently after a self-declared retirement from the trade, often served as a further opportunity at self-aggrandizement, a final cashing-in on their ingenious schemes by having the reader pay to learn from the grafter's experiences. Whether exposés trying to enlighten the unsuspecting or the barely-repentant confessions of former swindlers, such texts are rich catalogues of the everyday practices of the graft. Through an analysis of these compendiums of knowledge,

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[13]T. J. Jackson Lears, "From Salvation to Self-Realization: Advertising and the Therapeutic Roots of Consumer Culture, 1880-1920," Richard Wightman and Lears (eds.), *The Culture of Consumption: Critical Essays in American History, 1880-1980* (New York: Pantheon, 1983), 1-38; Warren Susman, "'Personality' and the Making of Twentieth-Century Culture," *Culture as History: The Transformation of American Society in the Twentieth Century* (New York: Pantheon, 1984), 271-285. See also Ian Nicholson, *Inventing Personality: Gordon Allport and the Science of Selfhood* (Washington: American Psychological Association Press, 2003).

[14]The problem of securing trust at a distance is the theme of Theodore Porter, *Trust in Numbers: The Pursuit of Objectivity in Science and Public Life* (Princeton: Princeton University Press, 1995). On the incorporation of confidence games into the corporate culture of advertising, see T. J. Jackson Lears, *Fables of Abundance: A Cultural History of Advertising in America* (New York: Basic Books, 1994).

we can chart the skills and techniques through which the confidence man constituted his identity, his trade, and his victims.[15]

Despite the availability these sources, the confidence man is a particularly difficult historical subject to pin down. His was a consciously deceptive style of subjectivity and self-identity, one grounded in a refined skill in lying to those willing to listen. By his very profession, he is an unreliable witness: he frequently fabricated his exploits and accomplishments. He would literally manufacture a fictitious past in order to pursue his latest commercial exploit. While historians have a wealth of first-hand accounts of the activities of confidence men, the kind of testimony being presented can never be fully trusted. The reader can never be certain which events depicted in the text actually took place, were exaggerated, or simply made up to recount an impressive tale. For this reason, I focus on how experience was represented in these texts and how, in turn, they could frame expectations.

My central concern in exploring these texts is to elucidate how the confidence man as a style of performing the self intersected with implicit notions about human psychology. As accounts circulated by local chambers of commerce, farmer's journals, and popular publishers, these books framed the public perception of what to expect from an encounter with a swindler. Their publication also helps track the geographic reach of the confidence man from the urban metropolises of the east coast to the agricultural communities of the Midwest. While one cannot guarantee the authenticity of the events depicted in these texts, they can be used to reconstruct the perceptions that molded the encounters with and performances of the confidence man. As the historian Joan Scott has argued, historical

[15]In contrast, Gary Lindberg's insightful study of the confidence man looks exclusively at canonical texts of American literature. See Lindberg, *The Confidence Man in American Literature* (New York: Oxford University Press, 1982).

experience is not something that is given in an unmediated form but rather something that is constituted.[16] When facing a confidence man, people were instructed to expect a charismatic individual, capable of shifting his outward appearance, who embodied the aggressive, aggrandizing aspects of commercial self-making.

Although scholars have identified long antecedents to confidence schemes, most acknowledge that there was a perceptual shift that made these crimes more visible in mid-nineteenth-century America. As a concept and a term, the confidence man as particular criminal kind first appeared during the 1849 trial of William Thompson in New York City. Thompson would approach well-to-do passersby and inquire whether they had 'confidence' in their fellow citizens. When a person replied that they did, Thompson asked them to prove their statement by allowing him to borrow their gold watch, promising to return to the same spot the next day. Once in possession of the watch, Thompson would disappear, demonstrating that the trust had been misplaced. Upon his arrest in July 1849, Thompson's exploits became the fodder of New York newspapers.[17] The term gained further cultural currency with the publication of Herman Melville's *The Confidence Man: His Masquerade* (1857), a narrative of a swindler of shifting appearances who plied his trade on a Mississippi riverboat.[18] Thompson was an apt criminal for his time and place; his scheme manipulated norms that linked inward moral character with outward visual signifiers. This small-time crook became notorious because his crime exposed the weaknesses of established mechanism for guaranteeing trust in metropolitan economic interactions.

The most insightful work on the confidence man remains Karen Halttunen's, which elucidates how concerns about confidence men reflected anxieties about the security and

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[16]Joan W. Scott, "The Evidence of Experience" *Critical Inquiry* 17(4) (1991): 773-797.
[17]Johannes Dietrich Bergman, "The Original Confidence Man," *American Quarterly* 21(3) (1969): 560-77.
[18]Herman Melville, *The Confidence-Man: His Masquerade* (1857; New York: Norton, 2005).

stability of the boundaries of mid-nineteenth-century middle-class identity. For Halttunen, the increased visibility of swindling crimes mirrored anxieties about the speculative nature of the economy with its potential for unethical commercial gain. While middle-class commentators celebrated the exploits of the upwardly mobile self-made man, they projected the dangerous and antisocial aspects of this commercial self-making onto the confidence man. The cultural productions of the middle-class, their advice manuals, the arrangement of their homes, and the self-presentation of women, were replete with techniques that enabled the honest to distinguish themselves from the disreputable. Such concerns were tied to the 'Victorianism' of the female bourgeoisie with its distain for make-up, fancy fashion, and dress. These practices, with their emphasis on the sincerity and transparency of their inner selves, were products of the uncertainty of never knowing if a stranger was who he or she claimed to be.[19]

Halttunen concludes her study in 1870, arguing that the minimalist aesthetics of the culture of sincerity were giving way to more ostentatious forms of self-presentation.[20] While many of the trends that she highlights persisted in the critiques of late nineteenth-century confidence men, the understanding of the self had changed. Halttunen argues that the psychological model for the culture of sincerity drew upon a Lockean understanding of the mind as a malleable, blank slate over which the confidence man exercised an external mastery.[21] By the Gilded Age, however, exposés and confessions of confidence men emphasized the constitutive importance of internal emotional and desires of the victim even

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[19]Karen Halttunen, *Confidence Men and the Painted Women: A Study of Middle-Class Culture in America, 1830-1870* (New Haven: Yale University Press, 1982).
[20]For the new consumption-oriented style of femininity, see Ellen Gruber Garvey, *Adman in the Parlor: Magazines and the Gender of Consumer Culture, 1880s-1910s* (New York: Oxford University Press, 1996); Kathy Peiss, *Hope in a Jar: The Making of America's Beauty Culture* (New York: Metropolitan, 1998); Nan Enstad, *Ladies of Labor, Girls of Adventure: Working Women, Popular Culture, and Labor Politics at the Turn of the Twentieth Century* (New York: Columbia University Press, 1999).
[21]Halttunen, *Confidence Men and the Painted Women*, 4-6.

prior to the swindle. There was something within the interior self of the Gilded Age bourgeoisie that made them ready fodder for the swindler. In this sense, these tracts fit within a post-Romantic vision of the self that stresses the importance of a deep, interior self.[22] The commercial self of the late nineteenth-century was not a blank slate but rather a bundle of passions, emotions, and desires constitutive of its behavior, and liable to lead them to either financial success or moral decline.

Furthermore, certain of the boundaries so important to antebellum morality, the virtuous country versus the sinful city and the agrarian rube versus the urban sophisticate, were dissolving. In *The Eye Opener* (1892), David H. Leeper consoled farmers: "Remember, no class of people are exempt from the sharp brains and oily tongues of the swindler. The honest, hard-working farmer, the business man, the legislator, and even the speculators and bankers, all fall victim to them."[23] Chambers of Commerce warned bankers, lawyers, and insurance men to be on the look out for swindles that members of their ranks had already fallen victim to.[24] By the Gilded Age, what the legal historian Lawrence Friedman has insightfully labeled "crimes of mobility" had become both more geographically diffuse and were encroaching on a wider array vocations.[25]

The relationship between the confidence man and the self-made man has been made most explicitly by Jackson Lears in his recent history of gambling and luck in American history. The self-made man seeks his livelihood through the regular adherence to self-

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[22]On the post-Romantic, 'expressive' model of the self, see Charles Taylor, *Sources of the Self: The Making of Modern Identity* (Cambridge: Harvard University Press, 1989), 368-455. See also Lears, "From Salvation to Self-Realization," 7.

[23]David H. Leeper, *The Eye Opener or Man's Protector* (Kirkville, Mo.: Journal Printing, Co., 1892), 10.

[24]For example, see The Rochester Chamber of Commerce, *How Fakers Fake: A Friendly Consideration of a Subject, Amusing in its Types but Dangerous and Degrading in its Possibilities.* (Rochester: Rochester Chamber of Commerce, 1912).

[25]Lawrence Friedman, "Crimes of Mobility," *Stanford Law Review* 43 (1991): 637-658. Contrary to John Kasson's history of nineteenth century manners, the problem of fraud was not a uniquely urban phenomenon as the American economy became increasingly nationally integrated, fluid, and anonymous. See Kasson, *Rudeness and Civility: Manners in Nineteenth-Century Urban America* (New York: Hill and Wang, 1990).

discipline, thrift, and a faith in the resulting providential rewards. The prototypical self-made man was Benjamin Franklin, who espoused such values and reconstructed a transparent, fully public image of the self in his widely read *Autobiography*.[26] In contrast, the confidence man, whose roots lay in the risky commercial ventures of the colonial era, eschews the value of diligent industry and seeks his fortune in chance. Furthermore, the confidence man lacked the transparency and legibility that was the hallmark of the honest, self-made man. While the self-made man is a fundamentality Protestant, even puritanical, figure the ranks of the confidence men are drawn from a heterogeneous lineage of adventurers primarily from Native, African, and Catholic cultures.[27]

Where Lears suggests the dialogical relationship between the confidence man, with his culture of chance, and the self-made man embodying the culture of control, this insight can be pushed further. Both these figures embodied many of the characteristics that present-day social theorists have identified as central to the modern, liberal, psychological configuration of the self: the distinction between an interior private selfhood and a public identity, a sense of inner depth from which comes our moral direction, a level of self-awareness, the ability to remake and redefine oneself.[28] Whether he was Andrew Carnegie or Ragged Dick, the self-made man was a testimony to the potential of social mobility and commercial self-fashioning, the very promise of American life.[29]

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[26]See especially Gary Lindberg, *The Confidence Man in American Literature*, 73-89. On Franklin as an emulated model for future American autobiographies, see Robert T. Sayre, *The Examined Self: Benjamin Franklin, Henry Adams, Henry James* (Princeton: Princeton University Press, 1964), 3-43.
[27]Jackson Lears, *Something for Nothing: Luck in America* (New York: Viking, 2003), 3.
[28]See Charles Taylor, *Sources of the Self.*
[29]On the ideology of the self-made man, see John G. Cawlti, *Apostles of the Self-Made Man: Changing Conceptions of Success in America* (Chicago: University of Chicago Press, 1964); Judy Hilkey, *Character is Capital: Success Manuals and Manhood in Gilded Age America* (Chapel Hill: University of North Carolina Press, 1997); Edward Balleisen, *Navigating Failure: Bankruptcy and Commercial Society in Antebellum America* (Chapel Hill: University of North Carolina Press, 2001); Scott A. Sandage, *Born Losers: A History of Failure in America* (Cambridge: Harvard University Press, 2005).

Despite the persistent evocation of a transparent, honest self in middle class's sentimental culture and in literary representations of self-made men, other commentators were acutely aware that a potential grafter brewed inside of every good liberal self. Concerns about the confidence man intersected with key components of liberal ideology during an era marked by the experience of emancipation, the rapid expansion of the market economy, and the dissolution of the older republican ideology. The historian Eric Foner has explored most fully the intersection of labor, property, and freedom in American political culture. For much of the nineteenth-century, 'labor' as a concept had broader meanings than denoting the working class. The entrepreneurial society of the antebellum North, with its politically cherished independent shops and farms, blurred the distinction between capitalist and worker. Ideal occupations were those closely linked to the production of tangible commodities that still permitted social mobility and freedom was largely defined in terms of the ability to leave wage-earning in favor of more autonomous self-employment. Financial independence was intimately braided to political rights and individuals existing in some form of economic unfreedom - whether grounded in gender, enslavement, wage labor, or debt – were perceived as incomplete political subjects.[30]

The rise of the corporation as the preeminent economic institution during the Gilded Age necessitated a rearticulation of this Protestant, republican conception of the political order. Greater latitude was given to salaried employment for large corporations as a politically dignified kind of work. Rather than stressing financial independence as the foundation for political rights, freedom was defined in relationship to one's self-mastery.

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[30]Eric Foner, *Free Soil, Free Labor, Free Men: The Ideology of the Republican Party before the Civil War* (1970: New York Oxford University Press, 1995); Foner, *Reconstruction: America's Unfinished Revolution* (New York: Harper & Row, 1988) and Foner, *The Story of American Freedom* (New York: Norton, 1998). See also Sean Wilentz, *Chants Democratic: New York City and the Rise of the American Working Class, 1788-1850* (New York: Oxford University Press, 1984); Elizabeth Blackmar, *Manhattan for Rent, 1875-1850* (Ithaca: Cornell University Press, 1989) and David R. Roediger, *The Wages of Whiteness: Race and the Making of the American Working Class* (1991; London: Verso: 1999).

American political theorists began to valorize what they called 'the social self,' a democratic individual who recognized and respected his interdependence with others.[31] Personal fulfillment was no longer achieved through eternal salvation but through the thrill of worldly achievement and the consumption of goods. Success was now defined in terms of assertion of one's will, the tapping of inner energies, and personal magnetism.[32]

Although consumer capitalism was grounded in the stimulating of desire and want while ignoring necessity or thrift, the confidence man as a commercial creature still posed a moral and political threat. Liberal regimes, which center on the democratization of sovereignty and the reigning in of the excessive powers of the state, require that the disciplinary power be transferred onto the individual citizen. These processes opened up an autonomous realm where the subject could achieve individual freedom as long as they exercised personal responsibility in form of containing one's basest passions.[33] It was precisely a lack of self-restraint that the swindler seemed to unleash in the commercial realm. Gilded Age confidence men threatened to unravel the internalized self-control that was the hallmark of late nineteenth-century Protestant liberal individualism. While new forms of consumption sought to tap and channel such energies, the swindler's activity created situations where they dominated the individual's selfhood. By unlocking disciplined

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[31]See especially Jeffrey P. Sklansky, *The Soul's Economy: Market Society and Selfhood in American Thought, 1820-1920* (Chapel Hill: University of North Carolina Press, 2002). See also T. J. Jackson Lears, *No Place of Grace: Antimodernism and the Transformation of American Culture, 1880-1920* (New York: Pantheon, 1981); Stuart Blumin, *The Emergence of the Middle Class: Social Experience in the American City* (New York: Cambridge University Press, 1989); Olivier Zunz, *Making American Corporate, 1870-1920* (Chicago: University of Chicago Press, 1990); James Livingston, *Pragmatism and the Political Economy of Cultural Revolution, 1850-1940* (Chapel Hill: University of North Carolina Press, 1994).

[32]See Cawlti, *Apostles of the Self-Made Man*; Lears, "From Salvation to Self-Realization"; Susman, "'Personality' and the Making of Twentieth-Century Culture."

[33]See Nikolas Rose, *Governing the Soul: The Shaping of the Private Self* (London: Routledge, 1990); Rose, *Inventing Ourselves: Psychology, Power, and Personhood* (Cambridge: Cambridge University Press, 1996); Rose, *Powers of Freedom: Reframing Political Thought* (Cambridge: Cambridge University Press, 1999). The starting point for this literature is Michel Foucault, *Discipline and Punish: The Birth of the Prison*, translated by Alan Sheridan (1975; New York: Vintage, 1977) and Foucault, "Governmentality," in Graham Burchell, Colin Gordon, and Peter Miller (eds.), *The Foucault Effect: Studies in Governmentality* (London: Harvester Wheatsheaf, 1991), 87-104.

passions and promoting vice, the swindler risked making deceptive frauds into a form of habitual behavior, etched deeply into the liberal soul.[34]

Historians have tended to overemphasize the notion that the confidence man's victims were understood as unaware innocents new to the urban environment.[35] Rather than innocent victims of savvy confidence men, late nineteenth-century 'marks' were often perceived as willing confederates to illegal schemes. Repeatedly in late nineteenth- and early twentieth-century depictions, the mark's complicity in the swindler's activities was highlighted. Confidence games would not be profitable if they did not appeal to greed and other desires lying below the surface of seemingly virtuous citizens. As the anonymous author of the exposé of urban crime, *The Swindlers of America* (1875) warned the reader "all swindlers are dishonest, but it is also a fact, not so generally known, that these swindlers could not exist unless there were persons of dishonest leanings, to practice their art upon."[36] The swindler required the active participation of his victims in schemes they knew to be fraudulent yet profitable. The most assured way of gaining this cooperation was through a psychological knowledge about human emotions and wants. This meant that at the heart of the virtuous, self-made republican citizenry brewed passions and desires that the confidence men could unleash.[37]

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[34]On the role of habit in liberal self-governance, see Mariana Valverde, "'Despotism' and Ethical Liberal Government," *Economy and Society* 25(3) (1996): 357-372.

[35]Halttunen, *Confidence Men and the Painted Women* and Lears *Something for Nothing*. Such views could be found in the Gilded Age in the polemics of certain crusading moral reformers like Anthony Comstock. For example, in his *Frauds Exposed* (1882), he berated the sharper for targeting the "unwary and credulous." See Comstock, *Frauds Exposed; or, How the People are Deceived and Robbed, and Youth Corrupted* (New York: J. Howard Brown, 1882), 5.

[36]See *The Swindlers of America. Who They Are and How They Work* (New York: Frank M. Reed, 1875), 3. For similar arguments, see S. J. W. [S. James Weldon], *Twenty Years a Fakir* (Omaha, Nebraska: Gate City Book and Novelty Co., 1899), 56; A. J. Greiner, *Swindles and Bunco Games in City and Country* (St. Louis: Sun Publishing Co., 1904), 9; J. B. Costello (ed.), *Swindling Exposed: From the Diary of William B. Moreau, King of Fakirs* (Syracuse: J. B. Costello, 1907), 61; Smith, *Confessions of a Confidence Man.*

[37]Lears hints at such a reading when he notes that Anthony Comstock's condemnation of the gambler was more psychological than spiritual. See Lears, *Something for Nothing*, 170.

At stake in the figure of the confidence man were questions about control, honesty, and autonomy as they became inscribed onto the liberal self. Fraud, and the passionate vices that it unlocked, threatened to become a kind of despotism over the individual's will that threatened the liberal political regime contingent upon self-discipline. Confidence men were morally dangerous individuals because their craft could usurp the autonomy of their fellow citizens and transform them into slaves to their passions. It is in this context that Chicago police detective and moral crusader Clifton Wooldridge identified the graft as "the worst form of despotism."[38] Not only did this corruption impede the proper function of government but the seeking out of fraudulent deals also became the focal point for all of the crooked politician's strivings. Graft became an all-consuming and undeniable habit that dominated his selfhood and behavior. Much like its effect on the individual soul, for Wooldridge, the presence of the graft risked enslaving liberal democracy to the will of the criminal class.

Swindling was an omnipresent aspect of the financial world of the Gilded Age. Although these activities have ancient lineages, the confidence man and this trade as a specific type are most often traced back to the mid-nineteenth century. The three earliest forms of the confidence game were bunco, gold brick, and green goods. 'Bunco' most resembled the older games of chance as it revolved around fixed gambling schemes. The two other schemes emerged out of transformations in the American economy at mid-century: the 'gold brick' schemes were linked to the Gold Rush while 'green goods' was tied to government attempts to standardize the paper currency. Although bunco had close

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[38]Clifton R. Wooldridge, *Twenty Years a Detective in the Wickedest City in the World* (Chicago: Clifton R. Wooldridge, 1908), 52. See also Edwin H. Sutherland (ed.), *The Professional Thief* (Chicago: University of Chicago Press, 1938).

associations were leisurely gambling activities, the latter two schemes were more explicitly designed as outright criminal frauds.[39]

Among the tricks at the disposal of the confidence man, bunco was the one that most reaffirms Lears's argument that games of chance derived from the Catholic, providential worldview of Old Europe. It derived from Old World games of chance such as card tricks and the wheel of fortune where the various players would gamble on whether their number would be selected as the winner.[40] In addition to actual gambling using such devices, swindlers would also deploy them to defraud players. Such a scheme would require one swindler to run the game of chance while an accomplice would feign being another player. The victim would witness the other competitor's tremendous luck and significant winnings, assaying the anxieties of the victim by illustrating the easiness of the game and its profitability. All along the game had been fixed and once the mark started playing big bets the wheel's fortune would quickly turned against him.[41]

Other cons did not take the appearance of gambling but were similarly grounded in the potential for riches due to the speculative nature of the worth of goods. Such was the case with the 'gold brick' schemes that arose out the mining culture of the Western United States. Here the swindler would pass himself off as an itinerant prospector who had chanced

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[39]On the early history of games of chance see Lears, *Something for Nothing,* 10-54. The nineteenth-century police detectives Benjamin P. Eldridge and William B. Watts concur with the notion of an ancient, old world lineage. See Benjamin P. Eldridge and William B. Watts, *Our Rival, the Rascal: A Faithful Portrayal of the Conflict between the Criminals of this Age and the Defenders of Society – the Police* (Boston: Pemberton Publishing Co., 1896), vii. On the modern birth of the confidence game, which he places around 1855, and its three original modes see Smith, *Confessions*, 6-10.

[40]Lorraine Daston has explored how as classical probability became used as a tool of governance, the lottery became disassociated with 'legitimate' kinds of insurance and hence morally denigrated. See Daston, "The Theory and Practice of Risk," *Classical Probability in the Enlightenment* (Princeton: Princeton University Press, 1988), 112-187. On the American culture of gambling, see T. H. Breen, "Horses and Gentlemen: The Cultural Significance of Gambling among the Gentry of Virginia," *William and Mary Quarterly* 34(2) (1977): 239-257; John Findlay, *People of Chance* (New York: Oxford University Press, 1986) and Ann Fabian, *Card Sharps, Dream Books, & Bucket Shops: Gambling in 19th-Century America* (Ithaca: Cornell University Press, 1990).

[41]On Bunco schemes, see E. G. Redmond, *The Frauds of America: How They Work and How to Foil Them* (Chicago: Francis Book Co., 1896), 166-171 and Smith, *Confessions*, 6-7.

upon a rich mineral find. The 'miner' would offer to sell the gold he had found below market rates explaining that he was desperate for the cash immediately and did not have the resources to bring it into town. Often the swindler would play off racialized notions of vulnerability and take on the appearance of a Native American or Mexican operating on the margins of the economy. The greedy mark would realize the potential profit and happily purchase the gold, whereupon the swindler would then swap a real gold bar for one made of a valueless ore. When the victim came to sell the good, he would discover his costly error.[42]

The green goods scheme similarly played upon the mark's desires to take financial advantage of others. The success of 'green goods' scheme was due to the relative novelty of a paper currency whose value was not intrinsic but proclaimed and controlled exclusively by the federal government. The counterfeiting of currency had been endemic in the early republic, with state banks responsible for the issuing of notes and a lack of nationally standardized bills.[43] By the Civil War era, a national network of locally organized counterfeiting rings meant that as much as half the circulated specie was fraudulent. In the Gilded Age, anti-counterfeiting measures had become a major locus of the federal government's exercising of its police powers. To enforce the Nation Tender Act (1863), the secret service was created, making the policing of fraud one of the major pillars in the formation of a more interventionist state.[44] As a swindle, green goods took on a number of forms. At its simplest, the swindler offered to sell a set of counterfeit bills at below their

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[42]On the Gold Brick scheme, see Benjamin P. Eldridge and William B. Watts, *Our Rival, the Rascal*, 191 and Smith, *Confessions*, 6-7.

[43]On the earlier assemblage of counterfeiting, capitalism, and confidence, see Stephen Mihm, "Making Money, Creating Confidence: Counterfeiting and Capitalism in the United States, 1789-1877" (PhD dissertation, New York University, 2003).

[44]See David R. Robinson, *Illegal Tender: Counterfeiting and the Secret Service in Nineteenth-Century America* (Washington: Smithsonian Press, 1995). On the unstable cultural meanings of money and currency in the late nineteenth-century America, see Walter Benn Michaels, "The Gold Standard and the Logic of Naturalism," *Representations* 9 (1985): 105-132 and Michael O'Malley, "Specie and Species: Race and the Money Question in Nineteenth-Century America," *American Historical Review* 99(2) (1994): 369-395.

denominational value. In more complex deceptions, the confidence man, claiming to possess a printing press that could produce bills indistinguishable from genuine ones, offered to become partners with his mark. Inevitably the victim would discover that the bills in his possession were distinguishable and hence worthless.[45]

It should be noted that in all three of these confidence tricks, the ultimate victim originally attempted to take advantage of the swindler himself. In bunco, the mark cannot believe his luck at coming across a faulty wheel that appears to consistently pay off; in gold brick the mark is pleased to pay less than the gold brick was worth from a miner desperate for cash, while green goods swindlers were willing to swindle his neighbors with fraudulent currency. The active participation of the mark in the illegal scheme also insured that they were less likely to go to the authorities once they realized the swindle. To press charges against the unknown swindler would require that victims confess to their own frequently illegal activities.[46] As William Moreau, the so-called King of Fakirs, argued "even in the face of all the warnings that they have to beware of them they make themselves the accomplices of the vampires, and should be classed with them."[47] While the confidence man may be a vicious predator as Moreau's imagery indicates, he is one whose victims collaborate in their fleecing.

Despite his explicit connections to criminal fraud, there were positive aspects associated with the confidence man's personality, most notably the malleable nature of his selfhood. The confidence man was an aberrant yet cautiously celebrated style of self-making

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[45]On Green Goods schemes, see Benjamin P. Eldridge and William B. Watts, *Our Rival, the Rascal*, 198; David H. Leeper, *The Eye Opener or Man's Protector* (Kirkville, Mo.: Journal Printing, Co., 1892), 46-50; Redmond, *The Frauds of America*, 57; Smith, *Confessions*, 7-8.
[46]Leeper, *The Eye Opener*, 51.
[47]Costello, *Swindling Exposed*, 95. See also Benjamin P. Eldridge and William B. Watts, *Our Rival, the Rascal*, 203; Greiner, *Swindles and Bunco Games*, 337; Smith, *Confessions of a Confidence Man,* 8-10 and 153.

in a society that prided itself on its flexible, democratic, mobile character.[48] This manifests itself in the ability to transform his outward appearance, his geographic mobility, and the fact that the confidence man was not bound to a single industry. In an era characterized by cycles of economic boom and busts, the confidence man possessed the ability to recover from financial reversals or exposure and rebound in a new enterprise. He was a lot of things but he was generally not an economic failure.[49] Such dynamism can be seen in the following description of an itinerate, Midwestern grafter of the late-nineteenth-century:

> "He was a handsome man, with big blue eyes and a striking personality; he was a fluent talker, always smooth shaven and precisely attired; he was one of the rare men who could play any part in any man's game, and his open countenance always won the esteem of those with whom he came in contact; he could preach a sermon on a moment's notice and from any text, and could pass off for a young minister with as much ease and ceremony as he could dispose of a bottle of Hawkins Pain Allayer to the most credulous for twenty-five cents."[50]

Sexually attractive and charismatic, such a criminal denied the notion of a rogue whose moral corruption was mirrored by physical degeneracy.

The confidence man did not rely on a fixed role defined by his occupation or craft but rather made the best of his circumstances. The swindler was also acutely aware of trends in consumer desire and packaged his scheme to the latest transmutations in the commerce. For these reasons, the confidence man can be understood as a representative product of the cultures of capitalism and his trickery an index of shifting commercial tastes and desires. His trade required that the swindler was an individual who was constantly being remade into someone else. The swindler was a kind of self-made man for his profits were dependent upon his creativity and his ability to innovate. Even Chicago detective Clifton Wooldridge struck an almost admiring note when he commented that the confidence man "lives strictly by his

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[48]See Lindberg, *The Confidence Man in American Literature*, 3.
[49]For the ways that economic failure came to define one's personal identity, see Sandage, *Born Losers.*
[50]Ben H. Kerns, *The Grafter* (Topeka, Kansas: Crane & Company, 1912), 45.

wits and he can truthfully be said to be a witty and a hard customer to handle. He is inventive and constantly bringing out new swindles."[51]

S. James Weldon most explicitly articulates this aspect of the grafter in his confessions, *Twenty Years a Fakir* (1899). A fakir, as defined by Weldon, was a traveling salesman who used puffery and fraud to move a variety of products. He specialized in no particular trade but moved freely from one scheme to the next based on the potential wealth it could generate. For Weldon, this included selling patent medicines, ineffective vaccines for livestock, and encyclopedias as well as running a wheel of fortune and other gambling devices. Writing in retirement, married, and having discovered religion, Weldon still praised his earlier dubious enterprises as a legitimate style of commercial self-making. He argued: "Show me the man who has not the ability to draw customers to him, or sense to employ business tact and trickery, and I will show you a man who will never amount to much in the world. His brethren in the trade are using them every day, and they are the ones who succeed."[52] Weldon defended his fellow fakirs from moral rebuke, arguing that their methods did not different in kind from those of legitimate salesmen.

Subsequent historians of American commercial culture have provided insights that would corroborate this contention. Salesmen and department store merchants of this period used a wide array of techniques to frame their goods in a more appealing fashion to heighten consumption. Advertising professionals conceived of themselves as missionaries for modern culture, creating bridges linking the rational world of the corporation with the emotions of the feminized, consuming masses.[53] Similarly the salesman's behavior embodied a distinct mode of corporate masculinity, one that required a greater emotional sensitivity than

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[51]Clifton R. Wooldridge, *Hands Up! In the World of Crime* (Chicago: Police Publishing, Co., 1901), 88.
[52]Weldon, *Twenty Years*, 348.
[53]See Roland Marchand, *Advertising the American Dream: Making Way for Modernity* (Berkeley: University of California Press, 1985).

nineteenth-century norms of manliness permitted. In the new science of sales, the successful agent had to balance a sense of empathy for the customer with a competitive outlook. While aggressively pursuing sales against their competitors, salesman had to be acutely aware of the emotional wants of the purchasing public.[54] In this respect, the rogue confidence man anticipated a new corporate style of masculinity.

The skilled coordination of consumer desire shaped the design of the department store, the nexus of the new economy. There the new techniques of display such as the artful use of light, color, and glass served as enticements that framed consumer yearnings. Window displays served a pivotal function by making goods highly visible to the eye while out of reach of the hand.[55] One of the most influential theorists of this new commercial art form was L. Frank Baum, future author of *The Wizard of Oz* (1900). For historian William Leach, Baum's two careers ought to be understood as closely intertwined with the Emerald City of the novel, with its false facades perceived through colored glasses, reflecting the aesthetic techniques of the department store. On this reading, Baum's novel represented a fairy tale celebration of consumer culture rather than a populist critique of American capitalism. Tellingly, confidence and humbug play a critical function in the resolution of the novel's climax. Although the titular character is ultimately exposed as a 'humbug,' none of characters condemn the confidence man. Rather, in the novel's climax, the fraudulent wizard uses his powers of persuasion to convince the scarecrow, tin man, and lion that they already

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[54]Angel Kwolek-Folland, *Engendering Business: Men and Women in the Corporate Office, 1870-1930* (Baltimore: Johns Hopkins University Press, 1994), 77-89. See also Olivier Zunz, *Making American Corporate*, 187-189.

[55]See William Leach, *Land of Desire: Merchants, Power, and the Rise of a New American Culture* (New York: Vintage, 1993), 40-66.

internally possessed the qualities that they sought. By plying the emotions of others, the confidence man honed his craft.[56]

Drawing on a similar rhetoric, Gilded Age fakirs stressed the ways in which their craft was a necessary, positive aspect of the commercial culture. For Weldon, the fakir is the salesman par excellence, as he "must move with the tide, and shift his operations from day to day. The business of this week will be the reminiscence of next. New fields, new customers, new fakes; for these he must be constantly on the alert, and work them to the most extreme limit."[57] His life was calibrated to the dynamics and instabilities of the marketplace, and as an emblem of his manliness he would boldly follow its course. The fakir was no weak-willed failure; when faced with a financial reversal of fortune, he always had the next scheme at the ready. Weldon was acutely aware of the moral condemnation of his profession yet he refused to capitulate to it. "Call me an unvarnished liar if you will, a dissembler, a hypocrite, a cheat, a dead-beat, what you like. To the untutored masses a successful fakir may seem to be all of these. You think his occupation is simply skinning the public. I know that his largest triumphs are in giving every man the full value for his money, and yet securing good profits for himself. Reconcile the two if you can; I did it long ago."[58] His brand of hucksterism represented a flexible attitude towards the demands made by a capitalist order. The fakir was an individual attuned to shifting commercial demands and transformed his trade and his self-presentation to meet them.

While the confidence man personified the flexible nature of selfhood under American capitalism, he was a moral revulsion in other respects. Most importantly, the swindler explicitly rejected the ethos centering on the dignity of honest work. Although more worldly

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[56]L. Frank Baum, *The Wizard of Oz* (Chicago and New York: G. M. Hill, 1900). Leach, *Land of Desire,* 252-255. In contrast, see Henry M. Littlefield, "*The Wizard of Oz*: Parable on Populism," *American Quarterly* 16(1) (1964): 47-58.
[57]Weldon, *Twenty Years a Fakir*, 12.
[58]Weldon, *Twenty Years a Fakir*, 358.

measures of success had eclipsed an earlier republican, Protestant understanding of hard work in exchange for just rewards in the afterlife, the new corporate capitalists continued to emphasize that their wealth of the product not of mere chance. They held that their worldly success was due to their internal, personal merit and morally rehabilitated their speculative enterprise as a service, a kind of intellectual labor. They argued that they skillfully traded stock and managed corporate hierarchies and their wealth of the fruit of such effort.[59] For them, the myths of upward mobility and immense wealth were all grounded in the conviction that such worldly rewards were contingent upon regular sustained work, whether mental or physical. They did not so much negate the older work ethic but redefined it for their particular needs. While the swindler's schemes required skill, these talents were deployed in order avoid concentrated labor. Although an enterprising individual, the fakir's energies were not deployed in the proper pursuits.[60]

Grafters prided themselves in their ability to avoid regular and regulated kinds of work. Such was the case of Bunco Bill who proudly proclaimed that he "never worked and never will."[61] Bill would travel the railroad lines and challenge his fellow riders to high stakes gambling matches. He would insist that they both ought to place their stakes in a common suitcase, to guarantee their safety during the match. Although the challenger would win the game, when he came to open the suitcase he would realize that Bill had had a confederate switch the suitcase during the game with another containing a mocking note.[62] Clearly Bill's scheme required considerable forethought and effort yet the distinction from honest labor was paramount. In his memoirs, the swindler Ben Kerns discussed how he attended law school but lacked the patience to build a practice. He recalled: "I was not

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[59]See Cawelti, *Apostles of the Self-Made Man*, 171-192; Lears, "From Salvation to Self-Realization"; Fabian, *Card Sharps, Dream Books & Bucket Shops,* 190-199; Sandage, *Born Losers*, 14-18.
[60]Lears, *Something for Nothing.*
[61]Greiner, *Swindles and Bunco Games in City and Country*, 55.
[62]Greiner, *Swindles and Bunco Games in City and Country*, 55-7.

particularly greedy for money, but I was greedy for success. I was unwilling to wait. I wanted everything quickly – right away."[63] Grafting offered a quick avenue to worldly gain while avoiding the requisite patience and diligence that Gilded Age success manuals proclaimed was necessary.

If the grafter avoided the diligence of regular, honest work, his trade did resonate with other elements of the morally sanctioned economy. Key to certain swindlers' craft was the capacity to exploit people's interest in technological and commercial novelties. The successful fakir recognized the public's enchantment with new devices and consumables. Probably the most infamous, fraudulent technological wonder of the era was the Keely Motor, whose inventor claimed to have discovered the principles of perpetual motion and unlimited energy. In 1872, John Keely convinced a dozen prominent men to invest ten thousand dollars to establish a company to support the production of his perpetual motion machine. In his public displays in Philadelphia, Keely would artfully mingle the language of physics with mysticism. His rhetorical strategies also played upon American political culture with his motor's generator being rechristened a 'liberator.' He claimed that he could develop an engine that could disintegrate the air itself and unleash its potential 'etheric' force. Throughout the next two decades, Keely managed to convince a cohort of wealthy investors that he was on the brink of completing his life's task. Upon his death in 1898, when investigators rummaged through his laboratory, they uncovered the Keely's demonstrations were abetted by a series of hidden machines on the lower level of the house.[64] At the heart of the Keely Motor hoax was a manipulation of the sense of wonder towards technological progress. Keely's investors had lived through an age of tremendous technological change

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[63] Kerns, *The Grafter*, 7.
[64] See Daniel W. Hering, *Foibles and Fallacies of Science: An Account of Celebrated Scientific Vagaries* (New York: D. Van Nostrand Co., 1924), 91-96.

and were willing to believe that he was capable of initiating another one. Belief in his fraudulent enterprise was infused with and sustained by the 'technological sublime.'[65]

Beyond an investment in technological novelties, the swindler still had much in common with the idealized liberal citizen. Like its virtuous counterpart, the deceptive identity of the confidence man was grounded on self-mastery and especially self-control. Although the fakir would often operate with confederates and occasionally serve as an apprentice, the swindler was not in someone else's employ. These situations, even those of apprenticeship, were arrangements of convenience where the independence of each operator was stressed and they were entered into to maximize the profits all those involved. As Ben Kerns noted, his occasional confederate John Hawkins "assured me that, if I ever found him guilty of participating in a legitimate or equitable transaction, I could feel perfectly free in repudiating him as an acquaintance."[66] Furthermore, the authentic grafter never relinquished control of the situation to anyone else, even in the face of prosecution. James Weldon's defiant pride as he simultaneously goads and entertains the reader with the exploits in his career as a fakir was not unique. J. P. Johnston related how one con man in particular, if confronted with the fraudulent nature of his actions would respond: "This is my way of doing business; you have yours." Although often arrested, the defiant man insisted that this strategy was more successful than cringing and attempting to apologize or explain away his actions.[67]

This particular configuration of the confidence man was implicitly marked as white. Nineteenth-century commentators noted the inability of African American to be truly

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[65]Leo Marx, *The Machine in the Garden: Technology and the Pastoral Ideal in America* (New York: Oxford University Press, 1964). David E. Nye, *American Technological Sublime* (Cambridge: MIT Press, 1994). Hering's account of Keely argues for the importance of the public's psychological predisposition towards awe and wonder as the keystone of the inventor's success.
[66]Kerns, *The Grafter*, 45.
[67]Johnston, *Grafters I have Met*, 62-63.

successful confidence men. For example, it is telling that among the numerous incidents catalogued by J. P. Johnston's *Grafters I Have Met* (1906), the only individual to lose this self-confidence and begs for mercy in the face of exposure was an African American Pullman porter who openly wept in order to retain his job.[68] Where the majority of confidence men retained their mask of total control, the African American porter dropped the aggrandizing persona and played supplicant. Other commentators, drawing on racial stereotypes, noted how African Americans were particular prone to being swindled in so far as they lacked "the perceptive and analytic power to investigate and understand any proposition which promises handsome returns."[69]

Such a configuration failed to recognize the importance of trickster figures in the African American expressive culture. Subsequent scholars have noted the centrality of masks and false performances to the master-slave relationship. Slaves would use trickery by playing upon racialized presumptions about their behavior as a means of resisting the master's direct control over his actions. If work in the fields was slow or if equipment was damaged, many masters felt that the childlike slave could not be held entirely responsible for his or her actions.[70] The trickster of the slave's pedagogical lessons was a very different personality than the commercially oriented swindler. As the historian Lawrence Levine has explained, for African Americans, the trickster did not represent a direct means of control and domination over others but rather the use of deception to take advantage of more powerful adversaries. In the folk culture of the slaves the trickster was usually a physically weak animal like a rabbit that used guile to overcome his larger opponents. Levine has argued these tales served as pedagogical lessons in the slave community, teaching the young

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[68]Johnston, *Grafters I Have Met*, 45-50.
[69]Greiner, *Swindles and Bunco Games in City and Country*, 117.
[70]William Freehling, *The Road to Disunion: Sessionists at Bay* (New York: Oxford University Press, 1990).

to avoid direct confrontations with whites who had a monopoly on social power. When playing the trickster, African Americans would wear a mask of a supplicant in order to eek out small personal advantages. In contrast to the enslaved trickster, who used deception from a defensive position, the commercial swindler operated from a stance of dominance.[71]

If the virtue of self-mastery harmonized the confidence man with the republican vision of the male subject, the practice of the swindler's craft posed a looming threat to the self-control at the heart of liberal governance. His trade required a form of psychological expertise in the mental habits of others that undermined their autonomy. As Edward Smith argued in *Confessions of a Confidence Man* (1923), the craft was predicated on "the artful preparation of the victim, the winning of his confidence, the dulling of his good sense, the allaying of his suspicions and the excitation of his natural avarice." In recounting the history of his profession, Smith boasted that confidence games took "advantage from the beginning of the public foibles, of what is now termed mass psychology."[72] For this reason, the confidence man was a particularly troubling individual within liberal regimes, for his work undercut the supposed autonomy that was the foundation of other citizen's self-government. The susceptibility of the unwary to the graft brought out into public view those internal, private vices that good liberal citizens were supposed to have mastered. Not only were these vices on public display, they were being manipulated by another individual for profit.

Smith was not alone in remarking on this aspect of the grafter's trade and his claims that confidence men were experts in human psychology ought to be taken seriously. In praising his own ability to craft fraudulent advertisements that attracted the public's

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[71]Lawrence Levine, *Black Culture as Black Consciousness: Afro-American Folk Thought from Slavery to Freedom* (New York: Oxford University, 1977), 81-133. For the case of a nineteenth-century urban black swindler, see Shane White, *Stories of Freedom in Black New York* (Cambridge: Harvard University Press, 2002), 177-184.

[72]Smith, *Confessions of a Confidence Man,* 8-10.

attention, self-described grafter Ben Kerns credited his "knowledge of human nature."[73] In his exposé, A. J. Greiner likewise stressed the importance of the mental preparation of the mark for when "bunco man can seize the psychological moment to 'make his play,' his victim falls, be he a bank president, hotel man, farmer or merchant."[74] Even the Rochester Chamber of Commerce associated the confidence man's activities with knowledge of "human nature long before the psychologists unlimbered their guns upon it."[75] The police detectives Eldridge and Watt noted how important that manipulation of emotions was to the swindler's trade for they "have every device at their finger ends for exciting, deluding and drawing on their victims until their pockets are emptied."[76]

While political liberalism was predicated on the self-restraint of innermost vice and desire in the name of public civility, the confidence man threatened this equilibrium. The attack occurred in one of the most cherished venues of the liberal imagination: the economy. The economy of distance that was being constructed was depended on certain forms of trust in strangers: that paper money was worth the denomination printed upon it; that goods described in a catalogue were authentic. The swindler undercut such a faith in a virtuous marketplace. Reflective swindlers and moral commentators were in agreement: the only certain way to avoid becoming the victim of a confidence game was intense self-regulation in the form of personal integrity and honesty.[77] For example, Alson Secor, editor of the Iowa agricultural journal *Successful Farming*, encouraged readers to avoid being seized by immediate desires by discussing all business decisions with their more prudent wives. After

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[73]Kerns, *The Grafter*, 16.
[74]Greiner, *Swindles and Bunco Games in City and Country*, 9.
[75]The Rochester Chamber of Commerce, *How Fakers Fake*, 2.
[76]Eldridge and Watts, *Our Rival, the Rascal*, 187.
[77]For example, see Greiner, *Swindles and Bunco Games in City and Country*, 337-38. See also Halttunen, *Confidence Men and the Painted Women.*

all her "instinct is often more reliable than a man's judgment."[78] The confidence man did not prey upon the truly honest but those who were greedy for personal wealth and who sought to make a fortune without the time and effort of industrious work. In other words, confidence men required the presence of private vices among his victims in order for his schemes to be profitable. Belief in such schemes, to be 'taken in,' was not passive but was dependent upon the active participation of the victim, what the philosopher William James called in a very different context the 'will to believe."[79] Alternatively, if one were capable of reigning in one's own greed the grafter would have nothing on which to attach. The very public moral policing of confidence games reinforced this central element of liberal self-government.

Attacks on swindlers helped reinforce another aspect of the economy of distance: the importance of recognizable familiar retail outlets. Many of the exposés concluded with a short list of tips for individuals to avoid being swindled. Invariably they would recommend patronizing the local, established merchant rather than rely upon the solicitations of a stranger.[80] Such suggestions were facilitated by the increased integration of the economy by the early twentieth century. Alongside the development of interchangeable parts and the assembly line, American manufacturers embraced the use of nationally recognized brand. In addition to being produced by large corporations, with identifiable names, these branded goods increasingly appeared prepackaged to prevent adulteration and images easily detected by the eye. One of the major projects of corporate America at the turn of the twentieth century was to convince consumers that they could rely upon the regularity and quality of the

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[78]Alson Secor (ed.) *Swindles* (Des Moines, Ia.: Successful Farming Publishing Co., 1910), 3.
[79]William James, *The Will to Believe and Other Essays in Popular Philosophy* (1896; Cambridge: Harvard University Press, 1979). The psychologist Joseph Jastrow articulated this version of James's doctrine while discussing how certain 'miraculous' patients were fooling modern medical doctors. See Joseph Jastrow, "The Will to Believe," *Journal of the American Medical Association* 78 June 17, 1922: 1891-1893.
[80]See Greiner, *Swindles and Bunco Games in City and Country*, 337.

brand name good.[81] In the economy of distance, brands were another technology of trust. Although the creation of easily recognized brands could lead to other forms of commercial deception, namely trademark infringement, the standardization of the way consumables reached the market created a major impediment to some of the nineteenth-century fakir's traffic.

The practice of swindling ultimately undercut attempts to mark a distinct cleavage between fraudulent and legitimate businesses. Commentators became increasingly aware of this and there was a crucial shift between the exposés of the Gilded Age and the early twentieth century. The latter increasingly stressed the identity between practices of the marginal confidence man and the methods of the modern corporation. As confidence schemes evolved from the final decade of the nineteenth-century onwards, their appearance, methods, and results were increasingly coming to mirror those at the center of the official economy. For some commentators, corporate capitalism itself was a kind of confidence game that threatened the liberal political order just as the swindling schemes of the nineteenth century had corrupted the ethical equilibrium of the liberal self.

In the 1890s, this argument was most closely associated with the agrarian Populists, especially in the Prairie West, who attacked organizations like the Chicago Board of Trade. Drawing on an established moral critique of gambling, these farmers condemned the speculative nature of trading futures. By the 1870s, the standardized grading system for grain led to the creation of futures, where traders would sell the promise of grain to be delivered. This economic development meant that the Chicago exchange's traders were able to sell a greater amount of bushels than the actual amount produced in a year. Farmers

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[81]See Susan Strasser, *Satisfaction Guaranteed: The Making of the American Mass Market* (New York: Pantheon, 1989), 29-57; Elizabeth Grace Hale, *Making Whiteness: The Culture of Segregation, 1890-1940* (New York: Vintage, 1998), 121-97; Roland Marchand, *Creating the Corporate Soul: The Rise of Public Relations and Corporate Imagery in American Big Business* (Berkeley: University of California Press, 1998).

complained that through the selling of excess futures the urban traders were artificially diluting the worth of the goods that they physically toiled to produce.[82] For farmers, the railroads and their rates provided another visible example of how capitalism was a form of corruption speculation. Transportation titans like Gould and Vanderbilt built oligarchies through the conscious manipulation of information.[83]

These Gilded Age economic elites countered this moral attack on their practice through emphasizing their ideal of service. Speculation was not a species of deception or financial fraud but rather a valid form of labor, analogous to the physical work of the farmer. For members of the Chicago Board of Trade, the truly corrupt institutions were the unlicensed 'bucket shops' who allowed individuals to place bets on anticipated fluctuations in the daily market. While their exchanges required a refined knowledge of how the economy worked and their trades rationally governed the market, the bucket shops promoted idle speculation and outright gambling. The Supreme Court bolstered such a view in 1905 when it decided that the stock quotes did represent a trade secret and a kind of property.[84]

The Populists were not the only ones who associated the modern aspects of capitalism with the criminal activity of swindling confidence men. The identity between corporate capitalism and confidence games was brought out by a generation of swindlers who specifically targeted large financial institutions. For the Progressive Era grafter, the corporate world was a favored environment. The banker was a particularly appealing mark because he "has business experience and faith in his own judgment. He is ready to act

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[82]See Fabian, *Card Sharps, Dream Books & Bucket Shops*, 153-202. On the transformation of nature that made this speculation possible, see Cronon, *Nature's Metropolis*, 97-147.
[83]Lindberg, *The Confidence Man in America Literature*, 203-6 and Richard White, "Information, Markets, and Corruption: Transcontinental Railroads in the Gilded Age," *Journal of American History* 90(1) (2003): 19-43.
[84]See Cawelti, *Apostles of the Self-Made Man*, 187-192 and Fabian, *Card Sharps, Dream Books & Bucket Shops*, 198-200.

without seeking outside advice."[85] The swindler's schemes against the financial elite artfully played off the uneasy coexistence of anonymity and individual judgment so integral to market transactions.

The trend of identifying swindlers with the business elite can be seen in the Progressive Era tract *Swindling Exposed: From the Diary of William B. Moreau, King of Fakirs* (1907). As the subtitle indicates, Moreau conceived of himself as a fakir that Gilded Age type of confidence man who made his fortune through get-rich schemes and puffery. Its publisher J. B. Costello edited the deceased confession and the final text is fused with Progressive Era sensibilities. For example, Intermingled with the confessional narrative of the 'king of fakirs' the editor J. B. Costello inserts his own tirade against John D. Rockefeller's monopolistic Standard Oil Company. In his own account, Moreau had described himself as a "vampire" who financially suckled off the willing. As the editor acerbically noted: "The sins of the Moreau combined, and, we may add, thousands of other crooks combined, did not squeeze as much out of the people of the United States as the unscrupulous octopus known as the Standard Oil Company, dominated by John D. Rockefeller."[86]

Such a view was more even more explicit in Edward Smith's *Confessions of a Confidence Man* (1923). Smith argued for the demolition of the barrier that distinguishes the corporate manipulation of the marketplace from the small time swindler. Both the stock market speculator and the grafter made their fortunes through the management of the trust of others:

> "To me whoever trades fraudulently on the confidence of another or others is a confidence man, whether he erects and wrecks a $30,000,000 or $100,000,000 corporation, or whether he takes $100 from some ebullient

[85]Smith, *Confessions of a Confidence Man*, 19.
[86]Costello, *Swindling Exposed*, 215.

> countryman. I would include under this generic term many whom the law does not now reach and I leave it to the judgment of ten years hence whether I am right. It is true that at present the great rogue escapes prison or pays for colossal iniquities with a small fine or a short term in jail, while the rougher and readier villain spends ten years in prison for a relative trifle. But times and judgments change – and so do laws."[87]

Much like the Populists, for Smith, the speculative nature of the stock market, with its artful manipulation of the public's confidence, was a form of legally sanctioned swindling.

The persistence of a moralistic critique of deception can also be found in Progressive Era attacks of political graft. For urban reformers of the Progressive Era, corruption was bound up with their conception of the relationship between the polity and the self. Corruption was a systemic breakdown due to the lack of legitimate mechanisms through which private power could exercise its influence publicly.[88] The Chicago police detective Clifton Wooldridge certainly viewed graft in these moral terms. Not only did it cost financially "but it became a certainty that it was costing something even more valuable than money. Graft became the one object of the political seeker after office."[89] By persistently committing criminal acts of fraud, deception had colonized the very soul of the politician and had become his habit.

Ironically, as American commercial culture increasingly incorporated the techniques of the formerly morally reprehensible confidence man, deception became stigmatized and pathologized in new ways. While new capitalist styles of self-making emphasized the importance of puffery, personal magnetism, and the aggressive pursuit of profit, those swindlers who still operated on the margins of the economy were increasingly understood as

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[87]Smith, *Confessions of a Confidence Man*, 152-3.
[88]See especially Samuel P. Hays, "The Politics of Reform in Municipal Government in the Progressive Era," *Pacific Northwest Quarterly* 60 (1964): 157-169; Richard L. McCormick, "The Discovery that Business Corrupts Politics: A Reappraisal of the Origins of Progressivism," *American Historical Review* (1981): 247-74; Alan Dawley, *Struggles for Justice: Social Responsibility and the Liberal State* (Cambridge: Harvard University Press, 1991).
[89] Wooldridge, *Twenty Years a Detective*, 57.

suffering from some form of mental aberration. The strange ordeal of "George A Kimmel" illuminates the crafting of this other Progressive Era understanding of imposture, deception, and self-control. Here the confidence man does not dominate others but is rather unable to attain a certain level of self-mastery.

For several months in 1911 and 1912, the shifting fortunes of this "mystery man" haunted the headlines of the nation's newspapers. In 1905, Chicago resident Edna Kimmel Bonslett entered a claim to be paid as the beneficiary of her late brother's life insurance policy from the New York Insurance Company. George Kimmel had been a once respectable Midwestern bank teller who had disappeared in 1898 while under investigation of defrauding his employer, the Pacific Express Company. Pinkerton agents had been unable to locate Kimmel after he had fled to Arkansas City and no one had heard from him since then. The insurance company, reluctant to pay the twenty-five thousand dollar policy, initiated a second investigation in the hope of locating a still living George Kimmel. In the New York state prison at Auburn, an inmate going by the name of Andrew J. White seemed to match a photograph in the possession of the insurance company's detectives. White had been arrested three years previously for attempting to pass off clumsily forged cheques in Buffalo.[90] So began "one of the strangest insurance cases in the history of the courts."[91]

Having located a man it claimed was the true George Kimmel, the insurance company refused to pay his beneficiaries. For their part, Kimmel's sister and mother argued that the inmate was an imposter coached by the insurance company to defraud them of their entitled payment. By September 1911, Andrew J. White, or as he now claimed himself to be, George Kimmel, had completed his sentence for the cheque fraud and was released from prison. He announced his intention to return to his hometown of Niles, Michigan to reclaim his lost

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[90]"Plot to Get Insurance Money," *Chicago Daily Tribune* September 17 1905, pg. 2.
[91]"Convict Says He's Cashier," *Chicago Daily Tribune* May 2 1909, pg. 5.

identity and family.[92] When Kimmel arrived back in Niles, the Chicago *Daily News* claimed that thousands of residents of the small town flocked to the train station to get a glimpse of the mystery man. Papers highlighted the emotional mystery reporting that the claimants supposed mother cried: "My son is dead and it is wrong to play on my feelings this way."[93]

For much of the nineteenth century, Americans of the middling classes had been subtly coached to investigate such situations. Through the diffusion of courtesy manuals and books of manners, they had been trained to perceive certain codes in one's appearance and behavior to determine the possession of authentic respectability and to eliminate fraud.[94] Although such techniques were more vulnerable in large cities, certainly within the communal confines of the small town such detection was not supposed to pose major problems, only no consensus on the true identity of "George A. Kimmel" could be achieved among the residents of Niles. After a few days, the town was divided over whether the man in question was the true George Kimmel. For every former friend who recognized a familiar scar or bodily marking, another claimed that an equally prominent one was missing. The townspeople of Niles debated Kimmel's eye color, his use of the English language, and his recollections of local happenings. His mother and other childhood friends claimed that Kimmel lacked certain key memories that would secure their belief in his identity. Other observers noted that where the original George Kimmel had been well spoken, the current claimant frequently used foul language. Although his mother and sister continued to deny

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[92]"Identity Puzzle of Years to End," *Chicago Daily Tribune* September 17 1911, pg. 1; "May Solve Kimmel Mystery," *Chicago Daily News* September 18, 1911, pg. 1; "Quits Cell; Goes to End Mystery," *Chicago Daily Tribune* September 19 1911, pg. 2; "Convict Goes Home to Prove his Identity," *New York Times* Sept. 19 1911, pg. 7.

[93]"Niles, Mich. Aroused by Man of Mystery," September 19, 1911, pg 1. In some ways, Kimmel's story parallels earlier accounts of questioned identity such as the famous case of Martin Guerre in sixteenth century France. Although the courts played critical roles in arbitrating both cases, Martin Guerre did not have to contend with the insurance industry and the psychological sciences that complicated Kimmel's search for recognition. See Natalie Zemon Davis, *The Return of Martin Guerre* (Cambridge: Harvard University Press, 1983).

[94]See Halttunen, *Confidence Men and the Painted Women*; Kasson, *Rudeness and Civility*; Cole, *Suspect Identities*, 6-31; Sandage, *Born Losers*, 99-128.

him, a cousin and her husband remained loyal supporters.[95] Due to the geographic mobility of its residents, the social order of the small town with its careful surveillance over its members could not put to rest these competing claims.

In the winter of 1912, the spectacle of determining the mystery man's identity entered the courtroom as Kimmel's beneficiaries once again sued for the insurance money. After a verbal cross-examination by the plaintiff's lawyer, Kimmel was asked to present himself for a visual inspection of his body by the jury. Jurors were asked to compare the shape of the present Kimmel's ear to that in a photograph taken in 1897 before his disappearance. Their attention was also drawn to his profile and the presence of a scar on the back of his neck.[96] Despite this visual examination, the jury was unable to come to a definite conclusion. After seventy-three hours of deliberations, the judge discharged the jury without a verdict, as it was believed there was no hope in their arbitrating the competing claims of the two factions.[97]

The already bizarre case became stranger when Kimmel publicly announced that he would undergo a potentially deadly surgery in order to lift the cloud on his memory and rightfully reclaim his identity.[98] Kimmel, now relocated to Chicago, consulted Dr. Loren Wilder who performed an x-ray examination of Kimmel's head to reveal that portions of his skull had caved in, causing undue pressure on his brain. Kimmel claimed that he had sustained the injury during an 1898 assault and that it had affected his behavior and memory. The fraudulent acts he had perpetrated prior to his disappearance were now explained by the

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[95]"Kinsmen Welcome Ex-Convict Kimmel," *New York Times* September 20 1911, pg. 1; "'Mother' of Kimmel Sees Him; Is in Doubt," September 20, 1911, pg 1; "'Mother' of Kimmel Sees No Likeness," *New York Times* September 21 1911, pg 3; "'Kimmel' Loses Ground in Niles," *Chicago Tribune* September 22 1911, pg. 5; "'Kimmel' Tripped by Mother's Tests," *Chicago Daily Tribune* September 23 1911, pg. 12; "Kimmel Fails Test," *New York Times* September 23 1911, pg. 3.

[96]"Kimmel Jury Sees Scars," *Washington Post* February 25 1912, pg, 17.

[97]"Kimmel Jury Fails to Fix his Identity," *New York Times* March 6 1912, pg. 6.

[98]Ian Hacking has argued that these years witnessed the emergence of memory as one of the primary loci of politics, knowledge, and selfhood. See Ian Hacking, "Memoro-Politics," *Rewriting the Soul: Multiple Personality and the Sciences of Memory* (Princeton: Princeton University Press, 1995), 210-220. See also Alison Winter, "The Making of 'Truth Serum,'" *Bulletin of the History of Medicine* 79(3) (2005): 500-533.

change in his personality due the assault.[99] The recently revealed skull trauma was used to explain how the respectable, middle class George Kimmel had descended into a life of fraudulent crime and why his memories of Niles were imperfect. Although not grounded in the emerging psychiatric concept of multiple personality, Kimmel's supporters did advocate the notion that the skull trauma had altered his character. Such explanations were not unknown in nineteenth-century America, the most famous case being that of Phineus Gage in 1848. Gage, who had initially been a sober and diligent railroad laborer, had his entire personality transformed when a spike in an industrial accident had pierced his brain.[100]

In order to return Kimmel's memory and true personality, Wilder suggested a radical operation where the portion of Kimmel's skull that was placing excess pressure on his brain be cut away. After the impasse of the courtroom, it was hoped that a biomedical intervention could established some certainty in determine Kimmel's true identity. While the surface markings of the body were inconclusive, there was a hope that by targeting the brain, the interior site of memory and selfhood, Kimmel's authentic nature would emerge. Contemporary newspapers rhetorically played up the links between the surgery and Kimmel's criminal background. The Chicago *Daily Tribune* wrote: "Dr. Wilder sought entrance into the man's skull just as a cracksman would try to cut the lock to a safe."[101] For many newspapers, Kimmel's willingness to undergo the dangerous surgery suggested that there might be some legitimacy to his claims.

In the newspaper interview that followed a few days after the operation, Kimmel spoke of 14 lost years after the assault in 1898 that damaged his brain and altered his personality. He compared himself to the literary figures of Jekyll and Hyde: "I have come

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[99]"Try Knife to Free Kimmel's Memory," *Chicago Daily Tribune* April 15 1912, pg.5.
[100]See Malcolm Macmillan, *An Odd Kind of Fame: Stories of Phineas Gage* (Cambridge: MIT Press, 2000). The case of Gage is retold and put into present-day biomedical perspective in Antonio Damasio, *Descartes' Error: Emotion, Reason, and the Human Brain* (1994; New York: Avon, 1995), 3-51.
[101] "Cut Skull to Lift Fog from Memory of 'Mystery Man'" *Chicago Daily Tribune* May 2 1912, pg. 1.

into my real self. My better nature has asserted itself." When asked whether he felt that the injury had disturbed his "moral as well as physical sense" he replied in the affirmative. He emphasized the emotional dimension of this experience describing the "sorrow and anguish" of his lost years.[102]

Ultimately, 'George Kimmel's' quest to secure a stable, legally recognized identity met with failure, despite the fact that he claimed to have regained his lost memories. A second jury finally determined that Kimmel was unable to prove his case and awarded Edna Bonslett the policy monies.[103] Ironically, by this time certain newspapers, like the Chicago *Daily Tribune,* were coming around to the belief that the mystery man may actually be the real Kimmel. Based on the available evidence, we cannot be certain who 'Kimmel' was: a crafty and determined confidence man, a mentally ill man callously manipulated by an insurance company, a banker denied by his own family. The Kimmel case helps to illuminate the image of fraud and deception in the Progressive Era public sphere. On the one hand, the prominence of his strange story in newspapers illustrates a public fascination with the figure of the impostor. In this case, one can see the persistence of the public's captivation with the spectacular deception or epistemological trick where the truth is up for grabs. That an insurance company backed the potentially fraudulent claimant could only reinforce the view that modern industry was just another form of the confidence game. On the other hand, his ordeal highlights the inherent weakness of the courtesy-book epistemology in detecting deception and identifying confidence men with any certainty. Repeatedly, no consensus over 'Kimmel's' identity could be reached.

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[102]"'Kimmel' Asserts Operation Lifted Cloud of Memory," Chicago *Daily Tribune* May 8 1912, pg. 1; "Assert 'Kimmel' Gains Memory" Chicago *Daily Tribune* May 10 1912, pg. 3. Kimmel's tale became even more bizarre a few months later when the steel plate covering the hole in his skull caused him to be struck by lighting. See "Lighting Hits G. A. Kimmel," Chicago *Daily Tribune* July 9 1912, pg 2.

[103]"Claimant Fails to Prove he is George A. Kimmel," *Chicago Daily Tribune* November 1 1912, pg. 11.

Kimmel's submission to the inspection of his body, his inability to master his situation, and his public emotionality would have undermined his manliness in eyes of many of his contemporaries. In the public sphere at least, deceptive acts were associated with a kind of aggressive masculinity. In contrast, George Kimmel can be seen as a transitional figure in the gendering of the deceptive self. Unlike Hull, who proudly displayed his deceptive subjectivity as a sign of his rugged masculinity, in his own version of events, Kimmel's behavior was attributed to a blow to the head that caused an injury to his brain. His fraudulent actions prior to his initial disappearance were not the deeds of a willful, autonomous, free agent but the results of a damaged mind. Whether he was a failed trickster, a mentally ill man, or the real banker, Kimmel's manliness was undercut by his inability to master his situation.

Such gendered associations of deception became increasingly prominent in the Progressive Era and beyond. Legal cases concerning trademark infringement and the police power to prevent deception were still applied to consumables targeted at both men and women. By 1910s, as will be discussed in chapter five, when psychological techniques were used in the policing of urban space, the subjects were primarily female. The most extreme version of this was the diagnosis of pathological lying as applied to certain delinquents by William Healy as part of his work Juvenile Psychopathic Institute in Chicago. The pathological liar mirrored the fate of the unsuccessful George Kimmel; like him they were unable to master their own deceptions, to gain mastery of their situations or their very selves. Healy's pathological liars and George Kimmel represent the extreme of the new psychological understanding of deception. In the next chapter, I investigate the experimental psychologists who sought to erect a psychology of deception among ordinary and average individuals. In doing so, they silently incorporated the insights accumulated by the illegal

swindler about the psychology of individuals existing in relationship to consumer capitalism. For both groups held that deception in the public sphere was sustained by the artful cultivation of pleasurable beliefs and a toying with the emotions.

Chapter 3: Mind on the Market: Popular Psychology and the Disciplining of Deception

"'There's a sucker born every minute.'
Barnum said it; there's sad truth in it
What burns me up, and turns me sour
Is that a crook is born every hour."

-- Joseph Jastrow, circa 1943[1]

Joseph Jastrow, the author of the above poetic brevity was the architect and most prolific exponent of the 'psychology of deception' from the late 1880s into the 1920s. The phrase referred to the scientific and philosophical investigation of the habits of mind that led to the misinterpretation of sensory data and resulted in sustaining credulous belief. As a project pursued by experimental psychologists in the popular press, public lectures, and spectacular displays, the psychology of deception played an integral function in the delineation of psychology as an academic discipline and a vocation. From the standpoint of crafting a disciplinary identity, by studying deception psychologists were able to carve out a space distinct from physiology for their own research while also providing a tool in their conflict with spiritualists and proponents of psychical powers. As discussed earlier, this period was not only a time of rational bureaucratic experts but also popular credulity in the wondrous as well as the commercial frauds of the swindler.[2] Deception was associated with the mental habits and behaviors accentuated by modern forms of commercial exchange. Experimental psychologists drew upon such an association and refined it into their own

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[1]Found in a binder of typewritten poems likely composed in 1943 while Jastrow was a resident of the Foundation Inn in Stockbridge Massachusetts shortly before his death the following year. Joseph Jastrow Papers, Rare Books, Manuscript, and Special Collections Library, Duke University, hereinafter cited as JJP.

[2]On the persistence, if not explosion, of wonder in tandem with the Progressive Era's technocratic managerial culture see David E. Nye, *American Technological Sublime* (Cambridge: MIT Press, 1994); Carolyn Thomas de la Pena, *The Body Electric: How Strange Machines Built Modern America* (New York: New York University Press, 2003); Fred Nadis, *Wonder Shows: Performing Science, Magic, and Religion in America* (New Brunswick: Rutgers University Press, 2005).

project while still cultivating broader public debate. The psychology of deception was an important way in which psychologists mediated their own uneasy relationship with, and their ultimate integration into, the market economy. Deception as a matter of scientific investigation was simultaneously a concern of consumer culture, forming a bridge between the cultures of the marketplace and the psychological laboratory.

In many ways the psychology of deception was bound to psychology's troubled relationship with spiritualism and the search for psychic or paranormal mental powers. Born in 1848, the American spiritualist movement shared the same culture of evangelical revivalism that helped sustain belief in the Cardiff Giant. Spiritualism promised a form of religious certainty in a period of secularization by forging links between the living and the dead. Many early feminist radicals embraced the female-centered movement, seeing it as a means of an empowerment by making their supposedly passive bodies the vessels through which the spirits spoke. The embrace of psychic powers was not an archaic vestige of a dying culture but rather resonated in an era of scientific and technological innovation, by claiming to harness the untapped powers of the human mind. Usually these powers manifested themselves in performances for a fee in darkened rooms or at fairs and carnivals, in other words, in the grubby world of commerce. Such an association was not helped by the fact that America's first spiritualists, the Fox sisters soon admitted they had staged their encounters with the next world.[3]

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[3]See R. Laurence Moore, *In Search of White Crows: Spiritualism, Parapsychology, and American Culture* (New York: Oxford University Press, 1977); Jane Oppenheim, *The Other World: Spiritualism and Psychical Research in England, 1850-1914* (Cambridge: Cambridge University Press, 1985); Ian Hacking, "Telepathy: Origins of Randomization in Experimental Design," *Isis* 79(3) (1988): 427-451; Ann Braude, *Radical Spirits: Spiritualism and Women's Rights in Nineteenth-Century America* (Boston: Beacon Press, 1989); Barbara Goldsmith, *Other Powers: The Age of Suffrage, Spiritualism, and the Scandalous Victoria Woodhull* (New York: Knopf, 1998); Alison Winter, *Mesmerized: Powers of Mind in Victorian Britain* (Chicago: University of Chicago Press, 1998); Robert S. Cox, *Body and Soul: A Sympathetic History of American Spiritualism* (Charlottesville: University of Virginia Press, 2003); Alex Owen, *Places of Enchantment: British Occultism and the Culture of the Modern* (Chicago: Chicago University Press, 2004). On psychiatry's emergence from these movements, see Henri Ellenberger, *The Discovery of the Unconscious* (New York: Basic Books, 1970).

Many Americans identified the new experimental psychology with these investigations into the extraordinary and sought the opinion of these scientists on questions of the paranormal. For their part, the majority of American experimental psychologists were wary of how being associated with those the magician Harry Houdini called the "miracle-mongers" would affect their discipline's status among the sciences.[4] Tensions were particularly acute since psychology was a relatively new science with an uncertain methodology and insecure institutional base in late nineteenth-century America. The situation was further complicated at the turn-of-the-century as psychologists received large bequests and grants with the stipulation that the research revolve around psychical powers. Taking the lead from Jastrow, psychologists sought to pinpoint the nature of deception in the mind, a project linked to broader concerns about the boundaries for defining mental capacities. In elucidating deception as a mental phenomenon, psychologists engaged the work of spiritualists and psychics, not just to exclude such paranormal phenomena from the realm of legitimate scientific concern, but to study how lay people and scientists themselves experienced deception triggered by paranormal displays. Such a strategy permitted them to address the paranormal while simultaneously distancing themselves from it and rendering its study more 'scientific.'[5]

My approach is to take a broad view of what went into the making of deception into a psychological object of study. Rather than viewing the scientific constitution of deception as a process of exclusion, I will emphasize how its historical development was predicated on the

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[4]See Harry Houndini, *The Miracle Mongers and their Methods* (New York: Dutton, 1920). On Houdini's related campaign against the spiritualists, see Kenneth Silverman, *Houdini!!! The Career of Ehrich Weiss* (New York: HarperCollins, 1996) and John Kasson, *Houdini, Tarzan, and the Perfect Man: The While Male Body and the Challenge of Modernity in America* (New York: Hill and Wang, 2001), 77-155.

[5]For an insightful discussion, see Deborah J. Coon, "Testing the Limits of Sense and Science: American Experimental Psychologists Combat Spiritualism, 1880-1920," *American Psychologist* 47(2) (1992): 143-151. Similarly, the psychologist Ray Hyman identified Jastrow as the first person to explicitly articulate a 'psychology of deception.' See "The Psychology of Deception," *Annual Reviews of Psychology* 40 (1989): 133-54, 134-6.

gathering of a wide variety of cultural practices under the rubric of a psychology of belief and credulity.[6] Assembled within the psychology of deception was the Pragmatist understanding of a cosmos of chance, the psychophysics of perception, the desire to build bridges between the sciences of psychology and anthropology, and most importantly the popularization of the new science. Furthermore, the psychological conception of deceit borrowed from broader notions of commercial fraud, the methods of stage magicians, and incorporated the deceptive visual culture of popular magazines and spectacular fairs. Such an approach situates the study of deception in the technical practices of psychology while simultaneously broadening the cultural field in which the science was embedded. I want to recapture the culture of those historical actors who opposed the wondrous powers of mind by arguing for a naturalistic vision of a world filled with ordinary things distorted by deception.

This transformation of deception into a psychological object involved 'discipline' in two interrelated ways: the formation of a scientific discipline and the disciplining of a subject population.[7] Scientific disciplines require more than intellectual resources; scientists have to secure cultural prestige for their work. To institute their science, psychologists had to convince the public that their approach to the mind was correct. Those who developed the psychology of deception contributed to their discipline's formation by securing a broader public recognition of psychology's contributions to industrial life through their popular and applied work. By stressing the epistemological failings of ordinary Americans, psychologists carved a place for themselves and their science in the public debates of the day.[8]

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[6]My language here intentionally mirrors that of Bruno Latour, "Why Has Critique Run out of Steam? From Matters of Fact to Matters of Concern," *Critical Inquiry* 30(2) (2004): 225-248.

[7]On the historical interrelation of these two projects, see Jan Goldstein, "Foucault among the Sociologists: The 'Disciplines' and the History of Professions," *History and Theory* 23(2) (1984): 170-192.

[8]See Jill G. Morawski and Gail A. Hornstein, "Quandary of the Quacks: The Struggle for Expert Knowledge in American Psychology, 1890-1940," in JoAnne Brown and David K. van Kuren (eds.), *The Estate of Social Knowledge* (Baltimore: Johns Hopkins University Press, 1991), 106-133.

Although they were public scientists who worked at the intersection of multiple worlds, neither Joseph Jastrow nor Hugo Münsterberg established research traditions nor did they recruit and train many graduate students to form a subsequent generation that emulated them. Rather Münsterberg, who emigrated from Germany to head the psychological laboratory at Harvard University, is widely understood as the pioneer of applied psychology in realms such as industrial organization and forensics.[9] Although never an applied psychologist, Jastrow's passion for popularization in search of supplemental income and in the hope of transforming the public's perceptual habits led his only biographer to describe the psychologist as having "assumed the life of a vaudevillian."[10] Such a description could be aptly extended to many of Jastrow's contemporaries who expanded their discipline's reach through a cultivation of the spectacular and stressed the commercial utility of their science.

Buttressed by their laboratory work and university appointments, both men expounded on their science and American behavior on the public lecture circuit, in demonstrations at international fairs, in columns for mass circulation periodicals, and by speaking on the radio. They voraciously pursued opportunities to popularize their psychology through controversial public spectacles in which they would assess the mental capabilities of the deaf, spiritualists, and criminals. Focusing on discipline formation stresses

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[9]Bruce Kuklick, *The Rise of American Philosophy: Cambridge, Massachusetts, 1860-1930* (New Haven: Yale University Press, 1977), 196-214; Matthew Hale, Jr., *Human Science and Social Order: Hugo Münsterberg and the Origins of Applied Psychology* (Philadelphia: Temple University Press, 1980); Frank J. Landy, "Hugo Münsterberg: Victim or Visionary?" *Journal of Applied Psychology* 77(6) (1992): 787-802; Jutta and Lothar Spillman, "The Rise and Fall of Hugo Münsterberg," *Journal of the History of the Behavioral Sciences* 29(4) (1993): 322-338; Ludy T. Benjamin, Jr., "Hugo Münsterberg: Portrait of an Applied Psychologist," in Gregory A. Kimble and Michael Wertheimer (eds.), *Portraits of Pioneers in Psychology* vol. 4 (Washington, DC: American Psychological Association, 2000), 113-129.

[10]Arthur L. Blumenthal, "The Intrepid Joseph Jastrow," in Gregory A. Kimble, Michael Wertheimer, and Charlotte L. White (eds.), *Portraits of Pioneers in Psychology* vol. 1 (Washington, DC: American Psychological Association, 1991), 75-87, 84. Jastrow is prominent in accounts of popular psychology, see Ludy T. Benjamin, Jr., "Why Don't They Understand Us: A History of Psychology's Public Image," *American Psychologist* 41(9) (1986): 941-46; Steven C. Ward, *Modernizing the Mind: Psychological Knowledge and the Remaking of Society* (Westport, Conn.: Praeger, 2002), 139-64; Andrew Heinze, *Jews and the American Soul: Human Nature in the Twentieth Century* (Princeton: Princeton University Press, 2004).

the coordination of resources and how the sciences built productive networks that flowed through and helped constitute the social order rather than viewing their activities as closing themselves off from the world they inhabited. This particular ontology of deception derived from the historical process of discipline formation with its continual flows between the marketplace and the laboratory.[11]

As part of securing public recognition of their science, popular writings on deception permitted psychologists to advance their own understanding of the marketplace's effects on the mind. The psychology of deception advanced solutions to the problem of commercial fraud by focusing on the aggregate minds of the purchasing public as a population in need of regulation. As the unpublished poem that serves as the epigraph for this chapter indicates, psychologists like Jastrow were aware that they were operating in conversation with a tradition exemplified by Barnum, holding in common an interest in probing the effects that the marketplace had on the minds of individuals. Where Jastrow advocated a voluntaristic bio-political strategy centering on the individual cultivation of refined mental habits, Münsterberg advanced a technoscientific means of regulating deception to be instituted

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[11]While these projects could be interpreted as a 'professionalizing' strategy, I avoid this analytic since it implies that psychologists sought and achieved autonomy from the broader social order. See Mary O. Furner, *Advocacy and Objectivity: A Crisis in the Professionalization of American Social Science, 1865-1905* (Lexington: University of Kentucky Press, 1975); Burton J. Bledstein, *The Culture of Professionalism: The Middle Class and the Development of Higher Education in America* (New York: Norton, 1976); Thomas L. Haskell, *The Emergence of Professional Social Science: The American Social Science Association and the Nineteenth-Century Crisis of Authority* (Urbana: University of Illinois Press, 1977); J. B. Morrell, "Professionalization" in R. C. Olby, G. N. Cantor, J. J. R. Christie, and M. J. S. Hodge (eds.), *Companion to the History of Modern Science* (London and New York: Routledge, 1990), 980-989. Many early psychologists were deeply worried about expanding the ranks of their discipline too much, fearing it become a mass profession. I focus specifically on popular expositions and demonstrations to illustrate how the formation of psychology as a discipline required that the science remain embedded in the social. My understanding of scientific disciplines has been informed by Mary Jo Nye, *From Chemical Philosophy to Theoretical Chemistry: Dynamics of Matter and Dynamics of Disciplines, 1800-1950* (Berkeley: University of California Press, 1993), 13-31 and Timothy Lenoir, *Instituting Science: The Cultural Production of Scientific Disciplines* (Stanford: Stanford University Press, 1997); Jan Golinski, *Making Natural Knowledge: Constructivism and the History of Science* (New York; Cambridge University Press, 1998), 66-78; Adele Clarke, *Disciplining Reproduction: Modernity, American Life Science, and 'the Problem of Sex'* (Berkeley: University of California Press, 1998).

within the state. Despite these differences, both articulated a vision that combined psychology and discipline into a bio-politics of the marketplace.

I: The Deceptions of a Probable World

The transformation of deception into an object of psychological concern required recasting the study of human observation that had circulated across the disciplinary boundaries of numerous arts and sciences for a number of centuries. Since at least the seventeenth-century, European natural philosophers and showmen had experimented with the 'art of deception': the manipulation of optics, light, and images to produce fantastical yet edifying spectacles in the form of the camera obscura, the magic lantern, and the phantasmagoria.[12] During these same years, astronomers in large observatories with numerous staff members were keenly aware of and carefully policed the differences among various observers. The quantification of what they labeled the 'personal equation' or the perceptual differences between individual recorders needed to be calibrated in order to produce universal astronomical data at various locales.[13]

During the nineteenth-century's second quarter, human perception became the focus of experimental physiology. The physiological optics of Hermann von Helmholtz was grounded in the careful measurement of the varying reaction times of human subjects to stimuli and developed many of the instruments for measuring bodily reactions later used in

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[12]The art historian Laurent Mannoni stresses how such public displays assembled an array of technologies, science, spectators, and exhibitory practices in a fashion similar to that later deployed by the psychologists discussed in this chapter. See Laurent Mannoni, "The Art of Deception," in Mannoni, Werner Nekes, and Marinia Warner, *Eyes, Lies, and Illusions: The Arts of Deception* (London: Hayward Gallery, 2004), 41-52, 43. While he pays careful attention to the interdependence art and science, for Mannoni the notion of an 'art of deception' is an ahistorical phenomena unchanged by the time and place of its staging. On the historicity of perception, deception and illusions, see Jonathan Crary, *Techniques of the Observer: On Vision and Modernity in the Nineteenth Century* (Cambridge: MIT Press, 1990); James W. Cook, *The Arts of Deception: Playing with Fraud in the Age of Barnum* (Cambridge: Harvard University Press, 2001), 21; Iwan Rhys Morus, "Seeing and Believing Science," *Isis* 97 (2006): 101-110.

[13]Simon Schaffer, "Astronomers Mark Time: Discipline and the Personal Equation," *Science in Context* 2(1) (1988): 115-145.

psychological research. Vision, once understood as a universal experience common to all, became increasingly defined as an idiosyncratic process intimately tied to the bodily functions of the individual. German organic physics and its cognate, subjective vision, were organized around the measurement of physiological, bodily processes while, in contrast, late nineteenth-century experimental psychology was concerned with examining how mental processes that mediated the relay of sense perception formed an integral part of subjectivity. In other words, while organic physics located subjectivity in the physiology of perception, experimental psychology shifted the locus to the mind.[14]

Despite these antecedents, in the United States, the scientific study of deception became thinkable in relationship to experimental psychology. Beginning in 1879, experimental psychologists in Germany, and soon the United States as well, undertook a conscious project to make mental phenomena their exclusive domain. Although Wilhelm Wundt at Leipzig established the first psychology laboratory, by 1883 researchers at Johns Hopkins Universities had emulated his example. Wundt's research centered on the act of introspection, where the experimenter tested his own responses to stimuli and attained knowledge through conscious reflection on these mental processes. In the United States, Wundt's program was eclipsed by one that emphasized the distinction between the experimenter and his subject, the bracketing of introspective states in favor of studying outward behavioral responses.[15]

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[14]This necessarily brief sketch draws on R. Steven Turner, *In the Mind's Eye: Vision and Helmhotz-Hering Controversy* (Princeton: Princeton University Press, 1994); Lenoir, *Instituting Science*, 75-176; Henning Schmidgen, "Time and Noise: The Stable Surroundings of Reaction Experiments, 1860–1890," *Studies in History and Philosophy of Biological and Biomedical Sciences* 34 (2003): 237–275.

[15]For psychology's discipline formation, see Kurt Danziger, *Constructing the Subject: Historical Origins of Psychological Research* (Cambridge: Cambridge University Press, 1990); Roger Smith, *The Fontana History of the Human Sciences* (London: Fontana, 1997), 575-625; John Carson, "Minding Matter/ Mattering Mind: Knowledge and the Subject in Nineteenth-Century Psychology," *Studies in the History and Philosophy of the Biological & Biomedical Sciences* 30(3) (1999): 345-376. On the U.S. scene, see Donald S. Napoli, *Architects of Adjustment: The History of the Psychological Profession in the United States* (Port Washington, NY: Kennikat Press, 1981); John M. O'Donnell, *The Origins of Behaviorism: American Psychology, 1870-1920*

The selection of deception as an object of study may seem odd choice among psychologists, especially considering that mid-nineteenth-century scientists thought there was no such thing as a true illusion, in other words the deception of the senses. In the sciences of perception, whatever a healthy eye experienced was considered to be an optical fact, a product of an ever-present subjectivity.[16] If relegated from the scientific realm by physiological optics, why would Progressive Era psychologists invest so much energy in reclaiming and reanimating the concept of deception? A hint can be found in the British psychologist James Sully's *Illusions* (1881), where he suggested that what are "sometimes called deceptions of the senses" are inaccurately labeled since it was not the sensory data itself that was in error but how the mind classified the information.[17] Deception did not point towards the sensory organs but to mental processes and habitual behaviors.

Deception was an appealing topic of investigation for publicly minded psychologists due to the ambiguity and flexibility of the concept. 'Deception' encompassed both the ways in which ordinary observers were misled by what they perceived and the conscious misdirection of tricksters. It could invoke the pleasurable showmanship of the conjuror, in which the audience willingly suspended their skeptical judgments, or the fraudulent activities of the spiritualists. Psychologists harnessed this ambiguity by enrolling their expertise in human perception as an opening to speak to American concerns about commercial fraud. This shell game between intentional and unintentional acts of deception allowed psychologists to expand the scope of their authority.

While most accounts of the emergence of psychology as an experimental science have rightly highlighted the perceived need to break with the tradition of speculative

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(New York: New York University Press, 1985); Jill G. Morawski (ed.), *The Rise of Experimentation in American Psychology* (New Haven: Yale University Press, 1988).

[16]Crary, *Techniques of the Observer*, 97-98.

[17]James Sully, *Illusions: A Scientific Study* (1881; New York: D. Appleton and Co., 1891), 19.

philosophy, the psychology of deception represented a different route where such associations were sustained. For this reason, the distinctive academic culture during the brief period in the 1880s when Johns Hopkins University first had a psychology department was a formative influence. Created in 1876 as a graduate university dedicated to research, it soon became the most important nexus for psychology in North America. In 1879, Charles Sanders Peirce was hired on a part-time contractual basis to teach logic at the new institution. In addition to his teaching duties, Peirce established a Metaphysical Club, a university-sponsored group with a common interest in science, philosophy, and increasingly psychology modeled on the celebrated institution of the same name that convened in Cambridge, Massachusetts. In 1883, Peirce was joined by G. Stanley Hall who was hired to teach pedagogy and psychology, the first North American academic appointment in the new science.[18]

In 1882, Joseph Jastrow entered the doctoral program in philosophy at Hopkins but soon switched to psychological research under the mentorship of Peirce and Hall. Although never his teacher, the British polymath Sir Francis Galton was also clearly a model the young Jastrow emulated.[19] Hall was Jastrow's dissertation advisor and the two shared a common conviction in an evolutionary, functional approach to the human mind. Best remembered for his psychology of adolescence, Hall argued that the developing mind of the individual child recapitulated the evolution of the species.[20] While he would come to repudiate Hall's

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[18]On the academic culture at Hopkins and the new psychology, see Peter J. Behrens, "The Metaphysical Club at the Johns Hopkins University (1879-1885)," *History of Psychology* 8(4) (2005): 331–346. On the intellectual scene that influenced developments at Hopkins, see Kuklick, *The Rise of American Philosophy.*

[19]He pursued investigations on such Galtonian topics as composite photography, the 'longevity of great men,' as well as administering an anthropometric clinic in the 1890s. See Joseph Jastrow, "Composite Portraiture," *Science* 6(134) (Aug 28, 1885): 165-167 and Jastrow, "The Longevity of Great Men," *Science* 8(191) (October 1, 1886): 294-96. Most likely Jastrow was introduced to Galton's work in Peirce's 1883 seminar on the collective psychological characteristics of 'great men.' See Nathan Houser, "Introduction," *Writings of Charles S. Peirce: A Chronological Edition* vol. 5 (Bloomington: Indiana University Press, 1993), xxiii.

[20]See Dorothy Ross, *G. Stanley Hall: The Psychologist as Prophet* (Chicago: University of Chicago Press, 1972); Cynthia Russett, *Sexual Science: The Victorian Construction of Womanhood* (Cambridge: Harvard

understanding of evolutionary development, Jastrow's psychology of deception was similarly concerned with vestigial forms of 'primitive' mental behavior operating in an industrial world.[21] Although Peirce was soon forced to leave Hopkins under a cloud of personal scandal, Jastrow insisted that the logician's influence was the most important to his intellectual development. Derived from the philosopher's teaching, Jastrow embraced the importance of logic, not in the form of mathematical machines for problem solving, but as the "investigation of the nature of the thought process," a hybrid of logic and psychology. Most importantly, Peirce also introduced him to an experimental, interventionist approach to the mind.[22]

In 1883, alongside Peirce, Jastrow executed the first psychology experiment performed in the Americas. Their aim was to determine how reliably an individual could detect changes in pressure when differing weights were pressed against his index finger. Was there a threshold beyond which changes in sensation could no longer be detected or did the human subject operate within a continuum of misperception? The apparatus was simple: a post office scale, a one-kilogram weight, and smaller weights that could be added or removed from the scale during the course of the experiment. The test subject was separated from the experimenter by a screen making him unaware of whether the additional weight had been added, removed, or maintained. The kilogram weight was a constant on the scale but the experiment was designed to determine how accurately the subject could sense the differing pressures against his finger as the weights on the scale were altered. The experiment was governed by chance, as the experimenter's decision with reference to the

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University Press, 1989): 49-103; Gail Bederman, *Manliness and Civilization* (Chicago: University of Chicago Press, 1995), 77-120.

[21]Joseph Jastow, "Joseph Jastrow," in Carl Murchison (ed.), *A History of Psychology in Autobiography* vol. 1 (Worcester: Clark University Press, 1930), 135-162, 138.

[22]Jastrow, "Joseph Jastrow," 135-136. On Peirce, see Joseph Brent, *Charles Sanders Peirce: A Life* (Bloomington: Indiana University Press, 1993).

additional weight was determined by the drawing of a random playing card from a deck. Based on their findings, the two argued against Gustav Fechner's notion that there existed a threshold beyond which the difference in sensations could no longer be detected. No such definitive threshold existed, rather the bodily sensation operated in a continuum of misperception.[23] It was not only the experimental design but the very self it generated that was understood probabilistically: the mind was an uncertain judge that tended towards likelihood. From these experiments onwards, Jastrow cultivated an interest in the nature of misperception and deception.

Such an attitude can already be found in Jastrow's first individually published article, "Some Particularities in the Age Statistics of the United States," a study of mental habits as they expressed themselves as behavioral trends across large populations. In analyzing the findings of the 1880 national census, he found that invariably there was a disproportionate number of individuals who stated their age as ending with zero compared to those with a nine or one. For example, there were distinctly more people claiming to be fifty than either forty-nine or fifty-one. This statistical aggregate of ordinary Americans had a propensity to record its age in numbers such as thirty, forty, and fifty and Jastrow mapped out this "10 exaggeration" in the various segments of the population. His interest was not in the census numbers in and of themselves but rather in the psychological predisposition that produced the distortion. Jastrow understood this mendacity as a form of unarticulated emotional desire. He cautioned that future census takers had "to appreciate how enormous the attraction towards round numbers really is."[24] His concern was not the motivations that

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[23]Joseph Jastrow and Charles Sanders Peirce, "Small Differences of Sensation," *Proceedings of the National Academy of Sciences* 3 (1884): 75-83. See also Joseph Jastrow, "A Critique of Psycho-Physic Methods," *American Journal of Psychology* 1(2) (1888): 271-309. The experiment is linked to the rise of randomization, experimental design, and the broader culture of chance in Hacking, "Telepathy," 431-434.

[24]Joseph Jastrow, "Some Particularities in the Age Statistics of the United States," *Science* 5(122) (June 5, 1885): 461-464, 461.

led individuals to erroneously record their age but rather the search for psychological tendencies within large populations. After all, the rise of statistical thinking had reconstituted the study of individuals away from particular motivations in favor of discerning propensities and patterns in the aggregate.[25]

To address this concern, Jastrow next turned to a consideration of how racial and sexual differences contributed to the '10 exaggeration.' His findings reaffirmed the political hierarchies of his day with white, American-born males being the most accurate in their reporting followed by male immigrants, then women. The population most prone to exaggeration and hence deceiving census officials were 'colored peoples,' a category that included immigrants from Asia but was mainly populated by the recently emancipated black population. Jastrow felt that he had uncovered a geography of mendacity within the distortion of ages in the census. He argued that contact with racial minorities served as a kind of deceptive contagion which effected white males from New Mexico, whose numbers included Hispanics, and the denizens of the Southern states for living in "too close intimacy with the 'round-number loving' Negro seems to be dangerous to statistical accuracy."[26] These regions were in stark contrast to the more reliable and accurate zones of white, Protestant, republican populations of New England and the Midwest.

In these passages, Jastrow identifies age exaggeration as a kind of "mendacity" expressed as a psychological propensity to deceive directly correlated to individuals aggregated into sexed and raced populations. Arguing that such deeply engrained behavioral tendencies were impossible to root out of the subject population, he suggested that future census takers ought to reformulate their questions and approach individuals with greater

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[25]See Theodore Porter, *The Rise of Statistical Thinking, 1820-1900* (Princeton: Princeton University Press, 1986) and Ian Hacking, *The Taming of Chance* (New York: Cambridge University Press, 1990).
[26]Jastrow, "Age Statistics," 463.

skepticism in order to produce a more accurate final product.[27] While his mentor Peirce understood the significance of living in a 'statistical age' in terms of inhabiting a world governed by chance, Jastrow drew upon similar resources to organize a cosmos around the conviction that existing mental habits had the tendency to induce deception.[28]

An ardent champion of the new experimental approach to the mind, Jastrow remained open to more philosophical styles of thinking and literary modes of expression. Most important to his self-identity as a psychologist was his advocacy of a naturalistic, materialist interpretation of how the mind functioned. He understood psychology as the branch of biology dealing with mental phenomena. He was an early proponent of comparative psychology, the notion that much could be gleaned from the study of animal behavior, and he frequently called for closer ties between psychology and anthropology. He served as first secretary of the American Psychological Association and presided over the organization in 1900.

Jastrow's position as an accepted insider within the discipline of psychology was unquestioned, yet at the time of his graduation from Hopkins in 1886 no jobs in psychology materialized until his appointment two years later at Wisconsin. As a result, Jastrow initially began his career as a freelance science writer contributing to *Science* but also to middle-brow, mass circulation periodicals like *Popular Science Monthly* and *Harper's*.[29] To pursue his vocational interests as a scientific authority in matters of the mind required that Jastrow straddle the worlds of academia and popular publishing, to tailor his scientific investigations to the demands of middle-brow publishing. The development of topics appropriate for such

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[27]Jastrow, "Age Statistics," 464.
[28]On the statistical age, see Theodore Porter, *Karl Pearson: The Scientific Life in a Statistical Age* (Princeton: Princeton University Press, 2003). On Peirce's understanding of chance see Porter, *The Rise of Statistical Thinking*, 219-227 and Hacking, *The Taming of Chance*, 200-215. For a related discussion of William James, see Jackson Lears, *Something for Nothing* (New York: Viking, 2003), 220-225.
[29]Jastrow, "Joseph Jastrow," 140.

blossoming commercial venues had a formative influence on the subsequent development of both psychology and philosophy in America.[30]

Jastrow utilized these commercial ventures in popularization to advance his understanding of the mind as the locus of deception in a probabilistic cosmos. Among his earliest popular essays, appearing in an 1888 issue of *Popular Science Monthly,* Jastrow articulated his 'psychology of deception.'[31] While acknowledging that common sense and philosophical pronouncements that appearances could deceive were traceable to ancient times, Jastrow argued that only modern psychology could properly illuminate the problem of human deception. In what would become a hallmark maneuver, Jastrow formulated his argument in opposition to 'common sense' and its notion that it was the *senses* that deceived.[32]

As a psychologist, Jastrow argued that it was not primarily the physiology of the senses that were to blame for deception but rather the mind's interpretation of the sensory data. As Jastrow articulated it: "It is not the eye of the eagle, but the brain directing the human eye that gives intellectual supremacy."[33] Jastrow stressed every perception had two essential factors: the nature of the object perceived and the nature of the observer. The former was related to the external conditions of the physical world while the latter was concerned

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[30]In a non-pejorative way, I invoke 'middle-brow' to refer to ventures using mass-produced print commodities to communicate high culture and knowledge to a mass reading public. See Joan Shelley Rubin, *The Making of Middle-Brow Culture* (Chapel Hill: University of North Carolina Press, 1992); George Cotkin, "Middle-Ground Pragmatists: The Popularization of Philosophy in American Culture," *Journal of the History of Ideas* 55(2) (1994): 283-302; Janice A. Radway, *A Feeling for the Book: The Book-of-the-Month Club, Literary Taste, and Middle Class Desire* (Chapel Hill: University of North Carolina Press, 1997). These scholars emphasize the creation of the Book-of-the-Month Club in 1926 as the start of a true middle-brow culture. I would argue that the mass circulation periodicals of the second half of the nineteenth-century represent a crucial phase in the development of middle-brow tastes and styles.

[31]Joseph Jastrow, "The Psychology of Deception," *The Popular Science Monthly* 34 (December 1888): 145-157. An expanded version was included in his first collection of popular essays, *Fact and Fable in Psychology* (Boston and New York: Houghton, Mifflin and Company, 1900). Unless otherwise noted, all subsequent references refer to the original *Popular Science* version.

[32]Here Jastrow was building upon the edifying exhibitory culture of the nineteenth-century that stressed the interrelationship between judgment and vision. See Morus, "Seeing and Believing Science," 102.

[33]Jastrow, "Psychology of Deception," 145.

with the mechanisms of perception, the processes of interior mental states, and the use of logic. He sought to explicate how emotions, desires, and expectations frame what the individual observer was capable of perceiving: "Not only will the nature of the impression change with the interests of the observer, but even more, *whether or not*, an object will be *perceived at all* will depend upon the same cause."[34] In most instances, deception was a problem of psychological perception or what Jastrow termed the "mind's eye" in a subsequent essay.[35]

Jastrow located the ontology of deception in the mental habits and predispositions that led the observer to misinterpret sensory data. Certain objects (such as optical illusions) or persons (such as spirit mediums) were particularly prone to inducing deception but this was because they preyed upon pre-existing mental outlooks. These pitfalls were avoidable but the prevention of deception required self-discipline on the part of the individual observer. The easy road of quick conclusions and pleasurable beliefs had to be eschewed in favor of logical thinking as a form of rigorous mental work. As "creatures of the average," humans are deceived by our routinized habits of mind that lead us to take the surface appearance of things at face value. After all "we are adjusted for the most probable event; our organism has acquired the habits impressed upon it by the most frequent experiences; and this has induced an inherent logical necessity to interpret a new experience by the old, an unfamiliar by the familiar." Therefore, the possibility of deception derived from the very anticipation of the expected that allowed a species of intelligence to operate in a probable universe. While this mental outlook on the whole was a necessary attribute bestowed on humanity as a population by natural selection, this well-worn path could also lead into superstitious credulity.[36] As

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[34]Jastrow, "Psychology of Deception," 150. Emphasis in the original.
[35]Jastrow, "The Mind's Eye," *Fact and Fable in Psychology*, 275-295.
[36]Jastrow, "Psychology of Deception," in *Fact and Fable*, 110-111.

such, deception was fostered by the mind's governance by what William James called the "law of economy." According to this principle, new sensations travel the easiest, most economical route and therefore flow along established, habituated pathways. Humans have the tendency to categorize new data in terms of what they have already experienced or what they desire to see.[37]

Published in the same venue, Jastrow's work on deception incorporated his mentor Peirce's proto-pragmatist contemplation of the nature of belief in a scientific world. Both men stressed how mental habits sustained certainty. In "The Fixation of Belief" (1877), Peirce had already signaled the importance of the emotions in the formation of beliefs. Peirce had embraced a psycho-physiological understanding of the mind and body to explain the relationship between knowledge and belief. Belief was analogous to nervous association, the process whereby the mouth waters, in Peirce's example, with the scent of a peach. In contrast to pleasurable and comforting beliefs, doubt is expressed by the irritation of a nerve that produces further investigation as a form a reflex action. As such, irritation is the mental state prized above all others since it is the only one that provides the proper spur to true inquiry. Pleasure and comfort can never serve as the impetus to knowledge since they merely reinforce pre-existing beliefs.[38] Peirce's attention in this series of essays soon shifted to his primary interest, the elucidation of the proper course of scientific investigation, but Jastrow's focus remained on the psychological conditions of belief. He pursued Peirce's passing metaphor in an attempt to make false belief or deception itself into a scientific object.[39]

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[37]See William James, *The Principles of Psychology* v. 2 (1890; Cambridge: Harvard University Press, 1981), 821 and James, *Talks to Teachers on Psychology and to Students on Some of Life's Ideals* (1899; Cambridge: Harvard University Press, 1983), 96-97.

[38]Charles S. Peirce, "The Fixation of Belief," *Popular Science Monthly* 12 (November 1877), 1-15.

[39]Initially conceived as an opportunity for explicating the scientific method and logic to a broad reading public, Peirce quickly grew frustrated with the idiom of popularization and soon abandoned it. It is ironic then that

Jastrow's project was normative and he understood his psychology of deception as combining epistemology with ethics. He saw his own popular psychology as a means of communicating logical thinking about mental phenomena to the public. By following his guidance, one could reign in the fraudulent deceptions of the spiritualists or the pickpocket, comparable commercial predators that made a profit out of the misdirection of one's attention.[40] One could inoculate the mind from the deceptions that were constantly proliferating. Jastrow was offering a way of being in the world where logic, perception, and prudent action were intimately bound together. For Jastrow, ethics had to be rooted in epistemology; the true path went from "right knowing to right doing."[41] Such ethical decisions were bound to the logical ordering of the mind and its cognate perception, or as he argued elsewhere: "Thinking straight is essential to seeing straight."[42]

This historical ontology of deception, which braided together epistemology and ethics, served as the foundation for Jastrow's popular psychology: a program that entailed instructing how to navigate wisely the world of appearances. In step with his cultural milieu, he would increasingly define deceptive appearances with commercial culture. For Jastrow, the solution to these problems was bio-political for he focused on the mind as a biological entity. This required attending to the irritating itch of doubt and the cultivation of a critical attitude to combat evolutionary-instilled habits that directed the mind's perceptions onto the easy path of credulous belief. In articulating these concerns, Jastrow's response remained

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these essays provided the foundations for Pragmatism, demonstrating from the outset the middle-brow origins of the philosophical movement. For an insightful discussion of Peirce's philosophy in connection to commercial publishing, see Paul Jerome Croce, *Science and Religion in the Era of William James: Eclipse of Certainty, 1820-1880* (Chapel Hill: University of North Carolina Press, 1995), 206-222.

[40]Jastrow, "Psychology of Deception," 151. A crucial facet was the question of the observer's attention but deception was a multifaceted psychological assemblage with components distinct from attention and its dissolution, distraction. On the psychology of attention, see Jonathan Crary, *Suspensions of Perception: Attention, Spectacle, and Modern Culture* (Cambridge: MIT Press, 1999).

[41]Jastrow, "Psychology of Deception," *Fact and Fable*, 135.

[42]Jastrow, "The Case of Paladino," *The Psychology of Conviction* (Boston: Houghton Mifflin, 1918), 101-127, 113.

voluntaristic, a laissez faire liberal approach. The individual was given the techniques to detect deception but it was their personal responsibility to acquire such habits in order to operate prudently. This attitude reflected broader trends in the political import of the psychological sciences with their emphasis on individualized identities and self-responsibility. For the sociologist Nikolas Rose the psychological sciences are constitutive of liberal styles of governance where free peoples "are enjoined to govern themselves as subjects simultaneously of liberty and responsibility."[43] Despite a common emphasis on the individuation of the detection, Jastrow's concept of the self was quite different from Barnum's epistemologically robust spectator, who was expected to successfully navigate the humbugs and frauds of the marketplace, since Jastrow's psychological self constantly risked succumbing to deception.

For Jastrow, the psychological nature of this habituated individual was the outcome of the evolutionary process, a perspective that abetted the racialization of deception.[44] Credulity and mendacity as mental traits and moral qualities were understood as biological variants prominent among 'primitive' populations but recapitulated or transmitted in troublesome ways in more civilized individuals. As early as his 1885 essay on age exaggeration and the census, Jastrow linked racial differences to acts of mendacity. Although he was quick to point out mediating, environmental factors for errors among his fellow European immigrants, such as unfamiliarity with the language of the census taker, he naturalized the deceptive acts among non-whites, attributing them to their inherent moral character.

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[43]Rose, *Inventing Ourselves: Psychology, Power, and Personhood* (New York: Cambridge University Press, 1996), 12.

[44]Jastrow stressed that psychology as a science had emerged from the "Darwinized outlook." See Joseph Jastrow, "The Reconstruction of Psychology," *Psychological Review* 34(3) (1927): 169-195, 170.

The construction of the psychology of deception in relationship to questions of human difference was also encouraged by Jastrow's desire to build bridges between psychology and anthropology as human sciences. Such was the case in his address delivered as the vice-president of anthropology section of the American Association for the Advancement of Science in 1891. Here the deceptions and frauds explored in the *Popular Science* article were interpreted in terms of the natural history of humanity's mental development. Cast into an evolutionary narrative, deceptive reasoning skills, exemplified by analogies, were understood as vestigial mental tools.[45] As a style of reasoning, the arguments grounded in analogies were of the most primitive kind and were particularly prone to error. When individuals fell prey to deceptions it was because these primitive, childlike facets of their mental apparatus were not being adequately disciplined through rigorous logic. Even in the 1920s, after rejecting Hall's "appealing" recapitulationist theory, Jastrow still argued: "We do not completely escape or emerge from the childlike or the primitive; our past pursues us. The problems of life, social and personal, industrial and political, cultural and recreational, are due to the strong tendency to revert to childish patterns of behavior."[46] Ironically, the foundation of much nineteenth-century anthropological logic to which Jastrow adhered was such an analogy between children and 'primitives' embodied in the principle ontogeny recapitulates phylogeny.

Jastrow's location of deception in an evolutionary narrative was shared by a number of contemporary psychologists. In his investigation into "children's lies," G. Stanley Hall stressed the functionality of deception as a tactic in the struggle for existence that persisted in unwanted ways amongst the civilized: "Truth for our friends and lies for our enemies is a

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[45]For an abstract of the address, see Joseph Jastrow, "The Natural History of Analogy," *Science* 18(447) (August 28, 1891): 118-119. For the full text see *Fact and Fable in Psychology*, 236-274.
[46]Jastrow, "The Reconstruction of Psychology," 184.

practical, though not distinctly conscious rule widely current with children, as with uncivilized, and indeed, even civilized races."[47] Another of Hall's graduate students explored the evolutionary ramifications of deception in a 1900 dissertation that Jastrow came to incorporate into his own understanding. According to Norman Triplett, the conjuror's tricks originated in "a universal instinct to deception – a biological tendency appearing throughout the animal world from simple forms to the highest orders, which acts as a constant force in the process of natural selection – as a means of preserving the self or species."[48] Modern commercial deceptions derived from the simpler organism's instinctive mimicry in order to survive either by eluding predators or trapping prey through trickery. Although perhaps an intentional strategy in origin, the weak creature's feigning of death in the face of a predator had become an immediate response, an instinctual habit. During the next phase of development, as primitive man sought to wrest himself from the state of nature, his animistic religious beliefs sustained credulity in the religious conjuror. For Triplett, this shaman class consciously maintained their power through the manipulation of the credulous nature of their adherents.[49]

Such an anthropological idiom was an important resource in Jastrow's first published attack on the psychical research, which appeared in an 1889 issue of *Harper's Weekly*. Citing the authority of the British anthropologist Edward Tylor and arguing for an "evolutionistic" perspective to the problem of psychical phenomena, Jastrow held that the credulous belief in such things represented "reversions to a more rudimentary state of thought." Much like the "child" and the "savages," the faithful adherent of spiritualism inhabits of world of fearful mysteries and invokes the otherworldly to explain the perfectly

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[47]G. Stanley Hall, "Children's Lies," *American Journal of Psychology* 3(1) (1890): 59-70, 62.
[48]Norman Triplett, "The Psychology of Conjuring Deceptions," *American Journal of Psychology* 11(4) (1900): 439-510, 440.
[49]Triplett, "The Psychology of Conjuring Deceptions," 447-449.

ordinary things he or she could not explain.[50] At a time when spiritualism was gaining an increased hold in the culture of America's upper classes, in the pages of genteel *Harper's*, Jastrow performed his own calculated sleight-of-hand trick by associating spiritualism with savagery and racial recapitulation, warning readers that such pursuits were not appropriate for the refined tastes of their class. Jastrow stressed that primitive superstition did not provide an appropriate exit from the stresses of industrial life but led merely to self-deception.[51]

For Jastrow, like the pragmatists, living in an uncertain cosmos governed by chance required a probabilistic mindset: the individual was compelled to act based on his or her judgment of what was most likely to be true. Natural selection and personal experience had etched perceptual associations that facilitated quick judgment into human beings as an intelligent population. Through such habits and the law of economy, inscribed as "a condition of progress in the individual and the race" according to Triplett, the majority of mental functions could be rendered automatic, easing the perceptual burden.[52] If the bestowal of these perceptual habits was the evolutionary inheritance of the civilized races in the aggregate, it was the individual's ethical imperative to exert mental effort in certain circumstances. At the current stage of evolutionary development, it was the individual subject's moral obligation to struggle against the comforting mental habits acquired as a member of the aggregate population. Belief and credulity were provenance of the aggregate but the individual ought to chart an independent course.

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[50]Joseph Jastrow, "The Problems of 'Psychic Research,'" *Harper's Monthly Magazine* (1889): 76-82, 76.
[51]Jackson Lears argues that many Americans of the period prized such superstitions explicitly understood as primitive as a salve against the stress of over-civilization through a recapturing of child-like innocence. See Lears, *Something for Nothing*, 201-215. Such an account underestimates the importance of racial hierarchy in the period.
[52]See Triplett, "The Psychology of Conjuring Deceptions," 505.

In articulating such a vision Jastrow was both participating in and refining his contemporaries' psychological understanding of the self. His essays represent a conscious effort to reframe pragmatist thought into a practical and popular psychology meant to address the social problems facing Progressive Era America.[53] In so doing, Jastrow made deception a more prominent matter of concern than it was for his pragmatist mentors. The importance of deception in Jastrow's psychology was bound to the possibilities and the dangers posed to the rational, skeptical mind by the consumer-oriented economy.[54] Furthermore Jastrow's concern with deception was closely associated with his own tenuous economic position. Jastrow would cultivate the public's interest in deceptive and fraudulent persons and things as a means of remaining financially solvent.

II Personal Crisis and Vaudevillian Performances

A definite highpoint of Jastrow's early attempts to popularize psychology was his contributions to World's Columbia Exposition in 1893. Held to celebrate the city of Chicago's recovery from the devastating fire of 1871, the fair become a definitive cultural event of the final decade of the nineteenth century. Centering on the commercial and technological achievements of the Gilded Age, audiences were thrilled by the exotic

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[53]Pragmatism succeeded in shaping American values precisely because it was transmitted through public lecturing and popular essays. See David A. Hollinger, "The Problem of Pragmatism in American History," *Journal of American History* 67(1) (1980): 88-107 and George Cotkin, *William James, Public Philosopher* (Baltimore: Johns Hopkins University Press, 1990).

[54]The relationship between pragmatist thought and political economy is ambiguous, with scholars highlighting strains of republicanism, anarchism, corporate liberalism, and a consumption-based therapeutics. See Cornel West, *The American Evasion of Philosophy: A Genealogy of Pragmatism* (Madison: University of Wisconsin Press, 1989); James Livingston, *Pragmatism and the Political Economy of Cultural Revolution, 1850-1940* (Chapel Hill: University of North Carolina Press, 1994); Deborah J. Coon, "'One Moment of Salvation': Anarchism and the Radicalism of William James," *Journal of American History* 83(1) (1996): 70-99; Jeffrey Sklansky, *The Soul's Economy: Market Society and Selfhood in American Thought, 1820-1920* (Chapel Hill: University of North Carolina Press, 2002). I want to recast this debate by illustrating how a particular psychologist deeply informed by pragmatism incorporated aspects of commercial culture into his knowledge practices, built a career for himself as a popular science writer, and advanced a critical perspective on the mentalities generated by modern forms of consumption.

pavilions and electrified boulevards. The exposition was seen as a hymn to Americans' capabilities of conquering the continent, its peoples, and nature. The fair was also mired by controversy with its segregated African Americans audiences, whose leadership was excluded from organizing displays, and its transformation of Native Americans into exhibited objects.[55]

The Chicago fair provided the venue where Jastrow coordinated the first major public exhibit presenting psychology as a science in North America, working under the auspices of Frederic Ward Putnam's Department of Ethnology. In order to acquire instruments from laboratories to be placed on display, Jastrow wrote to a number of psychologists asking for suggestions and donations.[56] Jastrow also displayed a number of optical illusions with the aim of demonstrating to spectators certain psychological principles. As important as these material artifacts from the psychologist's toolbox were, they were not the aspect that garnered the most interest. For once again Galton inspired Jastrow; the exhibit's centerpiece consisted of the psychologist taking mental and anthropometric measurements of the attendees in collaboration with Franz Boas.[57]

Although widely understood by his scientific peers as a critically important event in elevating the public profile of psychology, the University of Wisconsin did not grant Jastrow a leave to manage the exhibit. For much of 1893, he regularly traveled between Madison and Chicago but ultimately found the responsibility of organizing the exhibit, overseeing the

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[55]The scholarship on the fair is enormous but see especially Alan Trachtenberg, *The Incorporation of America Society and Culture in the Gilded Age* (New York: Hill and Wang, 1982), chapter 7; Curtis M. Hinsley, "The World as Marketplace, Commodification of the Exotic at the Columbian Exposition, Chicago, 1893," in Ivan Karp and Steven D. Lavine, (eds.), *Exhibiting Culture* (Washington DC: Smithsonian Press, 1991), 344-365; James B. Gilbert, *Perfect Cities: Chicago's Utopias of 1893* (Chicago: University of Chicago Press, 1991).
[56]It was in this capacity that he first made contact with Münsterberg. See Jastrow to Münsterberg, November 13 1892, Hugo Münsterberg Papers, Boston Public Library (hereafter referred to as HMP), Mss Acc 1837.
[57]See "When Men's Senses are Tested," Chicago *Daily Tribune*, September 10, 1893, 35; "Experimental Psychology at the Fair," Chicago *Daily Tribune*, November 5, 1893, 28; Jastrow, "Joseph Jastrow," 142. See also Robert W. Rydell, *All the World's a Fair: Visions of Empire at American International Expositions* (Chicago: University of Chicago Press, 1984) 57.

anthropometric clinic, and his teaching duties to be too taxing. Exhausted by his intellectual labors, throughout the fall of 1894 his mental condition worsened. By January 1895, suffering from persistent fatigue and unable to concentrate, he could no longer maintain his teaching responsibilities at the university. When Jastrow and his wife Rachel consulted with a Madison-area physician, he was informed that no organic cause could be detected for his mental exhaustion and that in all likelihood he was suffering from neurasthenia.[58]

From the 1860s to the 1920s, neurasthenia was the most prominent mental disorder among American white-collar workers, colonial administrators, and genteel women. These groups were particularly prone since it was the mental ailment associated with problems of the over-civilization, of those at the height of evolutionary and cultural advancement. While men were encouraged to engage in vigorous, rugged physical activity to overcome their nervous malaise, women were usually confined to a rest cure in a secluded bedroom, their testimony about their own illness largely dismissed.[59] A long neurasthenic illness prompted by a religious crisis was also an important aspect of the career of William James. Unlike the Cambridge patrician who could live off his substantial inheritance while he articulated his psychology and later philosophy, Jastrow's illness placed him on the brink of financial ruin.[60]

Initially the psychologist was prescribed a variation of the rest cure in order to recover from his nervous breakdown. He was ordered to avoid all forms of mental work and

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[58]See Rachel Jastrow to her parents, January 6 1895 and Rachel Jastrow to her sister Henrietta Szold, February 3 1895, JJP.

[59]For a balanced overview of the enormous historical literature, see David G. Schuster, "Personalizing Illness and Modernity: S. Weir Mitchell, Literary Women, and Neurasthenia, 1870-1914," *Bulletin of the History of Medicine* 79(4) (2005): 695-722. On the disease's relationship to notions of civilization and race, see T. J. Jackson Lears, *No Place of Grace: Antimodernism and the Transformation of American Culture, 1880-1920* (New York Pantheon, 1981), 47-58; Bederman, *Manliness and Civilization*; Warwick Anderson, "The Trespass Speaks: White Masculinity and Colonial Breakdown," *American Historical Review* 102 (1997): 1343–70.

[60]Croce correctly notes the importance of class identity to pragmatism. The financial wealth of its founding members enabled them to embrace 'uncertainty' since their own social status was not expected to change: "They were privileged enough to be bold." Croce, *Science and Religion in the Age of William James*, 21. That his mentor Peirce descended into poverty by rejecting both the behavioral norms of academia and the demands of popularization would have only encouraged Jastrow to pursue these avenues.

his wife was advised not to indulge him and to treat him as coldly as possible. Such a prescription chafed against the psychologist's sensibilities and his wife's letters record his contempt for the medical advice he received.[61] At the time, the University of Wisconsin made no official provisions for faculty members who could not fulfill their teaching duties due to illness. The university president was sympathetic and sought to make the situation into a test case to ensure faculty members would not lose their salaries due to medical leaves of absence but no guarantees could be provided.[62] The couple pursued an expensive tour of east coast resorts and medical doctors in search of a cure. In doing so, they were forced to borrow money, usually from his wife Rachel's parents, placing them on an insecure financial footing.[63] After consulting numerous physicians who repeatedly proscribed variations of the rest cure, the Jastrows finally consulted with one of S. Weir Mitchell's former assistants who recommended a treatment of physical activity, the peak of which was a weeklong excursion with fellow psychologists James Mark Baldwin to a fishing hut in Maine.[64] Frustrated and angered by the rest cure therapy, Jastrow's condition improved steadily under the new regimen.

Jastrow's personal ordeal of a nervous ailment without an apparent organic cause – one whose very existence was viewed skeptically by many contemporaries – did not render him more sympathetic towards non-naturalistic understandings of the relationship between mind and body.[65] If anything, his polemics against the advocates of willful mind cure became more acute following his recovery from the neurasthenic breakdown. He broadened his psychology of deception to include new targets such as the Christian Scientists and other

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[61]Rachel Jastrow to her sister Herietta Szold, May 8 1895, JJP.
[62] Rachel to her family nd 1895 (late February), JJP.
[63]For letters asking to borrow money, see Rachel to her family no date circa January 1895 and February 22 1895, JJP.
[64]Rachel Jastrow to her family, August 4 1895 and 7 August, 1895, JJP.
[65]On the contemporaneous incredulity towards the neurasthenics symptoms, see Schuster, "Personalizing Illness and Modernity," 696.

popular doctrines of positive thinking collected in his first book *Fact and Fable in Psychology* (1900). Jastrow did not pen them as an unsympathetic, outside commentator on the fraudulent nature of non-organic mental disorders but as a frustrated former patient, an inhabitant of such therapeutic regimes.[66]

In addition to heightening the psychologist's disdain for alternative understandings of the mind, his neurasthenic episode left him in debt. Not only had he been deprived of his university salary during his leave of absence but he had also had to borrow money in order to travel to the rest cure resorts. Despite his secure disciplinary identity, Jastrow spent much of his adult life on verge of bankruptcy and was frequently in debt.[67] Jastrow was a financial failure, at a time and place when such a commercial status was understood as a serious personal fault, an emblem of an inward moral failing.[68]

Jastrow's simultaneous mental and financial crisis led him to embrace deception as the focal point of his popular psychology. Although he had begun popularizing psychology prior to his mental illness, with his recovery, his writing increasingly focused on market-oriented, popular books geared towards a general reading public rather than practicing psychologists. Although one of the earliest practicing experimenters in American psychology, Jastrow had largely abandoned laboratory research by the end of the decade in order to supplement his income with these potentially lucrative ventures. In the pursuit of personal success, Jastrow took on the mantle of the debunking psychologist, a commercial identity fit for the Progressive Era. The central recurring themes of Jastrow's popular psychology were the need for logical thinking, the definition of the proper domain of

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[66]Heinze argues that Jastrow's attitude on such matters reflected a Jewish code of emotional restraint and its popular exposition represented a conscious criticism of contemporary Protestant therapeutic culture and Christian mob psychology. See Heinze, *Jews and the American Soul*, 181-82 and 189-190.
[67]Blumenthal, "The Intrepid Joseph Jastrow," 81-82.
[68]See Scott A. Sandage, *Born Losers: A History of Failure in America* (Cambridge: Harvard University Press, 2005).

psychology, and the problem of self-deception. In step with his times, Jastrow's developed a popular psychology that functioned as a kind of muckraking geared towards the problems of the mind.

For Jastrow, public lecturing was not merely an opportunity to diffuse knowledge but also an important source of money. It was an approach that he recognized in his fellow psychologists, as he noted in a letter to Münsterberg, "[m]y main concern is to make the maximum of my present material in lecture before it is published. This I know you will appreciate, since I infer you are doing the same."[69] The lectures in question ultimately were not as appealing as Jastrow had hoped, for he noted that the financial conditions attached to giving to them "might in some cases prove embarrassing."[70]

In the wake of his recovery, even Jastrow's experimental research became increasingly oriented towards theatrical. For example, he soon cultivated relationships with a number of celebrated magicians, the professional performers who materialized human deception on the stage much as he felt he did in his laboratory. Although viciously antagonistic towards psychics and spiritualists asserting that their phenomena had no legitimate place within his discipline, Jastrow depicted stage magicians with sympathy. By this time, America's most celebrated stage conjurors did not proclaim to possess supernatural powers. By enrolling these performers into his psychology Jastrow could subtly shift focus from the capabilities of fraudulent deceivers to the mentality of those taken in by the deception. Such a view can be found in an 1897 review in which he pronounced: "The student of the psychology of deception takes his place with the audience and observes how readily their attention is diverted at critical moments, how easily they overlook the apparently insignificant but really essential settings of the trick, how the bewilderment increases and the

[69]Jastrow to Münsterberg, March 12 1912, HMP, Mss Acc 1837.
[70]Jastrow to Münsterberg, March 2 1912, HMP, Mss Acc 1837.

critical faculties lapse as one bit of sleight-of-hand succeeds another."[71] Passages such as this illustrate the ways in which the learned university professor transformed himself into the pupil of the stage magician, carefully studying his lessons. Beyond being capable of artfully manipulating objects in ways that confounded the audience's perception, the magician was a master of creating the emotional conditions that sustained belief and credulity.

An air of theatrically was certainly present in one of Jastrow's final laboratory experiments before he focused almost entirely on popular writing. In 1896, he orchestrated a series of experiments that transformed the magician into an experimental object. He invited Alexander Hermann and Harry Kellar, two of America's most popular stage magicians, to visit his Wisconsin laboratory during one of their western tours. Unlike the better-studied exposures of mediums by psychologists, these experiments were performed with considerably less antagonism among the participants. Hermann and Kellar were sympathetic with Jastrow's aim of providing a naturalistic, materialistic explanation of their abilities for they did not claim to possess occult or extraordinary powers. As part of a conscious project to make their trade more amenable to middle class sensibilities, Gilded Age magicians abandoned the air of occultism that was traditionally linked to magic. They adopted the tuxedo as a form a bourgeois dress and practiced the art of exposé targeting both those claiming otherworldly powers and street criminals such as pickpockets.[72]

Aggregate populations would again feature prominently, for Jastrow compared the results of the magicians with those of other experimental subjects to determine how they

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[71]Joseph Jastrow, "Review of *Magic Stage Illusions and Scientific Diversions, Including Trick Photography*," *Science* NS 6(153) (December 3, 1897): 850-851, 851.

[72]On Hermann and Keller's contributions to this reformed magic, see Cook, *Arts of Deception*, 205-213. More broadly, see Simon During, *Modern Enchantments: The Cultural Power of Secular Magic* (Cambridge: Harvard University Press, 2002).

measured against the 'average' observer.[73] Jastrow was interested in determining whether the conjuror either through inherent ability or professional training had acquired superior or unique sensory skills. The experiments began by testing the magician's tactile sensibility using an aesthesiometer. The device used two moveable pins to determine the distance on the forefinger at which the subject could detect the two pricks as distinct sensations. This experiment found that the magicians possessed a coarser sensibility than the ordinary person who could detect the two sensations at two millimeters while Hermann perceived the difference at three and a half millimeters and Keller at two and a half. Similarly, although both conjurors had trained themselves to be ambidextrous as a necessity of their profession, under experimental conditions, they did not perform well in a test that required them to move their two hands equally from a common starting point.[74]

Other experiments reaffirmed Jastrow's central premise in investigating magicians, although these gentlemen may possess perceptual skills superior to the average individual, their mental capabilities fell within the range of the norm. For example, he wanted to test the visual acuity of the magician to determine whether they could take in vast amounts information quicker than the ordinary individual. The magician Robert-Houdin had claimed this perceptual ability to be the key to his success. In turn, Jastrow exposed a series of flash cards each with a different patch of color for half a second to determine whether Hermann could detect the color at a mere glance. The magician responded correctly in half the instances but executed the test perfectly when the colors were linked to differently shaped patches.[75] Jastrow also performed an alphabet test wherein twenty-five letters were repeated in random combinations in a series of two hundred and twenty-five. The experimental subject

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[73]Joseph Jastrow, "Psychological Notes Upon Sleight-Of-Hand Experts," *Science* NS 3(7) (May 8, 1896): 685-689.
[74] Jastrow, "Psychological Notes Upon Sleight-Of-Hand Experts," 685-6.
[75]Jastrow, "Psychological Notes Upon Sleight-Of-Hand Experts," 688.

had to pick out a select letter in a period of ninety seconds. Jastrow noted Hermann's carelessness as the magician marked off ten right but nineteen incorrect responses in his first attempt while the more disciplined Kellar fared better, making seven correct identifications with no errors in his first attempt and eleven in the second. Such results placed the conjurors well within the norm of the average subject, who succeeded in marking eight correct responses.[76]

Although the experiments demonstrated that the magicians did not possess any extraordinary powers, Jastrow noted some dissatisfaction with the experience. In a concluding note, he discussed how he felt that Hermann in particular could have performed better in the laboratory. The problem was that the conjuror acted too quickly, intuitively responding to tests without giving them adequate thought. Although he completed the tests on average in half the time they usually took, the results were usually below the norm.[77] In short, the prestidigitator lacked the prerequisite self-discipline required of a truly reliable laboratory subject. This was undoubtedly due to the very different sensibilities of the experimental psychologists and the entertaining magician. While psychologists claimed to be operating on universal human subjects in their laboratory, in fact to produce reliable responses required certain sensibilities and training; it was a cultivated and not a natural attitude. To be a good laboratory subject demanded restraint and regularity in their performance while Hermann's responses reflect an older tradition of the intuitive and impulsive romantic genius.[78]

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[76]Jastrow, "Psychological Notes Upon Sleight-Of-Hand Experts," 686-687.
[77]Jastrow, "Psychological Notes Upon Sleight-Of-Hand Experts," 689.
[78]On psychology's inability to recognize the particularity of its experimental subjects, see Jill G. Morawski, "Reflexivity and the Psychologist," *History of the Human Sciences* 18(4) (2005): 77-105. On the restraint and self-discipline required of laboratory subjects, see Lorraine Daston and Peter Galison, "The Image of Objectivity," *Representations* 40 (1992): 81-128.

The desire to incorporate stage magicians into the apparatus of the laboratory is but one example of the links that flowed between the psychology of deception and the popular culture of the era. Psychologists used the resources of mass culture not only to popularize their knowledge but to fashion it as well. Psychologists shared with commercial publishers, advertisers, and organizers of fairs a common visual culture concerned with how the human senses could be tricked. Not only did psychologists take spectacles as an object of study, but also they absorbed aspects from these entertainments into their scientific toolboxes. Images that served as leisurely amusements in one context could be transformed into serious measures of human difference in another.

III: The Global Traffic in Pseudoptics

Psychologists and magicians were not the only constituencies that incorporated the deceptive nature of human subjectivity into their practice. In the realm of fine arts, the dominant form of popular painting during America's Gilded Age was the genre of *trompe d'oeil*. The *trompe d'oeil* was a complex illusionary image that gave the observer the deceptive impression of viewing actual three-dimensional objects rather than a painted representation of them. Although condemned as lacking artistic value by contemporary critics, painters like William M. Harnett were extremely popular with audiences and blurred the distinction between refined art and commercial amusements. At the heart of Harnett's craft was a detailed, realist still-life aesthetic that attempted to simulate three-dimensional space on the canvas. These paintings schooled Americans in the notion that what they perceived may not be real. Art historian Michael Leja has taken Harnett's commercial success but critical dismissal as a starting point to investigate the ways in which notions of how a conviction in the unreliability of vision shaped the public's reception of turn-of-the-

century art. While Leja argues that skepticism was the perceptual habit that predominated at this time, I would argue that the attitude of looking askance was one that needed to be cultivated and that it was popular psychologists who undertook such a project.[79]

For this deceptive visual commercial culture also had constitutive effects on the practices of the experimental human sciences; psychologists like Jastrow and Hugo Münsterberg both borrowed from and contributed to this visual culture of deception. As popular as the *trompe d'oeil* paintings of Harnett and his followers were, the most iconic and widely disseminated deceptive visual culture of the era were the optical illusions that cropped up in both magazines like popular illustrated magazines like *Harper's Weekly* and psychological journals. No other objects better illuminate the ways in which the historical ontology of 'deception' as a scientific object was produced in relationship to both laboratory experimentation and the leisurely amusements of the new mass culture. Optical illusions were designed by illustrators for mass circulation periodicals to amuse subscribers, refined into experimental tools, accompanied anthropologists on expeditions in the South Pacific, and were used by psychologists in transforming the strategies of the advertising industry. Just as psychologists used the bodies and performances of stage conjurors to make sense of the processes of deception, these visual tools helped materialize the new psychology.[80] Increasingly, rather than using festive displays to demonstrate the principles of deception to the public, psychologists used visual illusions circulated through middle-brow publishing to provide a medium for communicating knowledge during the period.

Among the many sites where Americans were likely to encounter leisurely deceptions, the various fairs and exhibitions were the most prominent on the cultural

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[79]See Michael Leja, *Looking Askance: Skepticism and American Art from Eakins to Duchamp* (Berkeley: University of California Press, 2004). See also Cook, *Arts of Deception*, 214-255.
[80]On the role of optical amusements in earlier scientific endeavors, see Crary, *Techniques of the Observer*, 97-136; Mannoni, "Art of Deception"; Morus, "Seeing and Believing Science."

landscape.[81] For example, in the mid-1890s San Francisco's Midwinter Fair featured the 'Haunted Swing,' an illusion that individuals not only perceived but could also inhabit. Fair-goers would enter a large, room at the center of which stood an enormous swing suspended from a vertical bar near the ceiling. The appearance of the room varied, in some instances a forest scene was painted on the walls while in others the room was furnished with household items. Once seated, from the perceptive of the rider, the swing appeared to rotate to such a degree that the rider ought to be tossed out. In fact, the swing remained stationary throughout: the room, which one expected to be fixed to the ground was suspended on a bar in the air and the proprietors of the ride in fact pivoted the entire room, the swing itself remaining safely bolted to the bar. While the financial trickery of the swindler discussed in the previous chapter was causing alarm, the magic swing attraction demonstrated that human deception was still a source of potential amusement and delight. Noting that this leisurely amusement embodied principles shared with their science, psychologists eagerly reported on the spectacle, including Jastrow, who incorporated the example of the swing in his revised essay of the psychology of deception.[82]

Similarly Münsterberg crafted tools that translated across the boundaries between scientific and leisurely visual pursuits. Trained in the experimental psychology of Wundt in his native Germany, Münsterberg emigrated permanently to American in 1894 at the request of William James to direct the psychological laboratory at Harvard University. The two psychologists soon parted ways with Münsterberg rejecting James's introspective approach and his credulity towards controversial mental phenomena. In contrast, Münsterberg's scientific style centered on the technoscientific ideal of a standardized experimental subject

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[81]On illusions at American fairs, see Leja, *Looking Askance*, 153-183.
[82]See R. W. Wood, "The 'Haunted Swing' Illusion," *Psychological Review* 2 (1895): 277-78 and Jastrow, "Psychology of Deception," *Fact and Fable*, 110.

produced in the aggregate and stressed psychology's foundation in instrumentation. Seeking to craft an objective science, he emphasized the use of mechanical tools and quantitative data. Such an attitude resonated with the industrializing culture in which it was nested. The prestige of the laboratory as the proper site to investigate mental phenomena was tied to its successful industrial application among other sciences. In common with the Progressive political culture of the era, Münsterberg was motivated by the ideals of order, control, and efficiency. Furthermore, his work suited the new corporate order with its emphasis on mechanization, interchangeable parts, and standardization.[83]

Typical of this approach was his *Pseudoptics* (1894), a work that transgressed the boundary between laboratory investigation and popular amusement. Published by the board game manufacturer the Milton Bradley Company and consisting of a series of optical illusions, the set was used by a number of experimental psychologists in laboratory investigations. For example, Bradford Titchener recommended using the set as a standard tool for optical research in his influential article detailing the apparatus necessary for a properly equipped psychology laboratory.[84] The set became a standardized tool and was used on the anthropological expedition to Torres Strait in 1898, probably the first use of experimental psychology instruments in the field. Designed with a technical purpose, among the images collected were many derived from and subsequently circulated through popular culture.

Optical illusions or ambiguous figures were enrolled into the psychology of deception because they powerfully brought to the fore the process of apperception: how engrained habits and expectations shaped what people were capable of perceiving. By demonstrating

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[83]On these affinities between psychology and Progressive Era political and corporate cultures, see Deborah J. Coon, "Standardizing the Subject: Experimental Psychologists, Introspection, and the Quest for a Technoscientific Ideal," *Technology and Culture* 34(4) (1993): 757-783.
[84]E. Bradford Titchener, "A Psychological Laboratory," *Mind* 7 (1898): 311-331.

how belief could lead to misperception of an object by not recognizing all of the available visible traces, psychologists created a space for their reforms of public habits. What makes optical illusions particularly interesting as scientific objects was that no single individual, institution or discipline had exclusive rights over their design, production, or interpretation. For example, when Edwin Boring brought the famous "My Wife and My Mother-in-law" ambiguous figure to the attention of psychologists in 1930 he noted how the image had been already been in circulation for fifteen years. Drawn by the cartoonist W. E. Hill, it had been first published in the American illustrated magazine *Puck*, founded in 1877 and famed for its political caricatures.[85] As originally crafted, the image was not intended to probe the principles of human perception but rather to amuse. Furthermore, the picture seemed to resonate with the long-standing political attitude of the journal with its opposition to feminism and suffrage: deftly portraying how the comely young wife is in fact the same person as her withered elderly mother.

This made them distinct from other contemporaneous psychological visual tools for examining apperception. For example, Rorschach's famous inkblots were standardized into uniform sets in order to produce a reliable object whose varying interpretation would materialize the psychiatric patient's innermost subjectivity. In contrast to Rorschach's non-figurative blotches, whose design and subsequent manufacture were exclusively managed by the Swiss psychiatrist and his anointed successors, these ambiguous figures were diffuse in both their origin and production.[86] Furthermore, these illusions, much like *trompe d'oeil* painting, are expressly figurative, intended to depict specific objects, except these artists attempted to craft two images in one. So unlike the tightly regulated Rorschach images, the

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[85]See Edwin G. Boring, "A New Ambiguous Figure," *American Journal of Psychology* 42(3) (1930): 444-445.
[86]On the control over the production of Rorschach inkblots to ensure that they remained objective tests of the subjective, see Peter Galison, "Image of Self" in Lorraine Daston (ed.), *Things that Talk: Object Lessons from Art and Science* (New York: Zone Books, 2004), 257-294.

details of optical illusions were invariably toyed with to heighten certain intended effects that the individual author desired. Such was the case when Jastrow introduced the 'duck-rabbit' into the psychology literature in an attempt to illustrate the untrustworthiness of perception and the deceptive nature of subjectivity.

Figure 1: "Which Animals Resemble One Another Most?" *Fliegende Blätter* (October 23, 1892), 147.

Jastrow did not design the ambiguous figure himself but rather borrowed it from the popular press much as Boring later would. It initially appeared in Germany among the pages of *Fliegende Blätter* in 1892. Similar in style to *Puck*, *Fliegende Blätter* was Germany's oldest nationally circulated, satirical illustrated paper. Although not explicitly political, the journal had a reputation for strong anti-clerical sentiments and was a popular venue for young artists.[87] The following year, the image was reproduced in *Harper's Weekly* where Jastrow first noticed it.[88] The duck-rabbit was not carefully crafted by experimentalists to illustrate a scientific problem but rather by a commercial artist with the aim of demonstrating his ingenuity and dexterity. The question that frames the illustration is not of shifting perception between two incommensurable images but rather the extent to which the artist could push the similitude of two distinct animals. Furthermore, the early circulation of the

[87]For information on *Fliegende Blätter,* I would like to thank Jeff Bowersox.
[88]On the duck-rabbit as a psychological figure, see Peter Brugger, "One Hundred Years of an Ambiguous Figure: Happy birthday, Duck/Rabbit!" *Perceptual & Motor Skills, 89* (1999): 973-977. See also the unpublished letter by psychologist John F. Kihlstrom, "Joseph Jastrow and his Duck – or is it a Rabbit?" http://ist-socrates.berkeley.edu/~kihlstrm/JastrowDuck.htm.

object was due to the fact that editors felt that the object would amuse and entertain their readers. The duck-rabbit was not initially an edifying or pedagogical image; its connections to academic psychology were miniscule.[89]

Although Jastrow incorporated the mass produced image into his psychological writings, he also altered the object to reinforce his argument. Due to the angle of its head, the original duck-rabbit is not as ambiguous an image as Jastrow's subsequent one. In the original the image of the rabbit predominates and the viewer needs to tilt his or her head to be able to see the duck clearly. With the bill-ears pointing in horizontally, the two visions can coexist more easily. Most significantly, Jastrow altered the text that accompanied the illustration subtly reframing how the observer ought to appreciate the image. Initially, the caption asked the viewer: "which animals most resemble one another most?" The question orients the view to consider the ingenuity of the illustrator to be able to capture the appearance of two animals in a single illustration. In contrast, Jastrow asks, "do you see a duck or a rabbit, or either?"[90] This question alters the meaning of the illustration; where before the image embodies the impression of two creatures, Jastrow is suggesting that which animal is more prominent is contingent upon the subjectivity of the individual viewer. It shifts the significance of the illusion away from the representation on the page towards the mental processes in the mind. Such an arrangement bolstered Jastrow's claim that perception was more than simply the reception of sensory data but also depended upon the mental work of interpreting such data: one perceives with one's mind and not merely the senses.

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[89]These kinds of ambiguous figures would play an important role in twentieth-century Gestalt theory. Although Gestalt psychology has benefited from some excellent contextualist studies, none have addressed its relationship to this commercial tradition of deceptive visual culture. See Mitchell G. Ash, *Gestalt Psychology in German Culture, 1890-1967: Holism and the Quest for Objectivity* (Cambridge: Cambridge University Press, 1995) and Anne Harrington, *Reenchanted Science: Holism in German Culture from Wilhelm II to Hitler* (Princeton: Princeton University Press, 1996).

[90]Jastrow, "The Mind's Eye," 295.

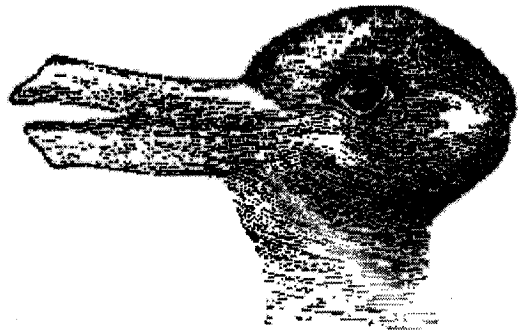

Figure 2: "Do you see a duck or a rabbit, or either?" From Joseph Jastrow, "The Mind's Eye," *Fact and Fable in Psychology* (1900), 295.

The relationship between these kinds of illusions and racial difference played a significant role in the Torres Straits expeditions, a 1898 British anthropological project that incorporated the visual tools refined by these American-based psychologists, including a copy of Münsterberg's *Pseudoptics*.[91] Although naturalist turned anthropologist A. C. Haddon organized the expedition, W. H. R. Rivers coordinated the responsibilities for carrying out the psychological and physiology investigations. This project gained considerable notice in scientific circles since it was widely credited with the novelty of exporting the equipment of the modern psychological laboratory into the field to perform mental experiments on individuals perceived to be barely exposed to civilization.[92]

Such an approach resonated with an objectivist turn in anthropological methodology, most pronounced in Germany, where investigators sought to inoculate themselves from the influence of subjective judgments through the deployment of the tools of quantification and technologies to regulate observation. Anthropology, to become a science, had to overcome

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[91]See George W. Stocking, Jr., "The Ethnographer's Magic: Fieldwork in British Anthropology from Tylor to Malinowski" in Stocking (ed.), *Observers Observed: Essays on Ethnographic Fieldwork* (Madison: University of Wisconsin Press, 1983), 70-120, 75-77 and Anita Herle and Sandra House, *Cambridge and the Torres Straits: Centenary Essays on the 1898 Anthropological Expedition* (Cambridge: Cambridge University Press, 1998) especially Graham Richards, "Getting a Result: The Expeditions Psychological Research 1898-1913," 136-157 and Henrika Kuklick, "Fieldwork and Physiology," 158-180; Anna Grimshaw, *The Ethnographer's Eye: Ways of Seeing in Modern Anthropology* (Cambridge: Cambridge University Press, 2001), 32-43.
[92]W. H. R. Rivers, "Vision," in A. C. Haddon (ed.), *Reports of the Anthropological Expedition to Torres Straits. Volume II: Physiology and Psychology* (Cambridge: Cambridge University Press, 1901).

its traditional links to the spectacles of the carnival with their associations of erotic leering and credulous gawking. In modeling their practices on the physical sciences, anthropologists also sought to distance themselves from the humanist tradition of interpreting literary texts. Central to this project was the remaking of the anthropologist's gaze to a disciplined one modeled on a precise, calculating machine.[93] For members of the Torres Straits expedition, the instrumentation of psychology promised the application of standardized and replicable measurement to gain physical and quantitative evidence about the peoples without history or civilization.

What was found was that, even by their own admission, certain psychological experiments translated better into the field than others. For example, Rivers found the testing of color reception to be a particularly fruitful way of probing racial difference.[94] The optical illusions collected in Münsterberg's *Pseudoptics* proved to be less reliable tools. In certain instances, Rivers and his associates failed to motivate the test subjects into engaging with the experimental apparatus. For example, Rivers speculated that the Western subject matter made it difficult for his informants to perceive the illusion that the figures of a man and a boy are of the same height. The Western signifiers of adult male in the bourgeois's top hat set against the youth in schoolboy's cap made no connection among the Papuans.[95]

Despite these setbacks, the optical illusions did play a crucial function. In sharp contrast to the evolutionist-recapitulationist perspective implicit in Jastrow's theories, Rivers' found that the Torres Straits inhabitants were not particularly prone to deception. Rivers reported that many of his informants were less susceptible to the visual tricks of the illusions

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[93]See Andrew Zimmerman, "Looking Beyond History: The Optics of German Anthropology and the Critique of Humanism," *Studies in the History and Philosophy of the Biological & Biomedical Sciences* 32(3) (2001): 385–411 and Zimmerman, *Anthropology and Antihumanism in Imperial Germany* (Chicago: University of Chicago Press, 2001).
[94]W. H. R. Rivers, "Primitive Color Vision," *Popular Science Monthly* 59 (1901): 44-58.
[95]Rivers, *Reports of the Anthropological Expedition to Torres Straits,* 130.

and "were certainly quite as good observers as the average European."[96] Despite these results, the data from the expedition was still used to illustrate the naturalness of racial hierarchies. The experimental subjects' immunity to the visual illusions that misled European minds was explained in terms of their lack of mental development. The psychological makeup of these peoples was deemed to be distinct from the Europeans. Living so close to a state of nature, they were more prone to perceive infinitesimal details rather than being able to visualize the images as a whole. To survive as primitives, the inhabitants had to be more acutely aware of nature's minutia while the more civilized European's perception was capable of taking in a wider scope of objects and details. Despite the fact that these 'people with history' were not taken in by the illusions as the European investigators presumed they would be, their immunity was understood as a mark of racial inferiority. Their inability to be fooled by the Müller-Lyer illusion was explained by the fact that they were more likely to direct their attention to a comparison between the two line segments while the European would recognize the need to understand the figure as a whole. Non-Europeans may have acute sense perception but invariably their 'mind's eye' remained largely underdeveloped.[97] Jastrow concurred with this interpretation when he reviewed the findings of the expedition for the journal, *Science*. If the islanders were less susceptible to deception compared with peoples of European descent, it had to do with their propensity to focus on subtle details and an inability to absorb the more general picture.[98]

Optical illusions were used not only to probe 'primitive' peoples for supposed evidence of racial difference but were also applied in one of the most self-consciously

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[96]Rivers, *Reports of the Anthropological Expedition to Torres Straits,* 99.
[97]Rivers, *Reports of the Anthropological Expedition to Torres Straits*, 126-7.
[98]Joseph Jastrow, "Review of *Reports of the Cambridge Anthropology Expedition to Torres Straits*, volume II. *Physiology and Psychology*" *Science* NS 15 (384) (May 9, 1902), 742-44.

'modern' of fields: the advertising industry.[99] In the various editions of his *Theory of Advertising* (1903), applied psychologist Walter Dill Scott used a similar array of optical illusions as Jastrow and Rivers to explicate how the mind of the consumer was likely to function. For Scott, one of the most pressing psychological problems facing advertisers were 'errors of expectancy.'[100] This concern was closely connected to the psychological phenomena analyzed by Jastrow in his essay, "The Mind's Eye," namely illusions of apperception, or how the thoughts and habits of the mind mold perception. Both psychologists argued that illusions were not merely confined to the realm of physiology and sense perception but were located in how the mind orders sensory data.[101] That an image like Figure 2, reproduced by Scott, could be interpreted as either a duck or rabbit was not contingent upon the misperception of the eye but how the visual data was categorized by the mind.

According to Scott, poorly crafted advertisements unintentionally deceived the purchasing public with their ambiguous visual cues. In discussing, 'illusions of apperception,' Scott initially analyzed through anecdotal evidence the graphic organization of a series of unsuccessful advertisements. For example, he describes two competing groceries in the Chicago area, Winter's Grocery and Robinson Brothers, whose inserts into the morning paper were virtually indistinguishable. Scott relates the experience of an acquaintance whose wife asked him to purchase a large order from one of the outlets that was having a sale one particular week. Not realizing the difference, the man purchased the goods from the wrong grocery and when scolded by his wife he produced what he sincerely

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[99]On the self-fashioning of early advertising professionals as cultural missionaries of modern culture, see Roland Marchand, *Advertising the American Dream: Making Way for Modernity* (Berkeley: University of California Press, 1985).

[100]Walter Dill Scott, *Theory and Practice of Advertising* (1903; New York: Small, Maynard and Company, 1916), 168.

[101]On the earlier historical moment that stressed illusions as products of individual physiological difference, see Crary, *Techniques of the Observer*, 67-96.

believed was the advertisement for the correct store but which of course was not.[102] Scott's other examples of misleading advertising were even more visual in orientation and he gives examples of distinct manufacturers sharing advertising space on the same page of a newspaper and magazine resulting in customers soliciting business from the wrong one.[103] From these examples, Scott reproduces a series of ambiguous images from the psychologist's repertoire, each illustrating how one's preconceptions affect what one perceives.

Scott's use of optical illusions to explain psychological principles to advertisers completes the circle that links experimental psychology and commercial culture. Objects that originated as visual images meant to entertain the purchasers of mass circulation periodicals came to explain how the minds of consumers' operate. These minds, as a kind of population, could be conceptualized more clearly through the use of these images. To explicate the mental mechanism through which advertisements mislead and inadvertently deceive the consumer, Scott drew upon these visual tools. These images "illustrate the same principles of illusions of apperception, but they make it clearer than any confusion of concrete advertisements can possibly do."[104] Where Jastrow utilized the image to convince observers to operate prudently, Scott used the same visual tool for his own ends, to rationalize advertisements.

Their coexistence as both commercial and psychological objects reoccurred in expositions on the nature of optical illusions for popular science magazines. In these articles, optical illusions were explicitly linked to the mind's deception rather than the subjective nature of the physiological senses. This psychological predisposition was closely associated with the culture of consumption. For example, a 1926 *Popular Mechanics* article easily

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[102]Scott, *Theory and Practice of Advertising*, 175-177.
[103]Scott, *Theory and Practice of Advertising*, 177-181.
[104]Scott, *Theory and Practice of Advertising*, 191.

glided from a discussion of the psychology behind optical illusion to recommendations about how such principles could be effectively used in home décor or clothing design to give differing illusions of space and proportion. Drawing examples from both male and female fashion, the article noted how the length of an overcoat, the size of jacket lapels, and the use of stripes could all deceive the judgment of others.[105]

Optical illusions were visual images that could recreate the uncertainties of observation in a laboratory, a field expedition, or the text of a popular exposition. Their representational ambiguity recaptured in a way that words could not the process through which the apperceptive mind miscatagorized sensations based on expectation. As such they were an important resource in the articulation of a psychology of deception. They were particularly apt tools since as images that had originated as entertaining illustrations in mass circulation periodicals they became psychological tools that in turn were used to explicate the mind of purchasing public. Their deceptive appearance played in important pedagogical function in popular psychology. By studying the figures and understanding how they misled the mind one could reorient one's perceptual habits or redesign advertisements and consumables based on the principles they embodied. While these deceptive things were incorporated into the psychologist's toolbox for the navigation of the marketplace, deceptive persons proved to be less amenable. While psychologists held up the exposure of spiritualists as pedagogical exercises, they also argued that the very venue in which judgment was exercised in these matters needed to be altered. This attempt to remove the actual inspection of commercial deceptions from the locus of the marketplace foreshadowed

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[105]"How Your Eyes Deceive You," *Popular Mechanics Magazine* 46(3) (1926): 370-374, 370-71. For further examples of the proliferation the optical illusions linked to the psychology of deception in popular science journals, see "Optical Illusions: Trust Not Your Eye," *Scientific American* 108 (1913): 227; Ken Murray, "How Your Eyes Tell Lies," *Popular Mechanics Monthly* 53(5) (1930): 759-761; "When Seeing is Deceiving," *Popular Mechanics Monthly* 5(6) (1930): 915-917.

subsequent trends as psychologists attempted to institute their approach to deception into the law.

IV: Commercial Frauds and Credulous Doctors

Writing in the Progressive Era, the debunking of spiritualists functioned as a kind of psychological muckraking by exposing the corrupting influences that lurked in the mind while also expelling commercial charlatans.[106] Even this unmasking, the project most intimately tied with the definition of psychology as a profession, remained embedded in market culture. Invariably an individual's commercial status determined whether she was deemed to be of scientific value or not, with psychologists invariably condemning those who profited financially from their potential paranormal powers.

Although there existed a relatively early consensus among the vast majority of American psychologists that psychical phenomena had no proper place within the domain of their discipline in the 1890s, they continued to expose those whom they deemed to be frauds. By claiming that spiritualists were charlatans, these celebrated exposures did much to confer upon the psychologist the exclusive right to speak authoritatively on questions of mental capabilities. They did so in highly public venues, the very same mass circulation periodicals that published the amusing optical illusions psychologists refined into tools. Beyond the exposure of individual spiritualists, these psychologists were concerned with deception in the form of credulous belief as a social problem. That so many intellectuals and other persons drawn from the ranks of the educated middle class could succumb to the medium's deceptions signaled the persistence of dangerous forms of credulity that needed to be rooted out of the commercial economy and society more broadly.

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[106]John Kasson stresses that this debunking was on a fundamental level a masculine crusade against women who transgressed the day's gender norms. Kasson, *Tarzan, Houdini, and the Perfect Man*, 143-54.

In categorizing the miracle workers, the imperatives of the marketplace played an important role. Psychologists readily distinguished the fraudulent medium with commercial intentions from the supposed innocent, unaware of the true nature of her powers. The approach of the psychologists in categorizing wonder workers implicitly followed legal convention in the definition of fraud. Legally, fraud occurred when a party knowingly made false representations of material facts of which the injured party was ignorant. The second element in the constitution of legal fraud resonated even more closely with psychology of deception. The injured party needed only to prove that "a reasonable, cautious and prudent person might be misled or deceived as to the existence of a particular fact which formed the basis or contributed an essential ingredient to the contract, and that such acts and conduct were designed and adapted to create a false impression and belief in the mind of the other party."[107] The psychology of deception took as its object the demonstration of the ease with which false beliefs and misperception could be generated.

Spiritualism was explicitly tied to commercial fraud during the 1869 trial of the photographer William Mumler. Operating out his New York City studio, Mumler claimed the ability to capture trace images of the departed when photographing a living loved one. For making such claims, he was charged with fraud and larceny by the city's License Bureau. During the grand jury hearing, Mumler's defense centered on the claim that he was ignorant of the exact mechanism through which the image of the spirits manifested themselves in his photographers. His lawyer challenged the prosecution to provide evidence that Mumler intentionally manipulated the process and to discredit the beliefs of the believing patrons. To refute this innocence, the prosecution called no less a celebrity than P. T. Barnum to testify that during a period of financial difficulty Mumler had offered to sell his technique for the

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[107]On the law of fraud, see Melville Bigelow, *The Law of Fraud and the Procedure Pertaining to the Redress Thereof* (Boston: Little, Brown, and Company, 1877), quote 4-5.

showman's array of humbugs. Although Mumler ultimately eluded prosecution, the widely publicized trial did much to induce a skeptical attitude towards visual evidence.[108]

While the crafting of illusions into experimental tools brought Jastrow and Münsterberg together in a shared project, the question of how to properly deal with individuals who claimed to possess extraordinary powers brought to the fore the tensions in their relationship. Witness the series of irate letters inspired by a review that Jastrow published of Münsterberg's *Psychology and Social Sanity* for *The Dial* in 1914.[109] Münsterberg had grand expectations for this particular popular work, dedicated to applying "the results of scientific study of the mind" to solving social problems. Since it was one of his least technical works and explored political questions central to the Progressive Era reformers, Münsterberg expressed his hope to his publisher that it would be his most financially successful work.[110]

The disagreement revolved around the spectacle of Madame Eusipia Palladino, an Italian washerwoman who claimed to possess spiritualist powers. Unlike William James, whose approach was quite sympathetic if not outright credulous towards the woman, both Jastrow and Münsterberg had been quite skeptical from the start. Where they differed was insofar as Jastrow felt that Münsterberg had been complicit in the affair and had ultimately served to publicize the woman's claims. Münsterberg assured his Wisconsin colleague that he had no desire to encourage public credulity in the woman's abilities. He wrote: "I went to those Paladino meetings at a direct challenge to James, who claimed that it was my duty to examine such affairs which are personally distasteful to me." Although certain newspapers

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[108]Leja, *Looking Askance*, 21-58.
[109][Joseph Jastrow], "Chips from a Psychologist's Workshop," *The Dial,* May 16 1914: 426-7.
[110]Münsterberg to Doubleday, Page and Co., January 8 1914, Mss Acc 2315(2).

represented him as being complicit in the affair, he denied the charge vehemently.[111] After Jastrow wrote to reassure his disgruntled colleague that the review was a friendly one, Münsterberg insisted he had not been offended. In reading Münsterberg's initial response however, his irritation and sour demeanor are palpable.[112]

Jastrow's own attacks on the international spiritualist community provided one of the key focal points for his second collection of popular essays, *The Psychology of Conviction* (1918). These inquiries built upon Jastrow's 'psychology of deception' articulated in 1888 and focused on a variety of instances where individuals persisted in holding beliefs that denied better judgment. His early twentieth-century essays were increasingly vehement, acerbic condemnations of the epistemological failings of his fellow Americans. In an era that Jastrow characterized as being marked by the hysteria of wartime patriotism, the idolatry of consumerism, and a general weakening of mental rigor, credulity was increasingly understood primarily as a pressing social concern rather than as a technical problem.[113]

Jastrow had earlier proclaimed that psychical phenomena could only be properly understood "when they are investigated by the same methods and in the same spirit as are other psychological problems."[114] Repeatedly, Jastrow insisted that the supposed powers of mediums could be debunked if only subjected to rigorous laboratory experimentation and complained that they refused to submit themselves to such tests. When he did expose them, however, he did not rely upon psychology's instrumentation. Instead, he applied lessons he had learned from magicians in the 1890s, especially in the artful manipulation of attention, to

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[111]Münsterberg to Jastrow, June 10 1914, Mss Acc 2343 (2).
[112]See Jastrow to Münsterberg, June 8 1914 Mss Acc 1837 and Münsterberg to Jastrow, June 10 1914, Mss Acc 2343(2)
[113]Jastrow, *The Psychology of Conviction* (Boston: Houghton Mifflin, 1918). See also Jastrow, "Delusion, Mass-Suggestion, and the War: A Dream and the Awakening," *The Scientific Monthly* 8(5) (1919): 427-432 and Jastrow, "The New Idol of the Market-Place," *Century Magazine* (1928): 491-504.
[114]Jastrow, *Fact and Fable*, 54. See also Joseph Jastrow, "The Case Paladino," *The Psychology of Conviction* (Boston: Houghton Mifflin, 1918), 101-127, 113.

better understand the charlatans techniques in his campaigns against the spiritualists. For example during the 1910 exposure of Eusapia Palladino, an electroscope was brought to the nighttime séance "to serve as a psychological decoy." The aim was to have the medium focus her attention on eluding detection by the instrument when, in fact, more important to the debunking was the presence of an "unobserved but observing observer" under the table watching her movements.[115] Such investigators noted that the medium did in fact move her limbs unbeknownst to those supposed watching over her. In fact, the role of psychology in Jastrow's exposure of Palladino focused on the beliefs of her supporters rather than on the mental powers of the woman herself. The wondrous aura that Palladino generated around herself was key to sustaining her adherents' conviction.

The tensions among wonder, humbuggery, and commerce were central to Münsterberg's account of the supposed abilities of ten-year-old Beulah Miller to telepathically read minds. Initially, he noted how he "was as deeply startled and overcome with wonder as I was after the first night with Eusapia Palladino."[116] For Münsterberg, the very aura of wonder led him to suspect a deception was at the heart of the matter. The intentionally fraudulent Palladino, with her conscious associations with commercial trade, is invoked in contrast to the innocent Miller, who is simply unaware of the true nature of her powers. For it was not just that the spiritualists claimed to possess extraordinary powers that solicited the psychologist's ire but rather that these claims were made with a commercial end in mind. Münsterberg emphasizes his physical revulsion at entering "Palladino's squalid quarters" to encounter the "sham psychologist, sitting in a trance state at a table surrounded by spiritualistic believers *who had to pay their entrance fees*." In such in an environment,

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[115]Jastrow, "The Case of Paladino," 107.
[116]Hugo Münsterberg, "Thought Transference," *Psychology and Social Sanity* (Garden City: Doubleday, Page, and Co., 1914), 141-77, 144. See also "Girl Prodigy Meets Tests," *New York Times*, February 16, 1913, 9.

"everything suggested fraud" which made exposing the "humbug" a relatively straightforward task.[117] The innocent Beulah Miller, in contrast, demonstrated her abilities "before any commercial possibility suggested itself."[118] As he told the *New York Times*: "It is a pity how the community forces sensationalism, commercialism, and finally humbug and fraud on a simple country girl."[119] Although she had been offered the opportunity to make a profit off her talents on the vaudeville stage, her upstanding New England mother turned down such lurid offers.[120] While frequently attacked himself for his financial opportunism, it was a quality that Münsterberg condemned in others.

This abstinence of the marketplace transformed Miller into a genuine psychological object. The young girl's family indicated that she was capable of reading the minds of others. For example, if someone studied a playing card away from her view, she could determine its face value. Dismissing the notion that Beulah Miller was executing a conscious humbug, Münsterberg offered a naturalistic and psychological explanation of the precocious young wonder after performing some experiments in her home. Beulah's talents were analogous not to the spiritual medium but rather to the stage magician, a commercial category that Jastrow had already demonstrated was amenable to incorporation into psychology's frameworks. Like these showmen, Beulah had the ability to detect subtle movements in people's bodies giving her clues as to what was on their mind. Her talent was particularly heightened when either her sister or mother were present with the tester, as she was even more capable of reading the traces in them. The primary difference was that unlike conjurors that practiced and mastered this skill, Miller's was largely an unconscious process of which

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[117]Münsterberg, "Thought Transference," 145. Emphasis added.
[118]Münsterberg, "Thought Transference," 147.
[119]"Beulah No Marvel, Says Münsterberg," *New York Times,* April 23, 1913, 20.
[120]Münsterberg, "Thought Transference," 148.

she was not aware.[121] For this reason, Miller proved to be a more legitimate psychological phenomenon compared with her spiritualist counterpart. While Münsterberg sought to debunk the sense of wonder that surrounded both, because Miller was judged to be morally upright as an individual, Münsterberg could extract more scientific value from her case.[122]

Jastrow deployed a similar logic in his most sustained application of pragmatist insights into a debunking of a wonder worker. On April 26th 1922, participants at a meeting of the Chicago Medical Society witnessed a remarkable spectacle. Willetta Huggins, a seventeen-year-old inmate of the Wisconsin School for the Blind had been brought to the gathering in order to demonstrate some of her extraordinary talents. According to Dr. T. J. Williams, the physician responsible for presenting her to the gathering, Huggins, although deaf and blind, seemed to possess special tactile and olfactory senses to compensate for her lost hearing and vision. She was asked to perform a number of tasks before the assembled medical experts to illustrate her unusual powers. She was given bouquet of variously colored paper flowers and she was able to distinguish every color by simply smelling each flower in turn. Next, she was given several paper bills of various denominations and was able to determine their monetary value based on the texture of the money. The final experiment involved a doctor sending a message along a twelve-foot tube that Huggins was asked to decipher based upon the vibrations the tube produced. According to initial reports, the young woman exhibited remarkable talents in all three demonstrations, leading some to theorize about the alternative, compensatory powers of the deaf and blind. The published report

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[121]Münsterberg, "Thought Transference," 159-162.

[122]For example, he incorporated a discussion of the Miller case into his public lectures. See "Prof. Münsterberg of Harvard Lectures on Beulah Miller," *New York Times*, April 20, 1913, 8.

speculated that based upon the Huggins case, the deaf and the blind had the power to cultivate sensory powers distinct from the senses the 'normal' population.[123]

Others in the audience were not nearly as impressed. For some, any inkling of extraordinary powers of perception was troubling and violated their understanding that the mind was adhering to regular, natural laws. As Jastrow had been present at the Chicago demonstration, the officers of the American Medical Association invited him to publish his verdict on Huggins's remarkable talents in their journal. In order to prepare his report, Jastrow was permitted to further examine the wondrous young woman. Although there was not sufficient evidence to prove that the Huggins case was an example of deliberate and intentional fraud, Jastrow quickly dismissed Williams's claim that the woman possessed extraordinary perception. He argued that Huggins that been misdiagnosed and that her 'ordinary' senses of sight and hearing were not completely useless but rather merely severely limited. Jastrow concluded that she suffered from slit vision and therefore could perceive some traces of vision and that her deafness had psychological and not physiological origins.[124]

Jastrow did not limit his report to simply exposing the details of the Huggins case but also speculated on what he perceived to be the widespread problem of credulity among physicians. He cited the Huggins demonstration as a visible case of "the will to believe": an emotional predisposition to be taken in, to act credulously towards phenomena one wanted to believe were true, and an over-reliance on one's own immediate sense perception. In doing so, he was consciously turning on its head William James's justification of religious faith by exposing some of the weaknesses in this fortification of belief in the modern world. Where

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[123]"Extraordinary Development of Tactile and Olfactory Senses Compensatory for the Loss of Sight and Hearing," *Official Bulletin of the Chicago Medical Society* 21 (June 3, 1922): 29. See also "Scientists at Odds Whether or Not Girl Sees," *Chicago Daily Tribune* June 17, 1922, 12.
[124]Joseph Jastrow, "The Will to Believe," *Journal of the American Medical Association* 78 (June 17, 1922): 1891-1893.

James saw a staunch and active commitment to tentative beliefs as the only protection for religious faith in a scientific world, Jastrow was concerned by how such credulity could permeate and dominate other spheres of life. To James's dilemma of whether if there was a greater ethical danger in believing in too little than too much, Jastrow responded that the preponderance of credulity required the nurturing of skepticism as the true moral path.[125] Jastrow translated the Huggins case from a test of a particular woman's physiological capabilities into an ethical drama centering on the social "problem of deception."[126]

He argued that his psychological expertise was relevant not only for the scientific study of Huggins but also ought to be directed towards his colleagues, who failed to apply a sufficiently critical judgment. The significance of the case lay in how it illuminated the psychological predisposition to believe in such a wondrous young woman. For Jastrow, the forms of popular enthusiasm that led to uncritical credulity were not limited to the solemn contemplation of religious truth or to the unruly masses attending a commercial spectacle but could also infuse the beliefs – and hence the scientific observations – of the most learned professionals. In such instances, Jastrow reasoned, it was insufficient to simply eliminate conscious acts of fraud, thus permitting doctors to freely accept any given testimony. Instead medical doctors must be constantly vigilant and watchful for the possibility of unintended acts of trickery and for how their own predispositions may enable such unconscious acts of deception. Jastrow shifted the object of study away from the sensory capabilities of Huggins towards an investigation of those who observed her. While Huggins may not have been a commercial fraud, certainly the medical men who professed faith in her had been deceived.

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[125]See William James, "The Will to Believe," *The Will to Believe and Other Essays in Popular Philosophy* (1896; Cambridge: Harvard University Press, 1979). Although they held different views on the nature of spiritualism, Jastrow remained an admirer of James and dedicated his *The Psychology of Conviction* to James, the "master psychologist."

[126]Jastrow, "Will to Believe," 1892. It seems no accident that when Huggins proclaimed herself to be cured of her blindness to years later, she credited her faith and the healing techniques of Christian Science. See "Deaf and Blind Girl Pronounced Cured," *New York Times*, January 30, 1924, 4.

These exposures worked to subvert the very scene of inquiry where investigations into wondrous persons and things ought to occur. In particular, Jastrow emphasized how disinterested, objective judgment was not a natural capacity among the majority of observers, making them unfit arbiters of the medium's power. In direct contrast to Barnum, whose humbugs were designed to inculcate the prerequisite sensibilities in the consumer, Progressive Era psychologists sought to solve the social problem of credulity by removing the evaluation of potentially deceptive things from the locus of the marketplace and from the purview of the non-expert's individual judgment. In an analogous fashion, Münsterberg sought to transform the American legal system, replacing the judgment of error-prone individuals with the evaluations of his psychotechnical apparatus.

V: Popular Psychology and the Meanings of Disciplinarity

Where Jastrow's avoided the political institutionalization of his psychology, Münsterberg undertook a considerable campaign to transform the application of the law through psychological insights and instrumentation. Münsterberg's conviction in the inherent unreliability of humans as observers placed him in strict opposition to the nineteenth-century liberal view of the self as a reasonable and responsible individual that was institutionalized in the American legal system.[127] In series of popular essays for mass circulation magazines, especially *McClure's Magazine*, later collected and supplemented as *On the Witness Stand* (1908), he sought to replace the evaluation of a person's moral

[127]On Münsterberg's legal psychology, see Hale, *Human Science and Social Order*, 111-121 and Tal Golan, *Laws of Men and Laws of Nature: The History of Scientific Expert Testimony in England and America* (Cambridge: Harvard University Press, 2004), 213-242.

character with the measurable study of human behavior grounded in specific experimental tests.[128]

In an early chapter on "Illusions," he sets out his position with an anecdote. He asks the reader to picture a courtroom situation concerning a car accident. Fortunately, there are two independent witnesses to give first-hand testimony; unfortunately, they cannot agree upon what they saw. One claims that the road was wet while the other insists it was dry. One claimed that the offending driver had sufficient time to brake while the other heartily disagrees. Münsterberg stresses that their differences of opinion were not due to personal interest or intentional deceit, for both are testifying as honestly as possible based upon their own abilities. "Both witnesses were highly respectable gentlemen, neither of whom had the slightest interest in changing the facts as he remembered them." The problem is that the individual's unaided visual observation was not a reliable kind of evidence regardless of the person's moral character, nor could one arrive at the truth merely through a common sense evaluation of their respective testimonies.[129]

To strengthen his argument, Münsterberg noted that he himself, outside of the exacting environment of laboratory, was equally prone to such errors of perception. In a later chapter, he outlines his own experience as an eyewitness when his home had been burglarized. When he testified in court, he insisted that at least two burglars had entered through a broken basement window, he recalled seeing candle wax on the second floor indicating that the criminals had been there, and he detailed the items stolen. Münsterberg used this episode to illustrate the influence of mental suggestion on memory and testimony.

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[128]See Hugo Münsterberg, "Nothing but the Truth," *McClure's Magazine* 29 (1907): 532-536; Münsterberg, "The Third Degree," *McClure's Magazine* 29 (1907): 614-622; Münsterberg, "Hypnotism and Crime," *McClure's Magazine* 30 (1908): 317-322; Münsterberg, "The Prevention of Crime," *McClure's Magazine 30* (1908): 750-756; Münsterberg, "Traces of Emotion and the Criminal," *Cosmopolitan* 44 (1908): 524-529; Münsterberg, *On the Witness Stand: Essays on Psychology and Crime* (1908; New York: Clark Boardman Co., 1925).

[129]Münsterberg, *On Witness Stand*, 15.

In fact, the basement door had been vandalized, the candle wax was in the attic, numerous missing items had remained uncatalogued, and he simply assumed that more than one individual had burglarized his home.[130] He stressed that each of these errors of perception did not invalidate the findings of the court, but even he, with his knowledge of psychology, could not be relied upon as a trustworthy eyewitness.

An essential tension operated within Münsterberg's presentations on the deceptive nature of testimony. His stated goal was the replacement of the jurist's common sense about human subjectivity with the precise measurements of the experimental psychologist. Yet his arguments frequently drew upon a common sense understanding of human nature, such as the visible traces of emotion in a person's face, despite his claims to ground his knowledge purely in mechanical objectivity. Rather than clearly laying out his procedure, Münsterberg's public advocacy of psychology as a science and a solution to social problems required that the audience place their trust in his expertise, reliability, and authority. Such a stance was in stark contrast to the elites of an earlier era, like Barnum, who emphasized the importance of individual judgment.

Beyond questioning the perceptual reliability of eyewitnesses, Münsterberg argued that his psychotechniques could elicit from suspects themselves the truth behind their deceptions. Ironically when Münsterberg sought to introduce his psychological approach to deception into an actual legal setting, his self-aggrandizing methods led to his own dismissal as a commercial charlatan. In 1907, a national sensation was set off when "Big Bill" Haywood, famed head of the International Workers of the World was placed on trial in Idaho after convicted murderer, Harry Orchard, claimed that he was ordered to sabotage mine

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[130]Münsterberg, *On Witness Stand,* 41-43.

works and assassinate officials as an agent of western mining unions.[131] With a commission from *McClure's Magazine* to write up his experience in an article, Münsterberg left for Boise hoping to subject Orchard to a series of experiments to determine whether he was truthful about implicating Haywood. Münsterberg stressed that physiognomy was an unreliable indicator of reliability in this instance; while Orchard possessed a "brutal" and "vulgar" profile, his ear was deformed, his eyes shifted irregularly, and his lower lip was abnormal, Haywood, in contrast, despite a missing eye, radiated honesty from his face.[132] Receiving the state's permission to interview Orchard, Münsterberg claimed to have subjected the man to a barrage of tests over the course of seven hours. Münsterberg insisted "that I changed my personal feelings resulted from our conservations, but that I changed my conviction as to the truthfulness of his words has been entirely the result of my psychological experiments." Münsterberg claimed that his psychological tests affirmed Orchard's story and the state's case against Haywood.

Münsterberg never made clear precisely which psychological tests he applied to Orchard. Against standard procedure for reporting scientific results, he did not detail his apparatus or procedure, insisting that others must rely upon his own word and reputation. For a man who claimed that such qualities were no guarantee of reliability, Münsterberg was placed in at best a paradoxical, if not hypocritical position. Certainly this is how Haywood's attorneys felt.[133] The problem facing Münsterberg was that the jury possessed a very different evaluation of the testimony, finding Haywood innocent of the state's charges. Despite the barrage of tests Münsterberg claimed Orchard had been subjected to, he felt sufficiently unnerved by the verdict that he did not want his scientific expertise to be seen as

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[131]On the Haywood trial, see J. Anthony Lucas, *Big Trouble* (New York: Simon & Schuster, 1997).
[132]Münsterberg, "Experiments with Harry Orchard," (1907), HMP, Mss Acc 2450, pg. 6.
[133]Münsterberg, "Experiments with Harry Orchard," pg. 7.

publicly contradicting it. He wrote a quick note to the *McClure's* office asking that the article be scrapped and then penned another to Haywood's attorney, Clarence Darrow, insisting that he had no wish to continue their quarrel over the case.[134] That the verdict in the Haywood trial would contradict Münsterberg's findings was not an isolated incident and when Münsterberg's essays were collected in book form, despite his publisher's attempts to market the book to lawyers, the reception among the legal community was hostile. John Wigmore, dean of Northwestern University's law school and the leading authority on the nature of legal evidence, exemplified this reaction and penned a hostile review of the book.[135] It was not only members of other professions that attacked Münsterberg's public immodesty. Lightner Witmer, professor of psychology at the University of Pennsylvania, was highly critical of what he perceived as Münsterberg's crass commercialism. He condemned his Harvard colleague for "crying his psychological wares in the marketplace."[136]

Witmer's criticism hinted to an essential paradox that animated yet fundamentally undercut the power of the psychology of deception. Namely, it was a popularized science that enrolled aspects of market culture into its toolbox while it simultaneously attacked the mentalities of the marketplace. For the psychology of deception, the market generated both the problems it sought to solve and the approach it used. How was the psychologist to propagate his knowledge in a field that was constantly generating swindling, belief, and credulity? The paradox was particularly acute in the life and work of Jastrow, which helps to explain why he has been largely forgotten despite his early prominence in the discipline. At the same time that Jastrow was writing syndicated newspaper columns instructing readers in the techniques of "keeping mentally fit" and broadcasting psychological advice on NBC

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[134]Hugo Münsterberg to Editor of *McClure's Magazine*, July 14, 1907, HMP, Mss Acc 2358 and Münsterberg to Clarence Darrow, July 14, 1907, HMP, Mss Acc 2311.
[135]John H. Wigmore, "Professor Münsterberg and the Psychology of Testimony," *Illinois Law Review* 3(7) (1909): 399-445. See also Wigmore to Münsterberg, November 11, 1908, HMP, Mss Acc 2244.
[136]Witmer cited in Hale, *Human Science and Social Order*, 110.

radio, he authored an acerbic attack on "the idols of the marketplace."[137] In a 1928 article of that name, the persistently financially troubled psychologist reflected directly on the effects of the consumer economy on the mind. The title of the essay deliberately invoked Francis Bacon's condemnation of various social superstitions that impeded rationality in order to emphasize how these "psychological frailties" had taken new forms in the consumer culture of the twentieth-century.[138] For Jastrow, of all Bacon's idols, it was that of the marketplace which promoted the most insidious ways of false thinking.

Jastrow was concerned about how the consumption ethos of the 1920s had permeated all spheres of life so that even knowledge had become a tradable commodity. He was critical of the ways in which 'commercialism' and 'money-mindedness' had become the sole defining values of worth.[139] This had led to the creation of three modern idols – advertising, efficiency, and organization -- that had become fetishized and valued as ends in themselves rather than mere components of society.[140] Jastrow condemned a culture where the salesman became the supreme hero and all that was of value was reduced to its monetary worth. In particular, he was concerned by how scientists were portrayed as behaving as yet another salesman, to sell his knowledge as a commodity. Identifying the idol of the marketplace with James's 'will to believe' and Freud's 'rationalization' signaled Jastrow's unease with the new therapeutic culture.[141]

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[137]The newspaper columns were collected as Jastrow, *Keeping Mentally Fit: A Guide to Everyday Psychology* (New York: Greenberg, 1928) and *Piloting your Life: The Psychologist as Helmsman* (Garden City: Garden City Publishing, 1935). Jastrow, "The New Idol of the Market-Place," *Century Magazine* (1928): 491-504.
[138]Jastrow, "New Idol," 491.
[139]Jastrow, "New Idol,"492-4.
[140]Jastrow, "New Idol," 497.
[141]On the therapeutic culture, see T. J. Jackson Lears, "From Salvation to Self-Realization: Advertising and the Therapeutic Roots of Consumer Culture, 1880-1920," Richard Wightman and Lears (eds.), *The Culture of Consumption: Critical Essays in American History, 1880-1980* (New York: Pantheon, 1983), 1-38. Andrew Heinze rightly criticizes Lears for overly identifying the therapeutic ethos with a crisis of faith within liberal Protestantism thereby ignoring the influence of Jewish understandings of human nature. See Heinze, "Jews and American Popular Psychology: Reconsidering the Protestant Paradigm of Popular Thought," *Journal of American History* 88(3) (2001): 950-978.

This essay, written soon after the death of his wife and his subsequent retirement from Wisconsin, was remarkable for its externalizing of Jastrow's own worries about his commercial life. Jastrow placed himself as a psychologist in opposition to the salesman's 'golden rule' embodied by the maxim of the fictionalization swindler David Harum: "to 'do' others as you know others would like to 'do' you, and to do it first."[142] Although Jastrow was critical of the commercial culture, he was unable to place himself outside of its bounds. While condemning the idolization of commercial exchange as the proper end of life, he candidly claimed "no holier-than-thou presumption, no involuntary high-brow abnegation, no self-deluding disregard of the plain fact that most of us have to earn a living and a meager one."[143] Despite such disavowals, the essay failed to come to grips with Jastrow's own immersion in the marketplace. He was never able to address the extent to which as a popular psychologist he was an active member of the "electrified, radioed, skyscrappered, gadgeted, press-agented, big-business world."[144] The 'vaudevillian' professor of psychology who had decidedly turned from the laboratory to the lecture circuit could never fully acknowledge how dependent he remained on commercial exchange.

In one of his most eloquent and highly regarded later essays, he acutely, but unreflexively, diagnosed one of the major challenges facing his discipline: the problem of commercial success. The psychological scene of the 1920s, especially as understood by the purchasing public, was a deeply divided one with both Behaviorism and psychoanalysis becoming intellectual fads that merely reproduced dogmatic thinking.[145] He did not attack Behaviorism because he rejected the laboratory study of animals to illuminate human psychology, for Jastrow had long embraced a naturalistic perspective on the mind. What was

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[142]Jastrow, "New Idol," 497. As noted earlier, the hero of E. N Westcott's novel *David Harum* (1898) was based on the horse trader, David Hannum, one of George Hull's conspirators during the Cardiff Giant Hoax.
[143]Jastrow, "New Idol," 495.
[144]Joseph Jastrow, *The Betrayal of Intelligence: A Preface to Debunking* (New York: Greenberg, 1938), 14-15.
[145]Joseph Jastrow, "Has Psychology Failed?" *American Scholar* 4(3) (1935) 261-269.

of concern was the cavalier fashion in which John Watson, Behaviorism's public advocate, represented his work. According to this reading, Watson was fraudulently marketing the behavioral approach as a kind of commodity. In a review for *Science* in 1929, he criticized Watson for "the strident, advertising tone of irresponsible statement." Drawing on a further monetary metaphor, Jastrow still held out hope for the proper study of behavior to be "accomplished not by so-called (Watsonian) behaviorists but by the contributions of scientifically minded psychologists who gave to that phrase of 'behaviorism' for which Watson claims *proprietary right*, precisely the recognition it deserved."[146] A fundamental irony animated Jastrow's career – here was a popular psychologist who only had contempt for the marketplace and its deceptive effects.

Jastrow's ambivalence was also productive, allowing him to articulate a post-Darwinian, pragmatism-infused popular psychology. His approach was predicated on the conviction that one needed to acquire new observational habits in order to properly navigate the deceptive world of the consumer economy. The mental pathways etched by natural selection could only serve to reinforce credulous beliefs, a dangerous proposition in a world filled with fraudulent mediums and the idols of the marketplace. His vision remained voluntaristic holding the individual responsible for rooting out the deceptions of the marketplace through learning to be vigilant about one's own habits of belief. To this end, he felt that his popular writings that applied the insights of pragmatist philosophy to psychological problems would cultivate better mental habits. Although the technoscientific approach advocated by Münsterberg became more visible in the twentieth-century with the development of the polygraph, Jastrow's program represented an alternative bio-political strategy for regulating the deceptive marketplace through the targeting of the mind.

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[146]Joseph Jastrow, "Scientific Books," *Science* NS 69 (April 26, 1929): 455-457, 456. Emphasis added.

If a common concern with human deception united Jastrow and Münsterberg, the answers they provided were particular to each. Münsterberg invariably advanced a technoscientific solution arguing that the mind could be best accessed through an array of instruments and tests. His interventionist experimental approach was paralleled by his greater concern for reshaping the American polity by instituting his psychological approach into the apparatus of the state. His unsuccessful odyssey to Idaho was a portent of coming trends during the Progressive Era. Psychologists would increasingly rustle their expertise in deception and human nature in attempts to introduce bio-political solutions to the problems posed by the marketplace. The lie detector, developed by one of Münsterberg's few graduate students at Harvard, represented the fullest fruition of the technological route. Before this device that calibrated the act of lying to the body's physiology captured the public's eye, Münsterberg himself pursued another technological approach to the problem of commercial deception when he sought to introduce a standardized measure into legal proceedings centering on the notion of an "unwary purchaser."

Chapter 4:
The 'Unwary Purchaser':
Consumer Psychology and the Regulation of Commerce

In 1894, Judge Jenkins of the Circuit Court of the United States for the Northern District of Illinois reaffirmed the ordinary purchaser's right to be careless: "the purchaser of goods, with respect to brands by which the goods are designated, is not bound to exercise a high degree of care."[1] In making this claim, during the in arbitration of a trademark infringement case between two manufacturers of flour with nearly identical names and packaging, Jenkins drew upon both legal precedent and his own common knowledge about the cognitive processes that went into the act of purchasing goods. Jenkins was far from an isolated individual. For much of the Gilded Age and Progressive Era, legal decision-making concerned with marketing, packaging, and advertising was grounded in a similar presumed knowledge about consumer behavior. For many jurists, the 'ordinary purchaser' was most likely to be an unwary one that acted quickly, on an impulse, with little reflection. This kind of consumer was vulnerable to fraudulent practices such as trademark infringement and deceptive advertising where unscrupulous manufacturers would impinge upon their legitimate counterparts' place in the market. In order to protect the reputation and trade of 'honest' businessman, certain judges enshrined the customer's right to be careless, which in turn enabled them to prohibit certain trade practices in the name of preventing the deception of the purchasing public. The application of the unwary norm to consumers was left to the individual judge's discretion and by the turn-of-the-century a number of commentators argued that the legal assessment of the consumer's psychology lacked both empirical foundation and standardization. Despite these concerns, when the nascent regulatory state

[1] *Pillsbury v. Pillsbury*, 64 Fed. 841 (1894).

deployed its police powers to prevent fraud and deception, the specter of the unwary purchaser played an integral function.

Cases concerning the unwary purchaser illustrate the ways in which jurists incorporated knowledge about human behavior and cognitive abilities into legal practice without the introduction of expert testimony from psychologists.[2] The resulting decisions are a rich archive of legal thinking about human subjectivity in the name of regulating commerce. Despite the absence of expert witnesses, these cases represented a psychologization of the law, for they required that judges reflect upon how the mind functioned within the framework of the marketplace: How did human perception operate? What aspects of a trademark garnered and sustained the purchaser's attention? How were these sense impressions retained in and recalled from memory? The common sense methodology used in these cases was in turn unsuccessfully challenged from the perspective of experimental psychology in the early twentieth-century. Arguing that the legal vision of the ordinary purchaser's abilities was inconsistent, concerned psychologists sought to erect a calculable standard grounded in laboratory research to determine the point at which the average consumer was likely to be deceived by similarly fashioned goods. Judges did not embrace such experimental insights; ultimately it was a non-standardized method of

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[2]On the history of expert scientific testimony, see Roger Smith and Brian Wynne (eds.), *Expert Evidence: Interpreting Science in the Law* (London and New York: Routledge, 1989); Sheila Jasanoff, *Science at the Bar: Law, Science, and Technology in America* (Cambridge: Harvard University Press, 1995); Jennifer Mnookin, "Scripting Expertise: The History of Handwriting Identification Evidence and the Judicial Construction of Reliability," *Virginia Law Review* 87(8) (2001): 1723-1845; Simon Cole, *Suspect Identities: A History of Fingerprinting and Criminal Identifications* (Cambridge: Harvard University Press, 2001); Tal Golan, *Laws of Men and Laws of Nature: The History of Scientific Expert Testimony in England and America* (Cambridge: Harvard University Press, 2004). On psychology and psychiatry, see Charles Rosenberg, *The Trial of the Assassin Guiteau: Psychiatry and the Law in the Gilded Age* (Chicago: University of Chicago Press, 1968); Roger Smith, *Trial by Medicine: Insanity and Responsibility in Victorian Trials* (Edinburgh: Edinburgh University Press, 1981); Geoff Bunn, "The Lie Detector, *Wonder Woman*, and Liberty: The Life and Work of William Moulton Marston," *History of the Human Sciences* 10 (1997): 91-119; Ken Alder, "A Social History of Untruth: Lie Detection and Trust in Twentieth-Century America," *Representations* 80 (2002): 1-33; Alison Winter, "The Making of 'Truth Serum,'" *Bulletin of the History of Medicine* 79(3) (2005): 500-533.

assessing consumer psychology that became successfully bureaucratized into government agencies such as the Federal Trade Commission.

The concept of the 'unwary purchaser' opens avenues to investigate the historically specific psychologies that are embedded within the practice of the law. I am interested in exploring how a variety of actors deployed knowledge in the legal process rather than focusing exclusively on the testimony of expert witnesses. By examining the role of psychology in the regulation of trade, I seek to broaden our understanding of what goes into the making of the law's common knowledge.[3] Furthermore, the jurists' embrace of the unwary purchaser illuminates the unevenness in the application of the standard of the self-responsible individual that is crucial to the modern understanding of liberalism.[4]

My argument is not that there existed in the nineteenth-century a Leviathan state intently policing manufacturers and protecting consumers. Although largely suspended in the cases I will discuss, the rule of *caveat emptor* (buyer beware) remained a powerful imperative in tort law.[5] As the legal historian Walton Hamilton noted, the reaffirmation of the English common law rule served a crucial ideological function in the new republic for it was believed that "caveat emptor sharpened wits, taught self-reliance, made a man - an

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[3]See Ron Levi and Mariana Valverde, "Knowledge on Tap: Police Science and Common Knowledge in the Legal Regulation of Drunkenness," *Law & Social Inquiry* 26(1) (2001): 819-46 and Valverde, *The Law's Dream of a Common Knowledge* (Princeton: Princeton University Press, 2003). See also Bruno Latour, *La fabrique du droit: Une ethnographie du conseil d'Etat* (Paris: Découverte, 2002).

[4]See Pat O'Malley, "Risk and Responsibility," in Andrew Barry, Thomas Osborne, and Nikolas Rose (eds.), *Foucault and Political Reason* (London: University College London Press, 1996), 189-207. Recent work on American liberalism has stressed how the law came to recognize the individual's dependency and limited responsibility in certain arenas. See Barbara Young Welke, *Recasting American Liberty: Gender, Race, Law, and the Railroad Revolution, 1865-1920* (New York: Cambridge University Press, 2001) and Michael Willrich, *City of Courts: Socializing Justice in Progressive Era Chicago* (New York: Cambridge University Press, 2003).

[5]See Earl Kintner, *A Primer on the Law of Deceptive Practice: A Guide for Businessmen* (New York: Macmillan, 1971), 7 and Ivan L. Preston, *The Great American Blowup: Puffery in Advertising* (1975; Madison: University of Wisconsin Press, 1996), 27-46.

economic man - out of the buyer."[6] This earlier faith was undercut by the latter years of the nineteenth century by the greater awareness of the deceptions produced in the minds of purchasers that threatened the profits and livelihood of other free men.

Still, I would concur with the current scholarly consensus that holds that the notion of protecting consumers did not become fully institutionalized within the American state until the New Deal.[7] Indeed, in dozens of cases involving trademark infringement, deceptive labeling, and related wrongs, judges suspended the rule of caveat emptor in order to protect the interests of established manufacturers and retailers. This concept of the unwary purchaser was used in police power cases during the 'butter wars' over the introduction of oleomargarine and in establishing early precedents for the Federal Trade Commission. These cases were not primarily concerned with consumer protection; instead the unwary purchaser was assumed in order to bolster the position of established traders from competitors who played upon their recognized brands. As became explicit during the butter wars, the intention was to secure the status of large industry like dairy from novel products like margarine. The psychological figure was a product of the big business oriented political culture of the Gilded Age, although reformers of the later eras would also find use for the concept.

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[6]Walton H. Hamilton, "The Ancient Maxim of Caveat Emptor," *Yale Law Journal* 40(8) (1931): 1133-1187, 1186. See also James W. Cook, *The Arts of Deception: Playing with Fraud in the Age of Barnum* (Cambridge: Harvard University Press, 2001).

[7]The more explicit case of the emergence of the consumer as a subject of governance in American can be found in Lizabeth Cohen, *A Consumer's Republic: The Politics of Mass Consumption in Postwar America* (New York: Knopf, 2003). See also Meg Jacobs, "'How About Some Meat?': The Office of Price Administration, Consumption Politics, and State Building from the Bottom Up, 1941-1946," *Journal of American History* 84(3) (1997): 910-941; Charles McGovern, "Consumption and Citizenship in the United States, 1900-1940" and Lizabeth Cohen "The New Deal State and the Making of Citizen Consumers" in Charles McGovern, Susan Strasser, and Matthias Judt (eds.), *Getting and Spending: European and American Consumer Societies in the Twentieth Century* (Cambridge: Cambridge University Press, 1998), 37-58 and 111-125; Lawrence B. Glickman, "A Strike in the Temple of Consumption: Consumer Activism and Twentieth-Century American Political Culture," *Journal of American History* 88(1) (2001): 99-128.

These cases provide a means for illuminating how the law and psychology constitute the subjectivity of supposedly 'normal' individuals differently in the historical "assemblage of the subject of consumption." This approach opens up the ways in which understandings of human subjectivity get engrained in the institutions that shape daily life.[8] When historians have discussed questions about consumer psychology during this period, they focus primarily on the perspective of advertisers, how these professionals viewed the purchasing subject and the appropriate styles of communication that derive from such a conception.[9] I will be drawing out how a legal version of consumer psychology differed from the one deployed by advertising agencies.

The figure of the unwary purchaser is more than a discursive fiction, an inhabitant of legal texts. Scholars like Lorraine Daston and Ian Hacking have advanced an understanding of scientific phenomena in terms of their historical coming into being. This approach permits us to see something as simultaneously socio-historically contingent while still being real in terms of the practices it enables and the effects it generates.[10] The unwary purchaser is such an object, although its origins lie in the legal rather than the scientific arena. One can trace the historical moment when this object was called into being, the values and practices

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[8]See Peter Miller and Nikolas Rose, "Mobilizing the Consumer: Assembling the Subject of Consumption," *Theory, Culture & Society* 14(1) (1997): 1-36. See also Warren Susman, "'Personality' and the Making of Twentieth-Century Culture," *Culture as History: The Transformation of American Society in the Twentieth Century* (New York: Pantheon, 1984), 271-285 and T. J. Jackson Lears, "From Salvation to Self-Realization: Advertising and the Therapeutic Roots of Consumer Culture, 1880-1920," in Richard Wightman and T. J. Jackson Lears (eds.), *The Culture of Consumption: Critical Essays in American History, 1880-1980* (New York: Pantheon, 1983), 1-28.

[9]See Roland Marchand, *Advertising the American Dream: Making Way for Modernity, 1920-1940* (Berkeley: University of California Press, 1985), 52-87; Jackson Lears, *Fables of Abundance: A Cultural History of Advertising in America* (New York: Basic Books, 1994); Elspeth H. Brown, *The Corporate Eye: Photography and the Rationalization of American Commercial Culture, 1884-1929* (Baltimore: Johns Hopkins University Press, 2005), 159-216. On the subsequent rise of consumer research, see Daniel Robinson, *The Measure of Democracy: Polling, Marketing Research, and Public Life, 1930-1945* (Toronto: University of Toronto Press, 1999) and Sarah Elizabeth Igo, "America Surveyed: The Making of a Social Scientific Public, 1920-1960," PhD dissertation, Princeton University 2001).

[10]See Lorraine Daston, "Introduction: The Coming into Being of Scientific Objects," in Daston (ed.), *Biographies of Scientific Objects* (Chicago: University of Chicago Press, 2000), 1-14 and Ian Hacking, *Historical Ontology* (Cambridge: Harvard University Press, 2002).

associated with it, and the very real effects felt when the object was deployed. The unwary purchaser as a legal object came to occupy a node in the network through which the economy was constituted. Although the judicial vision of consumption may or may not have reflected the behavior of actual purchasers, the effects of a judge's reliance on this conceptualization were real. It was used to adjudicate what retailing and marketing practices were legal, which traders had rights to certain styles of labeling or packages, and therefore framed merchants' behavior, their commercial opportunities, and shaped the contours of the legitimate economy.

These cases offer a counter-example to the view that heralds the rise of objectivity and standardization as the primary bureaucratic responses to the problems facing mass society. Much recent scholarship holds that objectivity as both a scientific and political ideal gained ascendancy as a method of securing consensus in heterogeneous, anonymous societies. In interactions that take place across socio-disciplinary and professional boundaries, standardized measures offered the promise of a universal language in which all could place their trust.[11] In contrast, the period from the 1870s to the late 1930s constitutes a 'psychological moment' in the regulation of American commerce. Deceptive advertising and branding was largely defined in terms of the attitude of mind they were likely to produce in the ordinary purchaser. Publicly minded intellectuals, American judges, argued that they could not come up with an objective standard free of personal idiosyncrasy and instead valorized personal judgment.[12] They dismissed the authority of psychologists who sought to

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[11]See Theodore Porter, *Trust in Numbers: The Pursuit of Objectivity in Science and Public Life* (Princeton: Princeton University Press, 1995). See also Lorraine Daston and Peter Galison, "The Image of Objectivity," *Representations* 40 (1992): 81-128; John Carson, "Army Alpha, Army Brass, and the Search for Army Intelligence," *Isis* 84(2) (1993): 278-309; M. Norton Wise, (ed.), *The Values of Precision* (Princeton: Princeton University Press, 1995); James C. Scott, *Seeing Like a State: How Certain Schemes to Improve the Human Condition have Failed* (New Haven: Yale University Press, 1998); Ken Alder, *The Measure of All Things: The Seven-Year Odyssey and Hidden Error That Transformed the World* (New York: Free Press, 2002).

[12]See Christopher Lawrence, "Incommunicable Knowledge: Science, Technology, and the Clinical Art in Britain, 1850-1914," *Journal of Contemporary History* 20(4) (1985): 503-20 and Peter Galison, "Judgment against Objectivity," in Caroline A. Jones and Galison (eds.), *Picturing Science, Producing Art* (New York: Routledge, 1998), 327-59.

speak about the nature of the human mind based upon laboratory experimentation and the collecting of their findings into statistical aggregates of how average individuals would likely respond. In doing so, these judges reinvigorated another tradition for studying the mind: namely the introspective method of eighteenth-century philosophical psychology where the investigator took self-conscious reflection upon his or her own thoughts as the primary object of inquiry.[13] The policing of trademark infringement and deceptive advertising remained tied to a common sense understanding about the subjective aspects of human observation.

These decisions occurred within the context of the booming commercial expansion of the Gilded Age, when manufacturers and retailers in a wide variety of industries were deploying numerous techniques to gain a privileged position within the marketplace. Among traders, greater emphasis was placed on the importance of advertising in stimulating higher levels of consumption and rationalizing the relationship between producers and purchasers.[14] Although such enterprise was often associated with corruption, the American state played a key role in defining the boundary between the legitimate and the fraudulent. One of the most powerful if contested techniques to accomplish these goals were the new laws concerning labeling and trademarks.[15] If a trader felt that one of his competitors was infringing upon his established trade name, he had the opportunity to take them to court in the hopes of having a cease and desist order issued. Yet historians have failed to recognize the judicial construction of consumer psychology deployed to protect the interests of established

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[13]My formulation of this shift is indebted to John Carson, "Minding Matter/Mattering Mind: Knowledge and the Subject in Nineteenth-Century Psychology," *Studies in the History and Philosophy of the Biological & Biomedical Sciences* 30(3) (1999): 345-376. On the rise of experimental psychology see Kurt Danziger, *Constructing the Subject: Historical Origins of Psychological Research* (Cambridge: Cambridge University Press, 1990); Deborah J Coon, "Standardizing the Subject: Experimental Psychologists, Introspection, and the Quest for a Technoscientific Ideal." *Technology and Culture* 34(4) (1993): 757-783.

[14]Stephen Fox, *The Mirror Makers: A History of American Advertising and its Creators* (New York: Morrow, 1984); Lears, *Fables of Abundance;* Marchand, *Advertising the American Dream;* Brown, *Corporate Eye.*

[15]See Susan Strasser, *Satisfaction Guaranteed: The Making of the American Mass Market* (New York: Pantheon, 1989), 29-57.

manufacturers and retailers. Nineteenth-century jurists held that infringement occurred when an ordinary purchaser was likely to be deceived by an imitation. The question was who was capable of ascertaining this mental threshold.

According to much Gilded Age jurisprudence, the ordinary purchaser was an unwary creature that made its decisions quickly, with virtually no information at its disposal, and with little attention to detail. Consumption in the marketplace was a rapid affair that took place in the blink of an eye. A consumer could easily mistake the brand name of a familiar product for another if the spelling or intonation resembled one another too closely. In short, the average purchaser was unable to transcend their subjective, error-prone perceptions and could be easily deceived by unscrupulous traders who imitated either the labeling or the packaging of a reputable trader. These legal remedies were available because the 'honest trader' was not meant to suffer from the unfair methods of competition and the resulting consumer behavior beyond his control.

In grounding their decisions about what constituted trademark infringement in the threshold of belief among ordinary purchasers, judges frequently cited *McLean v. Fleming* (1878) as a precedent. In 1834, Charles McLane, a medical doctor in Virginia, began to manufacture and sell liver pills in labeled, wooden boxes. By the 1860s, through a series of sales and inheritances, one Cochrane Fleming had acquired the exclusive right to use the trade name, "Dr. McLane's Liver Pills." Fleming gave his pillboxes a distinctive black label with fine, diagonal lines engraved into it. The name "Dr. C. McLane's Celebrated Liver Pills" was written on the label in white lettering. In 1872, he filed a case to restrain his competitor, James McLean, from allegedly infringing upon his established trademark in the sale of liver pills. Since 1849, McLean had been manufacturing and marketing medicines under the trade name of "Dr. McLean's Universal Pills" in St. Louis, Missouri. Since 1866,

his label had been a pale red with white lettering. The court had to decide whether McLean's trade infringed upon Fleming's exclusive right to use the name "Dr. McLane's Liver Pills."

By 1878, the case had reached the Supreme Court of the United States. Common law tradition dating back to early modern England had defended a trader's right to protect his own trademark. This particular case centered on the question of establishing a standard for the degree of similitude necessary to constitute a legal infringement. At what point did two distinctly branded commodities come to so resemble one another to the extent that the rights of the original proprietor had been transgressed? Justice Clifford determined that to protect the right to one's commercial reputation and the resulting regular flow of customers, one did not have to prove an exact similitude existed between the two goods. Rather the appearance only had to be sufficiently similar so that it was "likely to mislead one in the ordinary course of purchasing the goods."[16] If a judge determined that an ordinary purchaser was likely to be deceived by the similarity between the two goods then legally an infringement had occurred. Such cases required that the presiding judge visually inspect the goods, contemplate the sound of their trade name, and draw upon his perceptions of the purchasing public; the testimony of customers and the intentions of the manufacturer were secondary.

The regulation of trade exemplified by *McLean v. Fleming* was 'psychological' in two interrelated ways. Most obviously, judges grounded their legal opinion in their perceived understanding of the psychological characteristics of ordinary consumers. Consumption as a behavior was defined as a site where the careless and unwary aspects of human subjectivity would manifest themselves. Second, the form of property that these decisions sought to protect was the intangible worth of one's reputation in the commercial sphere. The packaging and labels at the heart of these cases were the visible signifiers of the

[16]*McLean v. Fleming*, 96 U.S. 245 (1878).

trust and good repute that the trader had built up among his costumers.[17] These cases built on a tacit recognition that the marketplace did not simply consist of material goods, constituting market transactions as an assemblage of material commodity, money, and interpersonal relationships among individuals.[18] Although not a formally acknowledge kind of property, these cases illustrate the government's recognition of something as ephemeral and emotional as reputation.

The notion that the ordinary purchaser was likely to be an unwary one, suggested in *McLean v. Fleming*, was made explicit in later cases. In *Wirtz v. Eagle Bottling Co.* (1892), the issue at stake was whether the differences between the labels of two competing beer distributors would be noticeable to the eye of an ordinary purchaser. The judge grounded his decision in the "common knowledge" that the ordinary buyer was not likely to exercise particular caution when purchasing relatively inexpensive goods. As a result, it was incumbent to determine whether the differences between the two labels could be perceived by a mere "glance" rather than by sustained contemplation.[19] In *Fairbank v. Bell* (1896), the appeals court overturned the lower court's decision that prudent customers using their eyes, ears, and common sense would be able to detect the difference between two brands of powdered soap. Judge Lacombe noted that the ordinary purchaser had neither the intelligence nor the experience of a learned judge in these matters. Consumers tended to associate the goods they habitually purchased with their general appearance rather than with a specific name. As a result, if a retailer intermingled the two goods on the shelf, the unsuspecting and non-discerning purchasers would likely be deceived. Therefore the courts

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[17]The legal protection of a manufacturer's goodwill among the purchasing public dates back to at least the eighteenth century. See Strasser, *Satisfaction Guaranteed*, 43-4.
[18]See Jeffrey P. Sklansky, *The Soul's Economy: Market Society and Selfhood in American Thought, 1820-1920* (Chapel Hill: University of North Carolina Press, 2002).
[19]*Wirtz v. Eagle Bottling Co.*, 50 NJ Eq. 164 (1892). See also *Centaur Co. v. Robinson,* 91 Fed 899 (1899).

must intervene.[20] In another case across the country concerning the same powdered soap company protecting their 'gold drop' trademark, the judge held that differences in the labels, the size of packages, and the trade symbols were insufficient to prevent the deception of the ordinary purchaser. To make his decision, the judge needed to assume that such an individual was a "stranger," unfamiliar with the specifics of the product but someone who had read the advertisement and retained the brand name in mind; such an individual would be easily deceived by similarly named goods.[21]

While numerous judges evoked the notion of the "ordinary" or "unwary" purchaser in issuing decisions, rarely did they make explicit what particular qualities this individual possessed. An exception was the frequently cited *Pillsbury v. Pillsbury* (1894) where the judge's opinion laid out these assumptions. In this decision, the judge highlighted such 'psychological' characteristics as the subject's vision, attention, memory, and responsibility:

> A specific article of approved excellence comes to be known by certain catch-words easily retained in memory, or by a certain picture which the eye readily recognizes. The purchaser is required only to use that care which persons ordinarily exercise under like circumstances. He is not bound to study or reflect; he acts upon the moment. He is without the opportunity of comparison. It is only when the difference is so gross that no sensible man, acting on the instant, would be deceived, that it can be said that the purchaser ought not to be protected from imposition.[22]

This legal vision of the consuming subject was based upon an understanding of how the consumer's mind functioned while engaged in commercial exchange. Through repeated exposure to specific visual markings, their impression became ingrained in the subject's memories making them familiar and readily recognizable to the eye. If a brand was satisfactory on numerous previous occasions, the mere intimation of its visual appearance

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[20]*Fairbank v. Bell*, 77 Fed 869 (1896).
[21]*Fairbank v. Luckel, King, and Cake Soap Co.*, 102 Fed 327 (1900).
[22]*Pillsbury v. Pillsbury,* 64 Fed. 841 (1894).

was sufficient to entice the purchaser's desire. Yet memory is considered to be imperfect, and if another brand sufficiently recalls a more familiar one, the mind will be confused and the purchaser likely deceived into buying the wrong product. It was assumed that the purchaser was denied the opportunity to compare among brands. Rather, he was perceived as acting in the moment, engaging in speedy commercial transactions that involved little to no inspection, introspection, or reflection. During the act of selecting commodities and purchasing them, this subject's attention span was lessened in fact. While 'attention' and 'memory' were becoming epistemic objects around which distinctive psychological specialties were developing, in the judge's common knowledge of human nature these mental faculties bled into one another.[23]

As a legal subject, this consumer was relatively free of responsibility to the point where many judges argued that he had the right to be careless. A 1924 judgment put it most bluntly: "the usual purchaser does not analyze; he merely looks, perhaps hastily; and the test must be whether the similarity of brands would mislead the 'ordinary observer.'"[24] This emphasis on carelessness was in stark contrast with the dominant vision of the liberal subject in the nineteenth century. In most legal and political contexts, the autonomy, independence, and self-reliance of the white, male subject-citizen were highlighted. The liberal self was an individual who possessed self-mastery and control. Private citizens were expected to act prudently and embrace personal responsibility for life's risks as an emblem of their freedom.[25] Nineteenth-century alienists and other mental health practitioners found it difficult to get courts to admit their evidence to demonstrate that a criminal suspect was

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[23]See Ian Hacking, *Rewriting the Soul: Multiple Personality and the Sciences of Memory* (Princeton: Princeton University Press, 1995); Jonathan Crary, *Suspensions of Perception: Attention, Spectacle, and Modern Culture* (Cambridge: MIT Press, 1999); Alison Winter, "Screening Selves: Sciences of Memory and Identity on Film, 1930-1960," *History of Psychology* 7(4) (2004): 367-401.
[24]*Ward Baking Co. v. Potter-Wrightington Inc.*, 298 Fed. 398 (1924).
[25]See O'Malley, "Risk and Responsibility," 189-90 and Levi and Valverde, "Knowledge on Tap," 842.

insane and not morally responsible for his or her crimes. Despite American jurists' awareness of the irrational aspects of human consciousness, they continued to champion a vision of individual self-responsibility, coherency, and intentionality in arbitrating wills. A high threshold existed for determining an individual's legal insanity and loss of responsibility.[26] A different kind of logic operated when the issue of legal insanity was not at stake though the problem of setting the limits for personal responsibility were. No one questioned the sanity of the unwary purchaser; they were supposed to be individuals possessing ordinary mental capability and sensibilities. These laws were geared towards non-pathological persons and forms of consumption.[27] Rather the issue was whether the ordinary purchaser had the opportunity to exercise their good judgment and whether the difference between products were sufficient to be detectable to a person with average observational abilities.

Petitioners did not have to provide actual customers to testify that they had been actually deceived by the imitator. While reaffirming their own abilities to detect visual deceptions, judges downplayed the role of consumer testimony in these cases. Rather, the application of the law centered on how the judge determined the probability that a customer may be deceived; even when the testimony of deceived purchasers was available the courts did not place great weight upon it. For example, in *McCann v. Anthony* (1886), a case where the plaintiff could provide two customers who swore they had been deceived by the competitor's similar packaging, the court did not find their testimony to be evidence of critical importance. Instead, Justice Thompson relied upon his own judgment to observe the competitors' labels to determine whether it was probable that the purchasing public would be

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[26]See Rosenberg, *Trial of the Assassin Guiteau* and Susanne Blumenthal, "Law and the Modern Mind: The Problem of Consciousness in American Legal Culture, 1800-1930" (PhD diss., Yale University, 2001).
[27]See *Hilson Co. v. Foster*, 80 Fed 896 (1897).

misled.[28] In such cases, the judges held that in all probability the competitor could provide alternative testimony. Similarly in *Britton v. White Manufacturing* (1894), a case dealing with the design of lamps, the Connecticut judge dismissed the evidence of designers arguing that their expertise was irrelevant since it was in the production of the goods and not in how the ordinary purchaser was likely to perceive them.[29] In the place of eyewitness accounts, judges substituted their own evaluation of the brands and marks to determine whether deception was likely to occur. In the space of the courtroom, the judge had the ability to carefully assess both the similarities between goods, a luxury not available in the marketplace.

Though sane, the legal purchaser-subject could be inattentive, frivolous, lacking good memory, and at the mercy of the retailer. These psychological qualities made the purchaser vulnerable to the frauds and deceptions of the marketplace. In order to protect the legitimate trader's income, the court could not assert purchasers' full responsibility for their actions. In this sense, these decisions are a more extreme version of the selfhood embodied in Progressive Era law. The prevalence of railroad and streetcar related injuries during these years led to a fundamental rethinking of the key concepts of liberalism. Rather than asserting the autonomy and self-responsibility of the nineteenth-century male citizen, the vulnerable female became the norm for legal subjectivity. Similarly, municipal courts sought to socialize justice by emphasizing the shared responsibility for crime due to the biological and social circumstances beyond the offender's control.[30]

To understand why judges downplayed personal responsibility in these cases requires us to understand how they conceptualized the effects of the marketplace on the human mind.

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[28]McCann v Anthony, 21 Mo. App. 83 (1886).
[29]*Britton v. White Manufacturing* 61 Fed 93 (1894).
[30]See Welke, *Recasting American Liberty* and Willrich, *City of Courts*.

Consumption is a practice that was usually gendered female and certainly many of the commodities at the heart of these cases would affirm this reading: female apparel, food, and other household goods. While the gender politics of consumption is a telling aspect, it cannot account for the doctrine of the unwary purchaser as a whole. If anything, within the language of these opinions the purchaser lacked a specific gender and was intended to encompass both. Consumption as a form of behavior and advertising as a mode of communication were understood by judges as drawing out the irrational and uncontrollable aspects in all individuals, of eroding the will. Below the surface of the autonomous, self-controlled, liberal self brewed passions and a potential for deception that the commercial world drew out. Such a view of consumption would become increasingly institutionalized in the early twentieth century. Despite the attempts to incorporate advertising and branding into the technocratic social order of the Progressive Era, consumption remained tied to concerns about the psychological capacities of the incautious masses. Cases centering on the unwary purchaser drew out the psychological implications of consumption before Walter Dill Scott and James Watson offered the resources of the new science to the advertising industry. During 1910s and 1920s, these advertising professionals sought to deploy their expertise in human emotions and desire to maximize the effectiveness of advertising campaigns.[31] Although the advertising trade made the shift from an appeal to consumer rationality to emotional associations of purchasing during the 1920s, the question of consumer psychology became a legal concern before it became an industry technique.[32]

According to the law, the purchaser's psychology was a collection of contradictions mixing deeply etched impressions with a fickle inattention and a susceptibility that led to an

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[31]See K. W. Buckley, "The Selling of a Psychologist: John Broadus Watson and the Application of Behavioral Techniques to Advertising," *Journal of History of the Behavioral Sciences* 18 (1982): 207-21.
[32]See Merle Curti, "The Changing Concept of 'Human Nature' in the Literature of American Advertising," *Business History Review* 41(4) (1967): 335-357; Marchand, *Advertising the American Dream*, 66-9; Lears, *Fables of Abundance*, 196-234; Brown, *Corporate Eye,* 164-168.

attraction to the mere surface appearance of things. The habitual exposure to visual images, in the form of a particular brand's distinct markings, left a deeply ingrained impression on the individual psyche, like a seal pushed into hot wax. As the judge noted in *Coca-Cola Co. v. Carlisle Bottling Works* (1929): "Its trade-mark has been burnt into the consciousness of people generally. Instinctively one recalls in memory its appearance and sound."[33] Despite the power of these impressions, the purchaser could not be relied upon to distinguish slight differences in appearance. Purchasing was an activity with a rapid pace that did not permit the subject to sustain its attention. The ordinary purchaser was an individual whose good judgment could be overwhelmed by the mere presence of a "dominating word".[34] The ordinary purchaser was seen as lacking the common sense, lived experience, or accrued knowledge that would help it navigate the deceptive terrain of the marketplace. That these characteristics were the qualities that the judges drew upon in crafting their decisions only highlighted the gulf between their perception of consumer behavior and their own self-understanding. For within the space of the court, the judge could carefully assess not only the similarity between the two brands but also the question of the consumer's psychology.

This common sense understanding of the consuming subject had a specific function within these laws. By positing the unwary, careless consumer as the legal norm, jurists could bracket off the questions about the dynamic nature of mental processes and variations among observers. This allowed them to focus exclusively on the visual and auditory similarities among commercial packaging, labeling, and branding. Lawmakers invoked the ordinary purchasers with its assumed mental capabilities precisely in order to cut off empirical investigations involving differences in perception and psychological ability among consumers. The purchasers of these decisions were lacking in social distinction such as

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[33] *Coca-Cola Co. v. Carlisle Bottling Works,* 43 Fed 2d 101 (1929).
[34] *Queen Manufacturing Co. v Isaac Ginsberg and Brothers* 25 Fed 2d 284 (1928).

gender, class or race. Their behavior was presumed rather than introduced as a form of evidence and testimony from deceived customers was rare.

This bracketing off of actual consumers fitted with the primary aim of these legal decisions. Their goal was not really the protection of the consuming public from fraudulent merchandize or harmful commodities but rather to secure the profitable trade of legitimate businessman. In *Williams v. Brooks* (1882), the judge made this principle explicit: "this proceeding is not primarily to protect the consumer but to secure to the plaintiffs the profit to be derived from sale of hair-pins of their manufacture to all who may desire and intend to purchase them. It is a matter of common knowledge that many persons are in a greater or less degree careless and unwary in the matter of purchasing articles for their own use."[35] Because common knowledge dictated that the ordinary purchaser was careless, it was necessary for the state to police imitators to protect the profits of honest businessman.

Legal observers soon noted that judges failed to adhere to a standard measure when contemplating the psychological make-up of the ordinary purchaser. Where one judge may see the conditions necessary to induce deception among an average assortment of individuals another may not.[36] In terms of labels and packaging, surely objectively determined points of visual similarity could be mapped out and infringement determined based on the number of points of resemblance? By and large, judges were skeptical that any such universal standard to be mechanically applied in every case could ever be established. In *McLean v. Fleming*, the case whose precedent did much to shape later decisions, the justices made the inability to arrive at an objective, universally applicable standard explicit: "What degree of resemblance is necessary to constitute an infringement is incapable of exact definition, as applicable to all

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[35]*Williams v. Brooks,* 50 Conn. 278 (1882). On the trader's right to the business of incautious purchasers, see *Colman v. Crump*, 70 NY 573 (1877) and *Battle v. Finlay,* 45 Fed 796 (1891).
[36]Bernard C. Steiner, "The Ordinary and the Ultimate Purchaser," *Yale Law Journal* 16 (1907): 112-125.

cases. All that courts of justice can do, in that regard, is to say that no trader can adopt a trade-mark, so resembling that of another trader, as that ordinary purchasers, buying with ordinary caution, are likely to be misled."[37] Common sense knowledge about the behavior and cognitive abilities of the average consumer as determined by judges on a case-by-case basis was seen as the more desirable and feasible alternative to a systemically applicable standard.

These decisions stand in contrast to the dominant narrative about the emergence of objectivity in modern society. Science studies scholars have stressed the social power of such tools as quantification, standardization, and precision in negotiating trust and certainty among heterogeneous actors. Despite the attempts by certain lawyers and psychologists to produce a standard for deception informed by experimental psychology, a more precise definition of the ordinary purchaser's attention or memory was never achieved. Instead with the expanding police powers of the state during the Progressive Era, the common sense knowledge about consumption became institutionalized within a government bureaucracy. This is a notable development since bureaucratic experts in a democratic society during a period of high political contention are precisely the kinds of individuals one would expect to adopt the more technical standard.[38]

While the legal assemblage of consumer subjectivity as the unwary purchaser prone to deception was first articulated in tort cases, it soon became enrolled in the police powers of the state. Initially traders took advantage of the space within tort law that permitted them to seek relief from imitators whose acts, although wrong, were not criminal. By the 1880s, all levels of government began to exercise their police powers in the name of preventing fraud and deception against their subject population. The notion of an easily deceived

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[37]*McLean v. Fleming,* 96 U.S. 245 (1877).
[38]See Porter, *Trust in Numbers*, 89-93.

purchasing public functioned well within a network of legal regulation that stressed the state's role as patriarch over its citizens. When the federal government bureaucratized its police power to prevent fraud and deception in the commercial sphere in the form of the Federal Trade Commission starting in 1915, the 'ordinary purchaser' was a concept used to defend this exercise of power.

While much legal scholarship has focused on the liberal rule of law tradition in America, a host of recent scholarship has highlighted the persistence of the traditional police powers in American governance. Although rooted in ancient patriarchal authority, these powers in fact proliferated in the postbellum era. Federal, state, and municipal governments passed a plethora of statues constraining or prohibiting a variety of objects, practices, and behaviors in the name of the common good. The nature of these police powers is paradoxical: promoting social welfare in the name of the common good on the one hand while enforcing coercive state power against individuals on the other. These traditional, common law powers provided the legal basis for the progressive, regulatory state of the early twentieth century.[39]

By the late nineteenth-century, both state and federal governments were engaged in the regulation of trade within their boundaries. One commercial object that became a repeated target of governmental prohibition was the animal fat derived butter substitute, oleomargarine. Commercial dairy interests were alarmed that consumers were opting for the chemical substitute for their product. In response, numerous states passed legislation in the 1880s either forbidding the import and sale of margarine within their boundaries or heavily taxing the product. States justified this action on the grounds that they were benevolently

[39]Ernst Freund, *The Police Power: Public Policy and Constitutional Rights* (Chicago: Callahan, 1904); Christopher Tomlins, *Law, Labor, and Ideology in the Early Republic* (New York: Cambridge University Press, 1993), 19-59; William Novak, *The People's Republic: Law and Regulation in Nineteenth Century America* (Chapel Hill: University of North Carolina Press, 1996); Markus Dirk Dubber, *The Police Power: Patriarchy and the Foundations of American Government* (New York: Columbia University Press, 2005).

and paternalistically protecting their citizens from the health risks of this potentially dangerous product. Initially, legislators emphasized their role in ensuring public health rather than the less secure claim of preventing fraud and deception. This was found to be a legitimate exercise of a state's police power in *Powell v. Pennsylvania* (1888) where the Supreme Court found that an 1885 statute did not interfere with the liberties guaranteed under the Fourteenth Amendment.[40]

By the time of *Plumey v. Massachusetts* (1894), the style of argument used by the Supreme Court to endorse the state's policing of margarine had subtly shifted. As it became increasingly difficult to justify the prohibition of margarine on strictly medical grounds, legal thinking stressed the potential deception that the commodity could produce in the purchasing public. Attention was drawn to the very color of the substance and the ways in which it was labeled and marketed. Justice Harlan explicitly cited the specter of the "unwary purchaser," now familiar from trademark infringement cases. "[T]he real object of coloring oleomargarine so as to make it look like genuine butter is that it may appear to be what it is not, and thus induce unwary purchasers, who do not closely scrutinize the label upon the package in which it is contained, to buy it as and for butter produced from unadulterated milk or cream from such milk." As Harlan noted in his opinion, the novelty that the case presented to the court was whether the state's police powers included the protection of the public against deception and fraud in the sale of commercial goods, specifically food products. With two justices dissenting, the court affirmed such a power.[41]

With the increasing purview of these powers, this common law tradition became institutionalized in permanent government bureaus like the Interstate Commerce Commission

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[40]*Powell v. Pennsylvania*, 127 US 678 (1888). On the Congressional aspect of the butter wars, see James Harvey Young, "This Greasy Counterfeit: Butter versus Oleomargarine in the U.S. Congress, 1886," *Bulletin of the History of Medicine* 53(3) (1979): 392-414.

[41]*Plumley v. Massachusetts*, 155 US 461 (1894). For a discussion of the police power to prevent fraud and deception, Freund, *Police Power*, 260-284.

and the Federal Trade Commission. Although their power was initially contested in a number of court challenges, these bureaucratic agencies were soon recognized as having proper authority. Instead of the federal government having to constantly pass legislation to prohibit certain practices or goods, the Federal Trade Commission existed as a standing body to monitor interstate commerce. The Commission's cases most frequently centered on goods directed at the consumer rather than within industry. These individuals were not expected to have an expert's knowledge about the products they purchased nor have the time or attention to give the products close inspection. The federal court outlined the power and knowledge to be deployed by the Commission in its policing deceptive or fraudulent commercial activities when the Sears, Roebuck Company challenged its authority in 1919. There the court held that:

> The Commissioners are not required to aver and prove that any competitor has been damaged or that any purchaser has been deceived. The Commissioners, representing the Government as parens patriae, are to exercise their common sense, as informed by their knowledge of the general idea of unfair trade at common law, and stop all those trade practices that have a capacity or tendency to injure competitors directly or through deception of purchasers.[42]

Like its nineteenth-century predecessors, the Commission's authority derived from the state's role as patriarch over its citizenry. Without an explicit standard for what constituted "unfair trade" in the Act that created the FTC, these agents of the state were to deploy their 'common sense' in detecting and policing deceptive and fraudulent commerce.

Despite its bureaucratic structure, the role of subjective human judgments in the determination of fraud persisted into the era of the Commission. For example, in *FTC v. William H. Plunkett* (1920), commercial fraud was defined as a situation "where a person misrepresents and by such representations induces another to purchase something or

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[42]*Sears, Roebuck, Co. v. FTC*, 258 Fed 307 (1919).

negotiate a transaction which does not come up to the representation."[43] There are no external standards to determine whether a fraud has occurred but rather its definition is contingent upon the perceptions and beliefs of those involved in the commercial transaction. Such a view was upheld as the Commission standardized its "types of unfair competition": the deception in misleading advertisements was based on the likely impression made in the mind of the consumer.[44]

Furthermore, the concept of the 'ordinary purchaser' was explicitly used in a test case wherein the Commission explored the scope of its police powers. In 1927, they issued a cease and desist order against Indiana Quarter Oak Company prohibiting them from using terms such as 'mahogany' or 'Philippine mahogany' to describe non-imported wood. When the company challenged the order and the case was heard in federal court, the deciding opinion drew upon the same logic as earlier tort cases. In interpreting the meaning of unfair competition in section 5 of the act, the judge argued that it was not necessary for the Commission to prove intent. Rather unfair competition occurred when "the natural and probable result of the use by the petitioner of such woods was deceptive to the ordinary purchaser and made him purchase that which he did not intend to buy."[45] Once again the purchaser is constituted as an individual without proper knowledge forced to act against to his own volition.

With the creation of agencies to regularly police the practices of commercial deception like the FTC, a particular configuration of the deceptive self became institutionalized in the nascent regulatory state. This bureaucratization did not result in the

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[43]"Brief of the Attorneys for the Commission," pg. 11 in *FTC v. William H. Plunkett (trading as Plunkett Chemical Co.)* (28 February 1920), Docket # 572. National Archives and Records Administration, RC 122, Box 262.

[44]See *Annual Report of the Federal Trade Commission for the Fiscal Year Ended June 30 1931* (Washington: United States Government Printing Office, 1931), 66-69.

[45]See *Annual Report of the Federal Trade Commission for the Fiscal Year Ended June 30 1928* (Washington: United States Government Printing Office, 1928), 63

standardization of the concept in any meaningful way. Where previously judges were asked to determine for themselves whether the deception of the purchasing public was a probability on a case-by-case basis, a similar kind of judgment was transferred onto the officials of the Federal Trade Commission. The language of the Act concerning what constituted 'unfair trade practices' was vague and became defined largely through a series of cases and court challenges. This was not the only possibility available at the time. Just as the notion of the unwary purchaser became institutionalized, a series of advocates challenged the utility and empirical basis of the concept from the perspective of experimental psychology.

It was legal scholars who first highlighted the contradictions within the common law assemblage of the purchasing subject. Edward S. Rogers, a Chicago-based lawyer specializing in copyright and trademark cases, wrote a series of articles discussing the law of infringement in the first two decades of the twentieth-century. As the series progressed, Rogers's approach shifted from an analysis of formal legal doctrine towards greater attention to the findings and application of the new psychological sciences. Like many of his contemporaries in the Progressive Era, Rogers saw in the human sciences the potential salvation of an ineffectual political institution, here the law concerning deception and trade. He recognized that the legal arbitration of unfair business competition had taken on a distinctly psychological quality without the authorities responsible for it looking to the knowledge produced by the human sciences.[46]

Prior to the creation of the Federal Trade Commission, Rogers criticized the basis of much unfair competition law. His critique centered on the figure of the unwary purchaser that played such an important role in deciding Gilded Age cases and revolved around issues

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[46]See Edward S. Rogers, "Comments on the Modern Law of Unfair Trade," *Illinois Law Review* 3(9) (1909): 551-564 and Rogers, "The Unwary Purchaser: A Study in the Psychology of Trade-Mark Infringement," *Michigan Law Review* 8 (1910): 613-22.

of accuracy and standardization. On the one hand, he argued these decisions did not take into consideration variations among the consuming subjects in terms of their intelligence, education, age, or station in life. At the same time, the application of the law in these decisions lacked standards, as certain judges would attribute different mental qualities to the consumer. The courts simply assumed rather than investigated the psychological processes at work during act of purchasing a good. Furthermore, certain judges had the tendency to read their own ability to detect imitations in the courtroom onto the purchaser, giving them a greater care and power to discriminate among goods. The result was an uneven application of the law. In contrast to the court system that presumed to know the nature of human mentality capacities, for Rogers, applied psychology had accrued considerable evidence about the mental performance of ordinary people. Frustrated with a lack of experimental data specific to the topic, Rogers wrote to the applied psychologist, Hugo Münsterberg.[47]

The choice was not accidental: Münsterberg had just published his *On the Witness Stand* (1908), his collection of essays applying psychological techniques to legal situations.[48] As discussed in the previous chapter, Münsterberg was a controversial advocate of using experimental psychology to address pressing political questions.[49] Inspired by Rogers, Münsterberg began a series of experiments designed to pinpoint the likelihood of an ordinary purchaser being deceived by two similar commercial products.[50] He argued that the law concerning the deception of consumers lacked a precise measure for determining "the exact point at which the similarity becomes legally unallowable." In Münsterberg's formulation,

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[47]Rogers, "Unwary Purchaser," 621-22. For the draft of this article sent to Münsterberg, see "The Unwary Purchaser," Hugo Münsterberg Papers, Mss Acc 2444, Boston Public Library.
[48]Münsterberg, *On the Witness Stand: Essays on Psychology and Crime* (1908; New York: Clark Boardman Co., 1925).
[49]See also Matthew Hale, Jr., *Human Science and Social Order: Hugo Münsterberg and the Origins of Applied Psychology* (Philadelphia: Temple University Press, 1980); Frank J. Landy, "Hugo Münsterberg: Victim or Visionary?" *Journal of Applied Psychology* 77(6) (1992): 787-802; Jutta and Lothar Spillman, "The Rise and Fall of Hugo Münsterberg," *Journal of the History of the Behavioral Sciences* 29(4) (1993): 322-338.
[50]Münsterberg, "Psychology and the Market," *McClure's Magazine* 34(1) (November 1909): 87-93.

the law's 'common sense' understanding of the self became mere 'general conceptions' without basis in empirical reality. Furthermore, the adversarial nature of the legal system, with its various contestations over the interpretation of the law, was seen as mere "endless difficulties."[51]

In contrast to the common sense psychology practiced by judges, both Rogers and Münsterberg turned to laboratory-based experiments as an alternative source of knowledge in cases involving questions of deceptive imitation. The goal of these tests was to determine the 'average' person's observational abilities and to assess which styles of imitations in particular would be most likely to confuse the eye or deceive the ear. The goal was the reproduce the kinds of behavior and cognitive processes that took place during purchasing in a laboratory setting so that they could be isolated, mapped, and measured. Within the laboratory the muddled practices of the marketplace and the courtroom could be cleansed and purified.

The experiment that Münsterberg carried out concerning deception and purchasing required that the experimental subject detect the subtle differences in various pictures. Münsterberg opted to use actual commercial goods in this test and used mass produced postcards as his key tool. The experimental subject was asked whether they could perceive the variations and differences in images viewed and recalled over a short period of time. Initially, the subject was exposed to two sets of six postcards, each viewed one at a time for five seconds through a shutter. The second set of postcards would be identical to the first except for a variation in detail in one of the card's images. For example, the picture of one church may be substituted for another or one photograph would picture a vase while its substitute would have a vase with flowers. Under this arrangement, a number of factors

[51]Münsterberg, "Experiments with Reference to Illegal Imitation," *Psychology and Industrial Efficiency* (1913; New York: Arno Press, 1973), 283.

could be manipulated to probe the threshold of deception within the research population. The exposure time to the image could be reduced to two seconds, the interval between viewing the two sets of postcards could be increased, or the differences between the two images could be altered. Through the manipulation of these factors, Münsterberg held that the psychology laboratory could serve as the site for establishing a standard for litigation based on the percentage of subjects deceived under these conditions. Psychologists could precisely measure the degrees of similarity beyond which the experimentally produced and statistically refined average observer would not be able to perceive the difference.[52]

Although it does not appear that Münsterberg ever testified as an expert witness in these kinds of cases, in 1915, while preparing a brief on behalf the Coca-Cola Company, Rogers approached another researcher to perform a series of tests that would illuminate the psychological processes of the ordinary purchaser. He acquired the services of Richard H. Paynter, Jr., an assistant at the Applied Psychology laboratory at Columbia University. Rogers requested that Paynter introduce no innovations into these experiments insisting on commonplace psychological tests that were uncontroversial within the discipline. In doing so Rogers hoped to use scientific standards and authority to bolster his claim that a competitor's trademark, Chero-Cola, infringed upon his client's brand.[53] Paynter suggested two classes of experiments that would elucidate the memory, attention, and cognition of the average observers. Both investigated the process of name recognition, one focusing on sight and the other on sound.[54]

These experiments sought to transport the mind of the purchaser from the chaotic world of the marketplace into the controllable space of the laboratory. There, aspects of the

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[52]Münsterberg, "Experiments with Reference to Illegal Imitation," 286-290.
[53]Rogers, "An Account of Some Psychological Experiments on the Subject of Trade-Mark Infringement," *Michigan Law Review* 18(2) (1919): 75-103.
[54]Richard H. Paynter, "A Psychological Investigation of the Likelihood of Confusion between the Words 'Coca-Cola' and 'Chero-Cola,'" *Journal of Applied Psychology* 3 (1919): 329-351.

mental process could be isolated, repeated, and quantified to produce the aggregate behavior of an average human subject. While direct testimony that actual customers had been deceived by the 'Chero-Cola' brand may be deemed insufficient proof, here the experimental scientist could provide empirical evidence about the probability of how an average individual would behave. Rather than remaining dependent on common sense, a judge could take into account the quantified data in charts demonstrating how actual persons had responded in a controlled situation. This control over variables came at the cost of having the research subject perform in situations that, although analogous to the world of consumption, were nevertheless distinct from it. The psychologist could simulate certain experiences but the laboratory was a different environment from the department store or the soda fountain. To isolate, purify, and quantify the discrete mental processes involved in purchasing meant abstracting them the commercial environments in which they usually took place.

In the first set of experiments, Raynter sought to quantify the 'visual recognitive confusion' generated by the two names 'Coco-Cola' and 'Chero-Cola.' The subject was shown twenty slips of paper for one second per slip and on each sheet a different trademark name was typewritten in the same unadorned, black script. Fifteen seconds after viewing the final slip of paper, the subject was given a stack of forty slips of paper with twenty additional trademark names written. The subject was asked to identify which names that had seen during the first phase of the experiment and their relative certainty in this decision. During the second phase of the experiment, the word 'Chero-Cola' replaced 'Coca-Cola.' Of the forty people tested, eleven or twenty-eight percent confused the two brand names. Furthermore nine of those subjects said they were certain in their identification.[55]

[55]Rogers, "Account of Some Psychological Experiments," 78-82.

In a second experiment twenty-five new research subjects were given basically the same test but now the name of the commodity was included on the slip of paper. Therefore the paper read: 'Coco-Cola Soft Drink' and 'Chero-Cola Soft Drink.' Once again, the experimental subject was given a second to view the original slips of paper and was asked to identify those sheets that had just seen from a pile of names. In this instance, the rate of confusion or deception was even greater with seventeen out of twenty five people incorrectly identifying 'Chero-Cola Soft Drink' as 'Coca-Cola Soft Drink.' The greater rate of deception was attributed to a combination of a long phrase to be read in the same amount of time and the fact that observers tend to associate certain trade names with specific commodities. Despite the greater rate of confusion, the vast majority of observers remained confident in their incorrect identification.[56]

The final visual recognition test placed the Coco-Cola/Chero-Cola pair into a set of nine other pairs of trade names that had been subjected to infringement litigation in the past. The goal of this experiment was to rank the confusion generated in the cola case along a scale of similarly confusing names. Like the subsequent experiment, this test was designed with the impending legal arbitration in mind. Among the competing trade names used in the experiment were examples of both instances where infringement and non-infringement had been determined by the courts. This would allow Rogers to explicitly rank the deception in this instance among cases known to the judge. Paynter found that the Coca-Cola/Chero-Cola pair ranked fourth in terms of the confusion generated among the experimental observers. Furthermore, as many subjects found certain trade names that had not been determined to be

[56]Rogers, "Account of Some Psychological Experiments," 82-3.

infringing more confusing than those that did, this experiment presented a not so implicit critique of the legal decision-making process commonly used in these cases.[57]

In the final series of experiments, Paynter shifted his attention away from the purchasers' visual observations and examined their auditory perceptions. The new set of experimental subjects were given the same list of competing trademarks from the previous test but this time only in auditory form. The subject was asked to rank the pairs in terms of the difficulty they experienced in terms of distinguishing one name from the other. The results of this experiment would provide a scale for the deceptive comparisons generated out of the aggregate of numerous individual's performances. This final test served a number of functions. By testing another of the human senses, one could get a clearer understanding of the confusion involved in the act of purchasing. Was it merely the eye that was deceived by the resemblance or would the ear prove to be as prone to error? If confusion were generated simply by the sound of the trade names, it would serve as an independent confirmation of the results in the earlier portion of the investigation. Secondly, since the product in question was a soft drink, frequently the customer would verbally order it at a soda fountain without ever seeing or referencing its packaging. In these instances, the consumer was entirely reliant on the auditory sense in detecting deception. Finally, the mental processes involved in this experiment closely paralleled what was asked of judges in arbitrating these trade disputes. The key difference was that instead of relying upon the perspective of a single or a few judges, this experiment, through the repetition of the process, offered to eliminate the bias of individual judgment with a statistical aggregate.[58]

When Rogers came to introduce this psychological evidence as testimony, the judge accepted the results as part of the record but did not give them great weight. Once again on

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[57]Rogers, "Account of Some Psychological Experiments," 83-4.
[58]Rogers, "Account of Some Psychological Experiments," 91-2.

appeal, the judge decided in favor of Coca-Cola but did not embrace Paynter's findings. Judge Smyth noted, "we are invited to listen to the teaching of psychology on the subject. None the less the question in dispute is a simple one, and the principles by which its solution may be reached have been often declared and applied by this court." The judge favored the common law tradition and its knowledge in making his ruling rather than the innovation provided by the psychological sciences.[59]

The aim of these proposed reforms was not to replace the law with psychology but rather to introduce a 'scientific' scale into legal proceedings. As Münsterberg originally suggested, determining what degree of similarity constituted a commercial deception remained what he perceived as a social convention and therefore within the realm of legal decision-making. In Münsterberg's opinion psychology could provide an objective scale grounded in experimental evidence of the varying degrees of similarity that the ordinary observer could detect. This scale would serve as a map of the human mind's ability to process information and notice differences in visual stimuli. With this scale in place, jurists could then decide on what point on the scale represented the moment when deception occurred.[60]

When American lawmakers eventually turned towards measurements for determining when an advertisement was deceptive, they were not psychological ones. The Wheeler-Lea Act (1938) that expanded the FTC's powers to discipline commercial deception in the name of consumer protection, largely abandoned the purchaser's mind as a legitimate site of governance. This was replaced with an increased emphasis on defining commercial deception in terms of falsifiable claims made in labeling or advertisements. At issue were the merchant's material assertions about their products, not the consumer's impressions. Such a

[59]*Coca-Cola Co. v. Chero-Cola Co.*, 273 Fed 755 (1921).
[60]Münsterberg, "Experiments with Reference to Illegal Imitation," 286.

shift in focus was seen as easier to administer, as the style of governance grounded in the psychology of the supposedly ordinary purchaser had always been controversial.[61]

From the 1870s through the 1920s, a psychological understanding of how the mind of the purchaser functioned lay at the center of a key area where the law intervened in the economy. Historians studying the import of psychology in the new commercial economy have stressed the science's contributions to encouraging new forms of consumption. Whether representing the advertising industry's project of manipulating consumer desire or expressing a therapeutic ethos satiated through the purchasing of goods, psychology has been understood as the tool of mass consumption.[62] The unwary purchaser offers an alternative perspective on the relationship between psychology and modern consumerism. Rather than serving simply as a means to unleash wanton consumer desire, psychological knowledge was used to constrain and shape the contours of the commercial economy. Trademark infringement and other forms of deceptive advertising were regulated through a bio-political strategy grounded in the psychology of the supposedly ordinary purchaser. No other concept better illuminates how deception was produced at the juncture of the law and psychology in order to regulate the marketplace. Although the expertise of the practicing psychologist was only occasionally, and invariably unsuccessfully, called upon in such cases, the qualities attributed to the ordinary purchaser's mind served as the foundation through which the state helped constitute an ethically sanctioned and efficiently run economy. The ethical imperative to be honest was transformed into a technique that legitimated and secured the business of certain enterprises while denying others. Despite the eventual eclipse of the

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[61]See *Annual Report of the Federal Trade Commission for the Fiscal Year Ended June 30 1938* (Washington: United States Government Printing Office, 1938), 2-4 and C. H. Sandage, *Advertising: Theory and Practice* (1936; Chicago: Richard D. Irwin, 1945), 47-48.

[62]In addition to the histories of advertising already cited, see T. J. Jackson Lears, *No Place of Grace: Antimodernism and the Transformation of American Culture, 1880-1920* (NY: Pantheon, 1981), 54-56.

psychological moment in the policing of American commerce, in the years that it flourished, it helped form the corporate economy.

In spite of the lack of success of explicit testimony from experimental psychologists, the unwary purchaser forces a rethinking of the relationship between objectivity and subjectivity in both the sciences and governance. Before the expert's trained subjectivity became valorized as an epistemological standpoint of mid-twentieth-century natural sciences, judgment had held an important place on the borderlands of science, embraced as a technology of governance.[63] The experimentalist's laboratory epistemology of precision did not colonize or assimilate other modes of knowing. The law's epistemology of common knowledge was a powerful tradition of conceptualizing the human self that withstood the challenge of experimental psychologists. The same period can sustain a number of heterogeneous epistemic regimes in a complex assemblage. The common law tradition and its conception of subjectivity are not archaic vestiges in a scientific world but rather a canon that was reaffirmed and expanded to meet new circumstances. The psychologist's expert judgment was being honed simultaneously in other areas of Progressive governance to address the question of human deception. Rather than focusing on the deception induced within the mind of the consumer, these psychologists worked to make the very act of lying more legible. These psychologists advanced a series of tools and techniques that grafted deceptive behavior onto dynamic mental and bodily processes. Operating in concert with political reformers on the problem of urban crime, the shadow of the marketplace and its imperatives were never far from sight.

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[63]On judgment emerging as a mid-century scientific ideal, see Galison, "Judgment against Objectivity."

Chapter 5:
Policing the Deceptive Self: Emotion, Observation, and the Crafting of Forensic Knowledge for the Progressive American City

One of the most bizarre tricksters of late nineteenth-century Chicago was the teenaged Rose Wallace. She briefly captured the public's attention in January 1899 with her strange tale of youthful marriage, mysterious inheritance, kidnapping, and false identities that began when the supposed "country maiden" arrived in Chicago accompanied by a street showman. Wallace was previously engaged to serve as a performer at the local museum but soon tired of this arrangement and sought to return to her home in Indiana. While awaiting the train, she gained the confidence of a Frenchman named George Gagne, a resident of the city's levee district and a former bondsman. Wallace convinced the itinerant laborer that she had an enormous fortune from her parents' estate awaiting her back in Indiana when she turned eighteen. Gagne, an operator on the margins of the economy and described as "a sport and always looking for the best of a good thing," saw plenty of opportunity in the young woman.[1] Soon after meeting, the two were married by a justice of the peace and set out for Evansville, Indiana.

Although initially it seemed that the young woman did possess a fortune, the situation soon turned strange. On arriving in Indiana, Gagne visited with an attorney named Horne who claimed to be the custodian of the woman's property. It appeared that it consisted of at least seven thousand dollars in the bank and an additional fourteen thousand dollars worth of diamonds. Having made arrangements to have the funds forwarded, the couple returned to Chicago and put themselves up in an apartment near the train depot. Soon afterwards the woman's sixteen-year-old sister, Gertrude, whom it should be remembered Gagne had never

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[1]Clifton R. Wooldridge, "Mystery of Rose Wallace," in his *Hands Up! In the World of Crime* (Chicago: Police Publishing Co., 1901), 111-120, 111.

met, was supposed to deliver the diamonds to the couple. One day in mid-January, while Gagne was at the post office, Rose slipped out of their apartment and bought herself the short skirts of a girl and a long brown wig. Setting herself up in a hotel, she changed her costume, and completed the transformation by asking the hotel clerk to procure for her some face powder to alter her complexion. She then went to the train depot and assumed the identity of her 'sister' Gertrude. The sobbing young woman soon attracted people's attention and she explained that she had recently arrived and was awaiting her sister and new brother-in-law. The lost juvenile was taken into police custody with the hopes of reconnecting her with her family. Meanwhile Gagne returned to the apartment to find his wife missing, at which point he headed to the police station to ask for assistance. The police greeted his story with incredulity. They suspected Gagne, a man they deemed to be of dubious moral character, of harming his adolescent bride.[2]

Although initially deceived, the police eventually realized that the young woman from the train depot was Gagne's wife. During an interview, he described a caste on one of his wife's eyes and a detective recalled that the young girl had a similar feature. It seemed inconceivable that the two sisters would have such an unlikely distinguishing mark in common. Initially 'Gertrude' denied that she was Gagne's wife; she then admitted it, but insisted that her sister was dead and that Gagne had mistreated her, tales that dissolved in turn. As reporters and the police investigated further, they could trace no Wallace family, nor any lawyer named Horne in Evansville; there was no inheritance to be claimed. Despite speculation that Wallace was in fact an established thirty-year-old confidence woman who played the part of the young would-be bride to fleece men, her premature, incompetent

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[2]"Missing Woman Puzzles Police," Chicago *Daily Tribune* January 18, 1899, pg. 2.

execution seemed to dispel such a theory.[3] Despite the winning of a few dollars spent on playing the Gertrude charade, Rose Wallace seemed to have made no money from her performances, making her motivation the lasting mystery of the case. What was a swindle without the financial pay off in the end?

One of the officers involved with the case was Clifton Wooldridge, a famed local detective whose career combined self-aggrandizement with a deeply moralistic worldview. On the frontispiece to his memoirs he describes himself as the "Incorruptible Sherlock Holmes of America." He compared his police work against crime and corruption to the church's war against the Devil, highlighting his moral rectitude. Referring to himself, as he was prone to do, in the third person, he proclaimed: "Wooldridge does not know the meaning of a lie. A lie is something so foreign to his nature that he has trouble in comprehending how others can see profit in falsifying."[4] Such a statement was telling; throughout his accounts of cracking down on urban crime, the psychological nature of deception - its ontology - eluded him.

Certainly Wooldridge could never comprehend Rose Wallace's deceptive exploits. When he wrote up the case in an early collection of his adventures, Wooldridge noted that although he had succeeded in determining the young woman's identity, her motivation remained a mystery. He suggested that the adolescent was spurred on not by criminal profit but primarily by a "spirit of adventure and in a mad desire for notoriety."[5] Such an explanation did not sit well with Wooldridge; he felt that he could not adequately explain why Wallace had told the stories about a fortune only to revoke them at a time that did not particularly profit her. When trying to explain her actions, Wallace's various tales were

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[3]Jack Doherty, "Gagne is the Real Victim," Chicago *Daily Tribune* January 19, 1899, pg. 4 and Wooldridge, "Mystery of Rose Wallace," 115-118.
[4]Clifton R. Wooldridge, *Twenty Years a Detective in the Wickedest City in the World* (Chicago: Clifton R. Wooldridge, 1908), 34.
[5]Wooldridge, "Mystery of Rose Wallace," 111.

inconsistent and could not be reconciled. Although convinced that the case revolved around some as yet undetected conspiracy, Wooldridge worried that he could not discern the financial motivation in the way it was executed. The American Sherlock Holmes could never unlock the psychological mystery behind Rose Wallace. While determining her physical identity had been accomplished relatively easily, Rose's interior mental states, the mechanisms that lead to her deceptive deviancy, were hidden from view.[6] What was it that made Rose lie? Was her deception a kind of pathology?

Had Rose's story unfolded two decades years later, she might well have found herself labeled a "pathological liar" or subjected to a lie detector examination. In the first third of the century, young women like Rose, were to become the quintessential subjects of a new ontology of deception wrought by the tools and techniques of clinical psychiatry transformed into a forensic science. This chapter explores the formation of a new kind of deceiving subject, gendered female, whose very lies were rendered legible in her body. For the situation in Wooldridge's Chicago would change dramatically during the first third of the next century as a host of psychological experts attempted to hone their craft to suit the needs of the judicial system.

With the creation of the Juvenile Psychopathic Laboratory linked to the Cook County court and Northwestern University's Scientific Crime Detection Laboratory, psychological approaches to policing became celebrated institutions in Chicago. Members of these organizations claimed to be able to open up the human subject in the name of detection, regulation, and therapeutics. These forensic identification sciences brought into being influential understandings of deception that resonated with both twentieth-century scientific practice and legal governance. Rather than a history of these institutions or technologies, my

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[6]Wooldridge, "Mystery of Rose Wallace," 118.

focus in this chapter remains on the historical ontology of deception rooted within their practice. To this end, I explore two distinct kinds of forensic knowledge about deception in the human sciences, one geared towards the normal, the other the pathological. The concept of pathological lying emerged out of early psychiatric examinations of juvenile delinquents at the Chicago area Juvenile Court conducted by William and Mary Healy. Pathological liars tended to be young women whose outward appearance suggested reliability but who in fact persisted in telling uncontrolled, non-beneficial deceptions. During these same years, the scientific study of normal lying arose when experimental psychologists offered their services to police agencies. These early investigations were eventually coalesced into the form of the machine known as the lie detector or polygraph.[7]

These forensic sciences of identification drew upon cultural ideas about human difference and inscribed such norms into their knowledge. Rather than focusing on how these human sciences represented ideas about racial or gender difference, I show how human difference was in fact integrated into their scientific practice. Gender norms, knowledge about sexuality, and female bodies themselves helped constitute forensic knowledge about deception in early twentieth-century America. Although there had certainly been some notorious swindling women whose proper outward appearance concealed their fraudulent intentions, the grafter was traditionally associated with manliness. In contrast, the pathological liar as a psychiatric kind was overwhelmingly identified with female delinquents. Similarly, most of the early, sensational cases that sought to authenticate the lie

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[7]Long neglected, the polygraph has recently received historical attention. Geoffrey Bunn analyzes the polygraph as a kind of semio-technique for the administration of justice through the signifying body. Ken Adler explores the various marketing strategies for the polygraph grounded in competing notions of objectivity and trust. Tal Golan sees the polygraph as the culmination of turn-of-the-century attempts by experimental psychologists to establish themselves as expert witnesses. See Geoffrey Bunn, "The Hazards of the Will to Truth: A History of the Lie Detector" (PhD dissertation, York University 1998); Ken Adler, "A Social History of Untruth: Lie Detection and Trust in Twentieth-Century America," *Representations* 80 (2002): 1-33; Tal Golan, *Laws of Men and Laws of Nature: The History of Scientific Expert Testimony in England and America* (Cambridge: Harvard University Press, 2004), 242-253.

detector as a forensic tool also deployed women as the test subjects. Because of its criminological application, the tests to validate the lie detector were ironically among the few psychological experiments where a non-educated, ethnically diverse population constituted the aggregate population of normal individuals. In this context, it was no accident that the court case that established the inadmissibility of the test featured an African American subject.

An examination of these techniques complicates an emerging historical consensus on the centrality of visual detection in the making of the pre-genetic, forensic sciences of identification, the policing of deceptive persons. A number of scholars have emphasized the continuity between nineteenth and twentieth century attempts to make deception more visible through the visual inspection of bodily traces. For example, Jennifer L. Mnookin and Michelle West write: "The premises behind the polygraph test, in this sense [searching for graphically represented bodily traces], are strikingly similar to premises behind police uses of photography in the nineteenth and early twentieth centuries." Mnookin and West are referring to the precedents like Thomas Byrnes famed photo-array in *Professional Criminals in America* (1886), the search for atavistic stigmata in the criminal anthropology of Cesare Lombroso, and Alphonse Bertillon's anthropometric classification system.[8]

Although bodily traces do help identity the criminal with the lie detector,there is a rupture. Where nineteenth-century visual techniques focused upon the identification of

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[8]Jennifer L. Mnookin and Michelle West, "Theatres of Proof: Visual Evidence and the Law in *Call Northside 777*," *Yale Journal of Law & Humanities* 13: 329-402, 360. On the rise of visual detection technologies, see Allan Sekula, "The Body and the Archive," *October* 39 (1986): 3-64. For related arguments about the continuity between nineteenth visual inspection and twentieth century forensic identification sciences, see Tom Gunning, "Tracing the Individual Body: Photography, Detectives, and Early Cinema," in Leo Charney and Vanessa Schwartz (eds.), *Cinema and the Invention of Modern Life* (Berkeley: University of California Press, 1995), 15-45; Ronald Thomas, *The Detective Novel and the Rise of Forensic Science* (Cambridge: Cambridge University Press, 1999); Simon Cole, *Suspect Identities: A History of Fingerprinting and Criminal Identifications* (Cambridge: Harvard University Press, 2001); Scott A. Sandage, *Born Losers: A History of Failure in America* (Cambridge: Harvard University Press, 2005), 99-128.

fixed, bodily markings such as the shape of an ear or the angle of a person's brow, the lie detector traces dynamic, internal emotional states. As the historian of psychology Geoffrey Bunn argued, the polygraph was intended to replace traditional mechanisms for detecting deception on the body, like the flushing of cheeks or the movement of the eye, and was targeted towards individuals who *happened* to commit crimes rather than fixed criminal *types*.[9] This testifies to the usually unacknowledged importance of the introduction of dynamic psychology into criminology. Although different in many ways, both the lie detector examiners and forensic psychiatrists were measuring 'deceptive complexes' in the mind to elucidate lived experiences of lying rather than tying criminality to a permanent bodily types. While visual traces and the body remain important aspects of these sciences, this chapter pays attention to the production of the interior self as a site of forensic concern.

The interventionist sciences discussed in this chapter changed the very emotions associated with the concept of deception. In contrast to pragmatist psychology that linked deception to pleasurable, comforting beliefs, deception in these police sciences were linked to pain, fear, and trauma. Such negative emotions were etched into the psyches and physiologies of those who deceived, making their lies traceable. In terms of the emotions that defined it, the moral economy that surrounded American ideas about deception had definitively shifted since the heyday of P. T. Barnum.

I: Pathological Lying and the Problem of Appearances

A new historical ontology of deception emerged in the early twentieth-century and was linked to the transformation of the American state. Criminological investigations into

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[9]See Bunn, "The Hazards to the Will to Truth," 259. On a similar shift in the context of the American industrial workplace and vocational testing, see Elspeth H. Brown, *The Corporate Eye: Photography and the Rationalization of American Commercial Culture* (Baltimore: Johns Hopkins University Press, 2005).

deception were tied to the activism of a heterogeneous array of social movements known as Progressivism. Central to the Progressives' project of securing social justice was a conception of crime not as the product of individual choice or control but as the result of socio-economic conditions and biological legacies. In Chicago, there was a vibrant movement to transform the municipal court system into an agency of social reform. However, following the First World War, there was a sharp shift in American political culture, characterized by a reaction against the Progressive experimentation with social policy accompanied by an increased conservatism. In criminological circles, many individuals rejected the notion of the social responsibility of crime in favor of one that emphasized personal choice and strict punishment in the name of deterrence.[10] As a forensic technique, Healy's pathological liar diagnosis with its emphasis on the moral quality of the household and concern with youthful exposure to sexual knowledge and parental deceptions fits squarely in the Progressive conception of crime, although its significance was reinterpreted in later years to fit with the new political culture. Placing the development of the lie detector in this chronological scheme is more difficult; it is best understood as a hybrid of both political cultures. With its prominence in 1920s and 1930s popular culture and its claim to spectacularly identify hidden criminals, the lie detector has much in common with the ideology of crime control. Despite this, the lie detector began as an experiment during the Progressive Era and one of its pioneers, William Moulton Marston, continually emphasized the therapeutic value of his technique, championing it as the realization of Progressive reform.

The development of the concept of pathological lying derived from research conducted by William Healy and his associates at the Juvenile Psychopathic Institute. In

[10]On the shift from socializing justice to crime control see Michael Willrich, *City of Courts: Socializing Justice in Progressive Era Chicago* (Cambridge: Cambridge University Press, 2003).

1899, the activism of the social reformers associated with Chicago's Hull House led to the establishment of a distinct Juvenile Court for Cook County. Starting in 1904, the Hull House women created and funded the Juvenile Psychopathic Institute in the hope of discovering a scientific basis for the underlying causes of delinquency.[11] In their crusade to regulate the city, the Hull House women privileged the study of the child or youth, usually from immigrant households, as the proper locus for reform activity. They found particularly objectionable the prevalence of child labor in the nation's urban centers. Reformers like Florence Kelley and Jane Addams argued that these employment practices threatened the moral fabric of the nation. They were concerned with the commodification of young women both as industrial workers and in terms of the commercialization of their leisure time. Even those children not employed in industry were threatened by the morally corrupting influences of the city and its immoral entertainments and attractions. These stimuli, combined with the poverty and ignorance of many urban youths, led to their moral depravity as they engaged in conspicuous consumption, truancy, and petty theft.

These Progressives sought to combat urban ills through the collection of sociological data on working and living conditions in tenements and factories, legislative lobbying, and the creation of centers within the city where immigrants could seek guidance.[12] Healy's

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[11]The link between the social settlement workers and Healy is further discussed in Kathleen W. Jones, *Taming the Troublesome Child: American Families, Child Guidance, and the Limits of Psychiatric Authority* (Cambridge, Mass.: Harvard U. Pr., 1999); Victoria Getis, *The Juvenile Court and the Progressives* (Urbana: University of Illinois, 2000); David S. Tanenhaus, *Juvenile Justice in the Making* (New York: Oxford University Press, 2004).

[12]The Progressives frequently published on their social and legislative reform activities centered on children and youth. See Florence Kelley, *Some Ethical Gains Through Legislation* (New York MacMillan, 1910); Jane Addams, *The Spirit of Youth and the City Streets* (New York: Macmillan, 1910); Jane Addams, ed., *The Child, The Clinic and the Court* (New York: New Republic, 1925). The work of these female reformers is the subject of an important strand of women's history, see Allen Davis, *Spearheads for Reform: Social Settlements and the Progressive Movement* (Oxford: Oxford University Press, 1967); Katherine Kish Sklar, "Hull-House in the 1890s: A Community of Female Reformers," *Signs* 10(4) (1985): 658-677; Robyn Muncy, *Creating a Female Domain in Reform, 1890-1935* (New York: Oxford University Press, 1991); Regina Kunzel, *Fallen Women, Problem Girls: Unmarried Mothers and the Professionalization of Social Work, 1890-1945* (New Haven: Yale University Press, 1993); Mary E. Odem, *Delinquent Daughters: Protecting and Policing Adolescent Female*

investigative procedure shared certain features with the methodology championed by these social reformers who organized and initially funded his clinic. Hull House sociology centered on the urban survey as a means of gathering politically relevant information about the social. Through face-to-face contact with residents and the filling out of questionnaires, they sought to combat laissez-faire social scientific thinking about urban affairs. First hand experience of urban conditions was privileged over abstract theoretical modeling. By collecting information on the individual household and correlating it into the aggregate, these social workers generated new ways of mapping and perceiving the city and its problems.[13]

In a similar fashion, Healy surveyed the minds and life histories of his clinical subjects to produce a psychological map in the hopes of making visible their behavior. In common with his Hull House supporters, Healy sought to map the subterranean origins of social problems. His team treated the mind of the individual delinquent in a manner similar to how the social surveyors approached the problematized spaces of the city. Healy and his staff questioned, surveyed, and catalogued the individuals brought to their attention through contact with the juvenile court. While the surveying techniques were explicitly tied to the political projects in Hull House sociology, Healy's place as a court appointed arbiter, outside the traditional adversarial structures of legal witnessing, led him to embrace an ideal of disinterestedness, rather than emphatic observation, towards his objects of study.

Sexuality in the United States (Chapel Hill: University of North Carolina Press, 1995); Sklar, *Florence Kelley and the Nation's Work: The Rise of Women's Political Culture, 1830-1900* (New Haven: Yale University Press, 1995); Elizabeth Clapp, *Mothers of All Children: Women Reformers and the Rise of Juvenile Courts in Progressive Era America* (University Park: Pennsylvania State University Press, 1998).

[13]On the social survey, see Martin Bulmer, Kevin Bales, and Kathryn Kish Sklar (eds.), *The Social Survey in Historical Perspective, 1880-1940* (New York: Cambridge: University Press, 1991); Michael Katz and Thomas Sugrue (eds.), *W. E. B. DuBois, Race, and the City: "The Philadelphia Negro" and Its Legacy* (Philadelphia: University of Pennsylvania Press, 1998); Sarah Elizabeth Igo, "America Surveyed: The Making of a Social Scientific Public, 1920-1960," PhD dissertation, Princeton University 2001. On the survey as a kind of scientific epistemology, see especially Michelle Murphy, *Sick Building Syndrome and the Problem of Uncertainty: Environmental Politics, Technoscience, and Women Workers* (Durham: Duke University Press, 2006), 95-101.

Such an attitude was abetted by Healy's ambivalent relationship with the working class immigrant children he studied in his Chicago clinic. In fact, he had much in common with them in terms of biography, though he never emphasized this in his published writings. Born in London in 1869 into a family of deeply religious Protestant dissenters that immigrated to the United States nine years later, he grew up in the poor immigrant neighborhoods of Chicago but did not identify with the street culture his fellow youths. Through a member of his congregation, he started working as a bank cashier at fourteen but did not attend university until he was twenty-three as a special student at Harvard University. Although the church had been an important resource for him as a youth, he came to break with religion since he could not accept the notion that those outside Christ's salvation were doomed. Fascinated by the work of Herbert Spencer and Ernst Haeckel as a student, Healy sought an understanding of crime and morality grounded in a materialist vision of the self.[14]

Appointed as the original director of the institute in 1909, Healy wrote prolifically during the next decade, sharply criticizing nineteenth century understandings of crime and delinquency. His approach was distinct from the scientific criminology of his immediate predecessors and, among his contemporaries, Healy was understood as initiating a revolution in criminological knowledge.[15] The majority of scientific criminological thinking of the late nineteenth and early twentieth century was grounded either in ideas about inherited criminal types or in general environmental explanations about the depravity of the urban poor. Most famously, Cesare Lombroso's Italian school of criminological anthropology sought to identify career criminals through stigmatic markings on their bodies that signified their

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[14]This sketch is primarily drawn from John C. Burnham, "Interviews of William Healy and Augusta Bonner, January 1960," 1-16. A transcript of the interview is available at the Chicago Historical Society. The interviewees requested that it not be quoted directly.

[15]The argument that Healy introduced a revolution in American criminological practice was widespread in the 1910s and 1920s. The clearest articulation can be found in Arthur E. Fink, *Causes of Crime: Biological Theories in the United States, 1800-1915* (PhD Dissertation, University of Pennsylvania, 1938), viii-ix, 149-150. Fink's closing year of 1915 is due to the publication of Healy's *The Individual Delinquent.*

recapitulation of primitive traits.[16] In contrast, Healy's primary targets for understanding criminal behavior were dynamic psychological experiences within the life history of the subject.[17]

The title of Healy's first major work, *The Individual Delinquent* (1915), indicates his different tact.[18] Running over eight hundred pages, combining case histories, statistical analysis, and engagements with the current debates over the causes of crime, this eclectic text established Healy as the leading psychological authority on crime in America. In contrast to the increasingly speculative orientation of continental criminology, Healy was praised for the concreteness of his approach, carefully integrating examples from his clinical experience into his theoretical models.[19] He stressed repeatedly the multi-causal and dynamic nature of delinquency: criminal behavior simply could not be reduced to a single cause, either hereditary or environmental. More importantly, he shifted the criminologist away from the study of social classes or inherited natural kinds towards the study of individual personalities.[20] Although trained also as a medical doctor and gynecologist, he eschewed the biological determinism of the criminal anthropologists.[21]

In understanding Healy's forensic style, it is important to recognize that he was agnostic in the nature-nurture debates that have polarized the majority of twentieth century bio-politics. For Healy, there was no sharp cleavage between the sociological and psychological domain. Despite this, Healy broke with the predominant understanding of

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[16]See Robert A. Nye, *Crime, Madness, and Politics in Modern France: The Medical Concept of National Decline* (Princeton: Princeton UP, 1984), 97-129 and David G. Horn, *The Criminal Body: Lombroso and the Anatomy of Deviance* (New York: Routledge, 2003).
[17]William Healy, "The Individual Study of the Young Criminal," *Journal of the American Institute for Criminal Law and Criminology* 1(1) (1910): 50-62. This journal will hereinafter be cited as *JAICLC*.
[18]William Healy, *The Individual Delinquent: A Text Book of Diagnosis and Prognosis for all Concerned in Understanding Offenders* (Boston: Little, Brown, 1915). For another discussion of Healy's investigative methodology, see Jones, *Taming the Troublesome Child*, 38-61.
[19]See W. Leslie MacKenzie, "Review of *The Individual Delinquent*," *Mind* 28(111) (1919): 354-358.
[20]See Henry M. Hyde, "Expert Laughs at Theory that Crime is a Disease," *Chicago Tribune* January 16, 1915, pg. 13.
[21]For Healy's medical background, see Burnham, "Interviews," 59.

crime advanced by the female reformers who initially funded his clinic and recruited him to direct it. Healy's patron, Ethel Sturges Dummer, the Hull House reformer who raised the funds for the clinic, was a committed environmentalist who saw the genesis of criminal behavior in urban living condition. In contrast, for Healy, deviancy remained largely a question of the functioning of mind and individualized psychiatric pathologies. Families could have numerous children while only having a single offspring who engaged in delinquency. Healy argued that such instances served as indicators of the limits of wholly environmental explanations.

To some degree, Healy's work contributed to the eugenicist tenor of the American human sciences in that he regularly applied results on intelligence tests as one of the key indicators of a delinquent's nature.[22] He was certainly an adherent of the concept of feeblemindedness and his clinical art sought to demarcate so-called normal individuals from such offenders. Yet it should be noted that compared to other members of the Chicago legal community, Healy's fondness of eugenics was considerably mild. His contemporaries William Hickson, director of the psychological laboratory attached to the Chicago Municipal Court, and Harry Olson, the Chief Justice for Chicago, were much more explicit and enthusiastic advocates of eugenics policies.[23] If anything, Healy's forensic psychology erred towards exonerating individual juveniles from responsibility for their crimes. The most famous instance of this was Healy's return to Chicago in the 1924 to serve as one of Clarence Darrow's expert witnesses in the defense of juvenile murders Leopold and Loeb. Darrow's defense centered on admitting his clients committed the crimes but arguing they were not responsible due to mental defect, thereby avoiding execution. While the psychiatric theory

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[22]See Leila Zenderland, *Measuring Minds: Henry Herbert Goddard and the Origins of American Intelligence Testing* (Cambridge: Cambridge University Press, 1998).
[23]See Willrich, *City of Courts,* 244-274, especially 260 where Healy is largely exonerated from the eugenicist tenor of his era.

developed to explain their behavior may appear biologically deterministic today, one must recall that the theory was crafted with the intention of saving the young murderers lives with the promise of rehabilitation.[24] Healy's Chicago-based criminological peers condemned the diagnosis. Olson felt there should have been more attention to hereditary (read eugenic) factors while John Wigmore of the Northwestern University Law School argued that if the psychiatrists' expertise were accepted, it would undermine the penal law.[25]

Healy's investigative method was grounded in the long-term observation of individual conduct, emphasizing habit and habit formation as the key to understanding behavior. The repetition of certain acts was seen ultimately to mold the individual psyche and engrain behaviors into their will.[26] These habits were important as objects of psychiatric investigation. As a style of forensic knowledge, Healy's procedure focused on the case histories of the individual subjects. Healy's expositional style involved presenting the case histories of various delinquents, grouped as representing particular conditions. The publication of edited case histories served an important pedagogical function for Healy; he hoped that future specialists reading his work would acquire the ability to collect subtle forensic clues from the cases, a skill to be applied in their own investigations. Reading case histories was a means of training one's observational skills to be able to detect similar cases in a clinical situation.[27] In this instance, Healy did not borrow practices from neurology or

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[24]See William A. White, William J. Healy, Bernard Glueck, and Ralph Hamill, "Psychiatrists' Report for the Defense (Joint Summary)," *JAICLC* 1924 15(3): 360-379.
[25]See Harry Olson and John Wigmore's contributions to "A Symposium of Comments from the Legal Profession," *JAICLC* 1924 15(3): 395-398 and 400-405 respectively. On the case's place in American history, see Paula S. Fass, "Making and Remaking an Event: The Leopold and Loeb Case in American Culture," *Journal of American History* 89(3) (1993): 919-951.
[26]On the importance of habit in moral regulation see Mariana Valverde, *Diseases of the Will: Alcohol and the Dilemmas of Freedom* (Cambridge: Cambridge University Press, 1998).
[27]Healy, *Individual Delinquent*, 5-8.

psychology but rather consciously modeled his case study and expository style on the pedagogical techniques of business and law schools.[28]

Integrated into these observations and interviews were a series of recently developed psychological tests. Despite the use of mental tests, Healy did not believe that mental conditions could be made manifest simply through the application of a mechanical procedure; his was a clinical art. Of uppermost importance was "a temperament or an attitude of mind calculated to develop friendly cooperation with the offender and his relatives."[29] To elucidate the mental workings of the delinquent required the cultivation of an interpersonal relationship of trust utterly different from that of the interrogating detective. Healy felt that women, in the tradition of Hull House, had an acceptable role to play in such investigations and were capable of administrating the tests. Despite this role, he did not feel that women could serve as the primary investigators since men since bore more authority in such situations and he was skeptical that young men would reveal their inner troubles to women.[30] He would collaborate with both of his wives, Mary Healy and Augusta Bonner, on major psychological monographs.

Although embracing mechanical tools for visualizing deception, psychological experts sought to secure a place for their own carefully crafted judgments. Certainly these forensic specialists played upon the cultural authority of their machines and tests to produce regular, standardized measures.[31] Yet these same psychological experts were adamant that these tools could not be used indiscriminately by just anyone. Critical to their success was the insertion of their trained eye and the expert's personal judgment as a crucial aspect of the assemblage that made these technologies work.

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[28]Burnham, "Interview," 236-237.
[29]Healy, *Individual Delinquent*, 34.
[30]Healy, *Individual Delinquent*, 36-37.
[31]See Lorraine Daston and Peter Galison, "The Image of Objectivity," *Representations* 40 (1992): 81-128.

Among the hundreds of cases he examined for the juvenile court, Healy argued he had uncovered a select number of delinquents with a particular psychological behavior: pathological lying.[32] He dedicated his second monograph, co-authored with his first wife Mary, to the explication of this disorder. The condition was defined as "falsification entirely disproportionate to any discernible end in view, engaged in by a person who, at the time of observation, cannot definitely be declared insane, feebleminded, or epileptic."[33] In his role as a court psychiatrist, Healy regularly encountered young people who engaged in petty theft and delinquency, and often these individuals would attempt to manipulate or deceive an authority figure like Healy. He argued that pathological lying, however, was different in kind. Unlike the actions of other youths, whose lies could be understood on a rational basis, there simply was no reason for the falsehoods of the pathological liar. What marked this condition, as a distinct form of conduct, was that the lies told did not benefit the falsifier, nor did the liars seem to derive pleasure from their deceptions. In certain instances, this involved self-incrimination in crimes the individual had not committed or which had not occurred. Contrary to similar conditions described by European psychiatrists, Healy argued that the designation of pathological lying should be reserved exclusively for otherwise *mentally normal* individuals, demarcating these kinds of individuals from the usual targets of eugenics: the 'insane,' the 'feebleminded,' the 'epileptic.' In other words, he wanted to distinguish pathological lies from the delusions of the insane, as well as from more everyday, self-interested lies.

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[32]William and Mary Healy *Pathological Lying, Accusation, and Swindling: A Study in Forensic Psychology* (Boston: Little, Brown, 1915). Healy's interpretation of pathological lying first appeared in his *The Individual Delinquent*, 729-752. The book-length study of the pathological liar was co-authored with his wife Mary, who died soon afterwards. From existing records it is difficult to determine each author's relative contribution to the monograph. When referring to findings from *Pathological Lying* I will refer to the Healys in the plural but refer to William Healy in the singular when information is derived from texts solely authored by him.

[33]Healy and Healy, *Pathological Lying*, 1.

Pathological liars warranted particular forensic attention not because of their epidemic number but because they posed particular problems for the justice system. The nature of their deviant behavior brought pathological liars into much greater contact with the legal system than was typical of the general populace. Due to their habit of deceiving, they made highly unreliable witnesses and the lawyer must be able to detect them in order to avoid a miscarriage of justice. An even more pressing concern was their propensity towards false accusation and self-incrimination. The false charges leveled by them cost the legal system financially but also threatened the proper administration of justice. For these reasons, forensic knowledge of the otherwise normal seeming pathological liar was a necessity.[34] Where psychologists such as Hugo Münsterberg had argued for the essential unreliability of the ordinary observer's testimony, the Healys' pathological liar was characterized by a willful desire to fabricate and deceive in similar situations.

The Healys themselves acknowledged that their theory of pathological lying did not apply to the majority of juveniles that they were called upon to investigate and was, in fact, a rare phenomenon. It is significant, however, that a theory of pathological deception emerged out of the particularities of the juvenile court system. As an institution, the court was designed to govern over an unruly and disruptive population that it also helped constitute: juvenile offenders. Its aim was the regulation of juvenile behavior through a moral therapeutic regime designed to cure them of their deviancy rather than punish them as adults. In practice, the juvenile court expanded the traditional police powers of the state so that individuals and actions that were previously not deemed criminal came under the court's jurisdiction. In invoking its *parens patriae*, the state quite literally became a surrogate parent

[34]Healy and Healy, *Pathological Lying*, 266.

for a host of new subjects.[35] This agenda created a fertile situation for the study of deception in biologically 'normal' to arise. Because of this more interventionist policy, individuals operating on the margins of the society came into greater contact with scientific experts who took unprecedented interest in their situation due to their vocation. As Healy later recalled, the first individual who proved to be a pathological liar was brought to his attention by a social worker.[36]

The most dramatic of the Healys' cases was that of a woman called Inez M.[37] Inez, claiming to be 17, arrived at a Chicago boarding house for young women with few possessions and little money. She first came to the Healys' attention when she falsely confessed to being a lost heiress when questioned about the possibility by the police. Inez did not possess any of the telltale physical signs of deviancy or degeneracy in accordance with the logic of the time. In their case history, the Healys specifically remarked on her "markedly strong, regular, pleasant features, including a set of teeth well cared for."[38] Her outward appearance was supplemented by her verbal skills and intelligence, both of which were deemed to be well above the norm. Much like Rose Wallace before her, Inez M. initially appeared to be a respectable young lady, a victim of unfortunate circumstances.

Despite this initially positive assessment, as the full details of Inez's life history were brought to light, the Healys remarked that she was in fact the perfect manifestation of the pathological liar. When first interviewed, she recounted how she had lived in a series of abusive homes in the American South before migrating to Chicago. Inez also claimed to be

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[35]Although not grounded in legal notions of the police powers of the state, the clearest argument along these lines is Anne Meis Knupfer, *Reform and Resistance: Gender, Delinquency, and America's First Juvenile Court* (New York: Routledge, 2001). See also Anthony Platt, *The Child Savers: The Invention of Delinquency* (1969; Chicago: University of Chicago Press, 1977).

[36]See Burnham, "Interview," 105.

[37]For obvious reasons, the Healys used pseudonyms and altered some identifying details in their published accounts. I have retained the names they give in what follows. The account of the case of Inez M. is from Healy and Healy, *Pathological Lying*, 54-81.

[38]Healy and Healy, *Pathological Lying,* 60.

suffering from a series of ailments and serious illnesses: persistent pain from an appendicitis scar, incurable diabetes, Bright's disease. She even produced a blood soaked handkerchief as evidence that she was suffering from tuberculosis. While undergoing an operation based on her oral testimony, the doctors removed an encysted hairpin that had been straightened and inserted through an old appendicitis wound. Inez was not only willing to simulate ailments but also inflict bodily harm upon herself to maintain her deceptions. When confronted by skepticism towards her claims, Inez fled, but wrote to her court-assigned guardian a few months later asking for money to pay for further medical work. She would eventually return to Chicago and the institute a number of times more.

Through correspondence with other state institutions, the Healys began to piece together her life history. She was not in fact an adolescent of seventeen but a women of twenty-seven, although she consistently refused to admit to it. For nearly a decade, she had been crisscrossing the nation, coming into contact with the embryonic social services in these regions and ultimately alienating herself from these communities due to her inconsistent, but perpetual lies. During an eight year span, she had been hospitalized eighteen times and had been attended to by a further twenty doctors. Her illnesses would often cease upon her release from hospital as a malingerer. Even after her birth mother had been located, Inez refused to change her story. Throughout this, she maintained her lady-like demeanor, her well-modulated voice, and her exquisite verbal expression.

Not all of the cases were quite this dramatic, but the Healys catalogued a long list of bizarre behavior that did not seem to benefit the individual. One young woman approached a professor at her university to confess to a murder that had not even taken place.[39] Another teenager appeared at a social service center claiming that her enlisted brother had just died in

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[39]Healy and Healy, *Pathological Lying*, 93.

a local hospital but when the social worker accompanied the young woman to the hospital, it was soon found out that no such individual had ever been admitted.[40] What is striking about these and other such deceptions is how easily they were discovered. The liars themselves were eager to bring their confidants into situations in which the transparency of their tales was soon revealed.

False visual and auditory cues played a central role in defining the pathological liar's identity. What distinguished the pathological liar from other juvenile delinquents was that their initial appearance was misleading. They were often well dressed, had seemingly healthy bodies, and passed as ordinary members of respectable society. Unlike the usual targets of juvenile psychiatry at the time, pathological liars were not considered to be feeble-minded. A closely related characteristic of pathological liars was their superior verbal skills that enabled them to generate grand fabrications. Their superior communication skills, their very personal likeability, meant that initially they did not appear to be delinquents.[41] It was only with extended contact and conversation that the illusionary nature of this visual façade became apparent and the enormity of the deceptions became evident.

In contrast to these deceptive surface appearances, the most reliable means of identifying pathological liars was through the use of a visual test. For example, their propensity for invention when responding to the visual clues in the 'Aussage' or Testimony Test was the mechanism for materializing their distinct mental pathology. The explicit aim of the test was the establishment of "correlations between laboratory work and the individual's reactions in social intercourse."[42] In the testimony test, the subject is presented with a familiar scene with a variety of observable objects and actions relevant to the setting.

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[40]Healy and Healy, *Pathological Lying*, 43.
[41]Healy and Healy, *Pathological Lying*, 250-252 and 266.
[42]Healy and Healy, *Pathological Lying,* 12.

At the Juvenile Psychopathic Institute, it was a scene from a butcher shop, an image that was intended to be relatively familiar to a wide array of observers. The subject viewed the scene for ten seconds and was then called upon to describe the picture in as much detail as possible without being prompted. Once done, the subject was further questioned about the image.[43] The purpose of this was twofold: on the one hand, the psychiatrist could see what other details could be elicited with a little aid, while on the other, the subject was asked about seven objects that were not present in the image but could have been. This aspect of the investigation aims to observe the subject's openness to suggestibility and their unreliability as a witness. The pathological liar would take these prompts as an opportunity to begin their fabrications. Their deceptive visual and verbal performances could only be unmasked through the careful judgment of the trained expert reading the cues provided by the test.[44]

The etiology of the pathological liar was complex and followed Healy's general principle for analyzing delinquency: that there is no unique cause. Heredity certainly contributed to this disorder but was not a definitive cause. Instead, individuals may possess "inherited instabilities" that socio-environmental factors could agitate.[45] Much like the female moral reformers funding his research, Healy stressed the importance of evaluating the moral quality of the child's household.[46] One such moral influence, deemed an environmental element in the causation of pathological lying, was the exposure to unacknowledged familial secrets. Also important was the potential presence of repressed mental conflicts in the minds of the young delinquents. Here William Healy implicitly drew

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[43]See Augusta F. Bonner, William Healy, Gladys M. Lowe, and Myra E. Shimberg, *A Manual of Individual Mental Tests and Testing* (Boston: Little, Brown, 1927), 66.
[44]Healy and Healy, *Pathological Lying*, 253-254.
[45]Healy and Healy, *Pathological Lying*, 258.
[46]Healy and Healy, *Pathological Lying*, 265. The character of the household was central to the ideology of the female moral reformers of the period. See Peggy Pascoe, *Relations of Rescue: The Search for Female Authority in the American West, 1874-1939* (New York: Oxford University Press, 1990) and Linda Gordon, *The Great Arizona Orphan Abduction* (Cambridge: Harvard University Press, 1999).

upon his increasing interest in Freudian theories of human subjectivity and suggested that such repressions were the result of early sexual experiences or contact with sexual knowledge.[47] Finally, although the Healys did uncover some pathological liars who were boys, the cases were overwhelmingly female.

Present-day clinicians would not necessarily designate the Healys' subjects in the same fashion that they did. Although some recent forensic psychiatrists have called for a revival of the Healys' notion of pathological lying as a distinct and recognizable mental disorder, by and large these kinds of fabrications have been incorporated into other forms of mental illness. Significantly, pathological lying does not appear as a distinct disorder in the American Psychiatric Association's canonical *Diagnostic and Statistical Manual.*[48] Where the juvenile court clinicians perceived a fairly coherent population of individuals suffering from a common disorder, latter-day psychiatrists would likely make a different set of cleavages within this group. This disjuncture raises the critical question of what made these individuals coalesce into a recognizable population in Progressive Era Chicago. Why did they consider the problem of pathological lying to be so pressing?

The recognition of pathological lying as a mental disease belonged to a culture where outward appearance could no longer be relied upon as an index of inner moral character.[49] Rose Wallace represented an early telling example of an apparently innocent 'country maiden' who was evidently far more complex than initial judgments would indicate and the kinds of young woman that the Healys profiled had much in common with her. Furthermore, the acuteness of the problem posed by pathological lying made particular sense in both a

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[47]There are not explicit references to Freud in *Pathological Lying*. In an interview conducted with Healy in 1960, he discussed his growing fascination with Freud although he was discouraged from calling on him during his 1900 grand tour of European psychiatric sites including Vienna. Burnham, "Interview," 54.

[48]For a recent call to revive the disorder as defined by the Healys, see C. C. Dike, M. Baranoski, and E. H. H. Griffith, "Pathological Lying Revisited," *Journal of the American Academy of Psychiatry and the Law* 33(3) (2005): 342-349.

[49]For a full treatment of this question, see my introduction.

culture and a scientific discipline engaged in a transition in the model of the self from one grounded in fixed moral character to dynamic personality.[50] In *The Individual Delinquent*, Healy had argued forcefully for a dynamic view of the formation of the self: "Every individual is partly his ancestors, and partly the result of his developmental conditions, and partly the effects of many reactions to environment, and to bodily experiences and even reactions to his own mental activities."[51] Furthermore, from his earliest report on juvenile thieves onwards, Healy drew attention to the contrast between the delinquent's physical appearance, especially an apparently "innocent" face, and their criminal behavior.[52] Although proponents of the concept of personality, the Healys were still partially operating within frameworks of the older culture. After all, the moral character of the household and parents was understood as a critically important causal mechanism in the making of pathological liars, one with equal purchase as more modern causes such as sexual knowledge and behavior. Character, then, was grafted onto the functioning of the deceptive personality.

Considering the ways in which deception was discussed in late nineteenth-century American culture, the feminine qualities of the disorder were significant. As discussed earlier in relationship to the confidence men, deception was not an inherently identified with the female. In the transparent culture of sincerity that governed gender norms of behavior for that century, women were expected to eschew make-up and fancy dress in order to reaffirm their internal moral purity. In the middle class culture of the nineteenth-century, moreover, women were understood as the moral center of the family and were responsible for educating their

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[50]Warren Susman, "'Personality' and the Making of Twentieth-Century Culture," *Culture as History: The Transformation of American Society in the Twentieth Century* (New York: Pantheon, 1984), 271-285. Andrew Heinze rightly points out the Susman makes such a cleavage too extreme. See Heinze, "*Schizophrenia Americana*: Aliens, Alienists, and the 'Personality Shift' of Twentieth-Century Culture," *American Quarterly* 55(2) (2003): 227-256.

[51]Healy, *The Individual Delinquent*, 25.

[52]On the innocent face of the young thief, see especially, Healy, "Individual Study of the Young Criminal," 52-53. On the persistence of physiognomy in 1920s employee screening and its gradual eclipse by psychological testing, see Brown, *The Corporate Eye*, chapter 2

children in matters such as sincerity and honesty. In contrast, the dominant image of the deceptive swindler in nineteenth century America was the confidence man. Such an individual was in complete possession of his faculties and used his skills to manipulate others for his personal gain. The early 1910s bizarre ordeal of 'George Kimmel' discussed in chapter two already disabuses this conception, presenting instead the man of mystery unable to master his situation, with his body and emotions exposed. In public representations of 'Kimmel,' his deceptive past, his bank fraud and subsequent disappearance, were described as the product a mental disturbance. Similarly, implicit in Clifton Wooldridge's detective story reconstruction of the Rose Wallace case is the implication that her deceptions could not be explained rationally. In both cases, the deception was deemed pathological since observers could not detect a commercial motivation for their actions.

This transformation in the gendering of a deceptive self is taken to the extreme in the pathological liar as a socio-psychological type. The pathological liar as a human kind was predominantly a female who, despite her intelligence and verbal abilities, could not control or benefit from her deceptions. Here we have a distorted reflection of the single, wage-earning women who garnered considerable attention in these years.[53] The diagnosis reflected worries about the means through which young, single women secured their autonomous life styles in an increasingly depersonalized, socially fluid world. A parallel can be drawn between them and the nineteenth-century, female kleptomaniac of the bourgeoisie. Both diagnoses projected and pathologized the lack of self-control among women operating in

[53]See Kathy Peiss, *Cheap Amusements: Working Women and Leisure in Turn-of-the-Century New York* (Philadelphia: Temple University Press, 1986); Joanne Meyerowitz, *Women Adrift: Independent Wage Earners in Chicago, 1880-1930* (Chicago: University of Chicago Press, 1988); Kunzel, *Fallen Women, Problem Girls*; Odem, *Delinquent Daughters*; Lauren Rabinovitz, *For the Love of Pleasure: Women, Movies, and Culture in Turn-of-the-Century Chicago* (New Brunswick: Rutgers University Press, 1998).

increasingly commercial and fluid social situations.[54] In both cases, specific, feminized maladies become the focal point for more diffuse anxieties about commercial conditions that dissolve existing social relations and generate new ones.

The key to understanding the wider cultural resonance of the pathological liar diagnosis is the sense that its victims possessed autonomy and mobility but were incapable of controlling their very selves. While the swindler may have undercut the masculinity of his mark through the public manipulation of his finances, his own manly identity was reaffirmed through his aggressive navigation of the marketplace, his artful use of deception, and his unwillingness to surrender control. The inverse qualities were at play among pathological liars, who although they frequently succeeded in manipulating others, ultimately became possessed by their own deceptions. They could partake in the new culture of consumption and take on deceptive appearances, but their schemes were not financially productive and ended in failure. They could not even use their superior verbal skills to generate a prudent and profitable swindle.

The concept of pathological lying met with a mixed reception among forensic specialists, especially in contrast to the widely praised *Individual Delinquent.* Two elements were especially controversial: 1) the almost exclusive use of case historians as a method of presentation and 2) the Healys' firm distinction that pathological lying should be reserved as a diagnosis for those mentally 'normal.' Herman Adler, who would later succeed William Healy as director of the institute, articulated both criticisms. In addition to arguing that pathological lying itself was a form of abnormal mental behavior, he complained that Healys' narrative style of exposition lacked the precision that the replication of the quantitative data

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[54]See Elizabeth S. Abelson, *When Ladies Go a-Thieving: Middle-Class Shoplifters in the Victorian Department Store* (New York: Oxford University Press, 1989) and Patricia O'Brien, "The Kleptomania Diagnosis: Bourgeois Women and Theft in Late Nineteenth Century France," *Journal of Social History* (1983) 16(1): 65-77.

from the various mental tests would have provided. As a result "the cases are literary rather than scientific," the analytic methods simply the age-old ones of the "laity."[55] The medical doctor, Richard C. Cabot succinctly captures the second criticism, arguing that "[p]athological story inventions, like the delirium of fever, are to be treated, not believed or disbelieved. They are neither honest nor dishonest, but symptomatic."[56] Following such logic denies the specificity of pathological lying as a disorder and incorporates it as a symptom of other diseases. Other readers were more sympathetic. For example, a number of reviewers stressed the value of the case-based narrative style and agreed on the importance of training forensic experts through the reading of cases rather than presenting the information abstractly.[57]

As Hermann Adler noted, the focus on the individuality of the pathological liar put the Healys at odds with the dominant trend in psychology. Psychologists at this time managed to negotiate a highly visible niche for themselves in industrial societies through their increased focus on the statistical aggregate. Intelligence testing best exemplified this trend, especially following its encounter with military culture during the First World War, when it became a mechanized procedure that could be completed by large numbers of people simultaneously.[58] Similarly, where Progressive Era criminology in Chicago focused on individualized therapeutics, by the 1920s the crime survey came to predominate. By the end of the 1910s, Healy moved from Chicago to Boston to head the recently created Judge Baker Foundation, an organization committed to the therapeutic function of juvenile justice. Although he remained in criminological circles, most famously as an expert in the Leopold-

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[55]Herman Adler, "Review of *Pathological Lying," Harvard Law Review* 29 (1915-1916): 346-348, 347.
[56]Richard C. Cabot, *Honesty* (New York: Macmillan, 1938) 30-31.
[57]For example see the unsigned review in *Columbia Law Review* 16 (1916): 364-365.
[58]See especially John Carson, "Army Alpha, Army Brass, and the Search for Army Intelligence," *Isis* 84(2) (1993): 278-309. On the triumph of the aggregate as a successful marketing technique for psychology, see Kurt Danziger, *Constructing the Subject.*

Loeb trial, his interests gradually shifted away from working-class delinquents towards a broader array of problematic children and their families. Alongside a network of psychologists, social workers, youths, and their families, Healy helped construct the child guidance movement.[59]

While few researchers pursued these investigations of pathological forms of lying, the Healys' concern set the stage for an even more visible form of detecting deception: the polygraph or lie detector. William Healy was important for introducing psychological expertise into the everyday management of urban policing. Furthermore, he stressed that forms of psychological testing and instrumentation could facilitate the implementation of justice. His and Mary's notion of a pathological liar also drew attention to the notion that deception was something located within the body in a web of negative emotions and expressed in the form of a detectable psychological complex. Advocates of the lie detector insisted that a 'deception complex' was not a marker of pathology but rather a temporary phenomenon expressed by every normal individual.

II: The Psychotechnics of Deception

The sum of these criticisms was that Healys' inquiries were held to be of limited value in understanding non-pathological forms of deception. This was especially true of early developers and advocates of the polygraph as a technology of lie-detection. When John Larson examined the intellectual antecedents to his own approach to the detection of deception in criminal cases, he quickly dismissed the applicability of the Healys' studies of pathological lying. Similarly, William Moulton Marston noted the lack of psychological

[59]See Jones, *Taming the Troublesome Child.*

investigations of 'normal,' adult testimony.[60] Although the identification of the disorder's typology might help the courts deal with a particularly problematic class of witnesses, it did not address the more general concern about the overall reliability of witnesses, nor how to scientifically extract true testimony from suspects. From the 1910s to the 1930s, a number of psychologists and criminologists argued that the processes of deception in 'normal' individuals needed to be approached from a physiological standpoint rather than a psychiatric one. Such an approach presumed that deceptive acts could be traced through changing rates of a subject's basic bodily processes as an index of emotional exertion. Building on this proposition, a number of experimenters assembled a hybrid technology that combined psychological theories, medical technology, and the common sense epistemology of the police officer. The result was a technique whose scientific and legal status was questioned from the start, but that has shaped governance and policing in the United States ever since.

Although the various contributors to what became the polygraph disagreed on a number of details, they shared a common understanding of mental processes and their expression through the human body. Their psychotechnical solutions to the problem of deception were grounded in an understanding of the body as an industrial machine. Their modernist vision emphasized how the body performed like a mechanical device and was subject to similar forces: wear and tear, entropy, and disintegration. The mind and its emotions were a component of this laboring body. Emotions were embodied in the form of changing rates of respiration, blood pressure levels, and the reaction time it took the body to respond to stimulus. Most importantly, the expression and repression of emotions were

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[60]John Larson, *Lying and its Detection: A Study of Deception and Deception Tests* (Chicago: University of Chicago Press, 1932) 35 and William Moulton Marston, "Studies on Testimony," *JAICLC* 15(1) (1924): 5-31, 5. See also Fred E. Inbau, "Scientific Evidence in Criminal Cases. II: Methods of Detecting Deception," *JAICLC* 24(6) (1934): 1140-1158, 1144.

conceived as a form of work that could be visualized, materialized, and calculated using the proper devices.[61]

Within this framework, the question remained of locating which bodily process served as the most reliable index of deception. By the early 1900s, European researchers, most notably the psychiatrist Carl Jung, championed the measurement of reaction times during word association tests as the ablest solution. The examiner would present the suspect with a list of words, most irrelevant but with a few select ones meant to invoke aspects of the crime, and the subject would have to provide in turn another word in response. Reaction time tests were intended to materialize a consciousness of guilt in the form of a noticeable delay in the time it took them to arrive at non-incriminating response to the select words meant to invoke the crime.[62]

When Hugo Münsterberg interrogated Harry Orchard during the 1907 Haywood trial, his deception test had followed this model. At his Vineland laboratory for the study of the feeble-minded, Henry H. Goddard, the chief architect of America's eugenicist intelligence testing programs, experimented with a similar device in 1911. In addition to measuring reaction times, Goddard used a galvanometer to measure changes in the body's electrical current. The major failing of these kinds of tests was that they targeted elevated emotional state in general but lacked a specific ontology of deception. As Goddard candidly observed to a *New York Times* reporter, he was "unable to tell from the record whether the emotion aroused is pleasure or pain, shame or triumph, guilt or mere nervousness." He continued

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[61]On the modernist body, see especially Anson Rabinbach, *The Human Motor: Energy, Fatigue, and the Origins of Modernity* (New York: Basic Books, 1992) and Otniel Dror, "Creating the Emotional Body: Confusion, Possibilities, and Knowledge," in Peter Stearns and Jan Lewis (ed.), *An Emotional History of the United States* (New York: New York University Press, 1998) 173-194.

[62]For a summary of Jung's position, see Carl G. Jung, "The Association Reaction Method," *American Journal of Psychology* 21 (1910): 219-240. For a defense of the reaction time methodology in the wake of the turn towards physiology, see Eva R. Goldstein, "Reaction Times and the Consciousness of Deception," *American Journal of Psychology* 34 (1923): 562-581.

with a telling illustrative case demonstrating that he marketplace was never far from view: "If I were to examine a stock gambler with the psychometer and mention stocks he would record a strong emotion, but I should be unable to determine whether he had won or lost."[63]

This absence of a specific ontology for deception was common to another novel police science technique from the era, Robert House's truth serum. During the 1920s, the Texas physician advocated the administration of small doses of the drug scopolamine in order to solicit more truthful testimony from criminal suspects during police interviews. Because the drug inhibited the brain's ability to make calculated decisions, suspects would be unable to create false stories, thereby giving the examiner direct access to their memories. Unlike subsequent lie detector testing, House's approach did not need to be predicated on an explicit understanding of what mental or physiological processes exactly constituted the act of deceiving. Scopolamine inhibited all rational mental activity including, but not limited to, the strength of will needed to manufacture untruths. With its emphasis on uninhibited mental activity and taking memory as its object, the truth serum had much more in common with hypnotism than the polygraph.[64]

The particular genius of the polygraph, then, was that its practitioners articulated a definition of what constituted a 'deception complex' and this psychological state was calibrated to many physiological measures rather than a single one. Although the initial experiments revolved around the relationship between changes in blood pressure and the act of deceiving, within a few years other equally important measures were incorporated. By 1931, when standardized polygraph sets were issued, the device combined the ability to simultaneously calculate shifting rates of blood pressure, respiration, and pulse. Ink styluses

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[63]Goddard cited in "Electric Machine to Tell Guilt of Criminals," *New York Times* September 19, 1911, 6.
[64]See Robert H. House, "The Use of Scopolamine in Criminology," *American Journal of Police Science* 2(4) (1931): 328-336. For a historical account of truth serum emphasizing its links to the sciences of memory, see Alison Winter, "The Making of 'Truth Serum,'" *Bulletin of the History of Medicine* 79(3) (2005): 500-533.

were attached to the medical devices used to measure the changes creating an instantaneous yet permanent record of the subject's bodily experience during the test. These graphical representations, in turn, required the expert's trained judgment for interpretation in order to locate deceptive moments during the interview.[65]

In 1913, one of Münsterberg's Harvard students, William Moulton Marston, performed the initial experiments that correlated acts of deception to changes in blood pressure. Marston's earliest experiments were on university students who were required to simulate acts of deception while their blood pressure was monitored. The students were then asked to describe their emotional experiences during the experiment. The emotions most often evoked in the testimonials were fear and irritation. Drawing on physiological models of the relationship between body and mind, Marston argued that a direct correlation could be determined between the rise in blood pressure and the "lying complex." This relationship became possible because deception was constructed not as an isolated act of the mind but was interconnected with the emotions of fear and anger. The experience of these emotions generated physiological stress in the body that corresponded to rising blood pressure. Using standard medical technology to measure changes in blood pressure, the experimental psychologist could quantify the effort required to conceal the truth. Because the experience of emotions in the laboring human body was a form of work, it could be calculated and later graphically represented.[66]

For Marston, monitoring a person's blood pressure could provide a more reliable index of deception as a distinct mental complex than the calculation of simple reaction times or resistance to electrical current. In his view, the rise in pressure represented the bodily

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[65]The clearest description of how the polygraph actually functions is Fred E. Inbau, "The 'Lie-Detector,'" *Scientific Monthly* 40(1) (1935): 81-87.

[66]William M. Marston, "Systolic Blood Pressure Symptoms of Deception," *Journal of Experimental Psychology* 2 (1917): 117-163.

expression of certain primal emotions, namely fear and anger. The expression of such emotional states was in turn interpreted as the subject's anxiety over having his consciously crafted deceptions being detected. To bolster such claims, Marston had his initial test subject record their introspective experiences of the test. While many respondents noted that they derived a sense of pleasure in pulling off the deceptions, Marston also found that the majority of subjects expressed his wanted anxiety over being uncovered as having lied.

In later accounts, Marston stressed that in developing his deception test he had invented no new equipment but simply used already standardized laboratory and medical equipment.[67] The centerpiece of the Marston's lie detector was the sphygmomanometer, an already standardized medical device for the measurement of blood pressure. Claiming a lack of novelty was a powerful technique of legitimation for a contested scientific artifact. Marston was attempting to enroll the already established authority and reliability of the medical equipment he used to convince skeptics of the validity of his findings. It was important for Marston to stress that no revolution in terms of scientific practice was at stake here. Rather, new territory was being explored with established tools. The theory behind the deception tests involved not so much a revolution in psychology but rather an expansion of its domain.

Across the continent in Berkeley, California, similar experiments were being performed, not on a university campus, but within a police department. Berkeley's chief of police since 1907, August Vollmer, was nationally renowned as the leading reformer of police services. Vollmer was sharply critical of traditional police practices for a number of reasons. He argued that resources were inefficiently managed, that police investigations lacked accuracy, and he was convinced that a large percentage of officers were corrupt.

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[67]Marston, *The Lie Detector Test* (New York: Richard Smith, 1938), 23.

Although possessing no university degrees himself, Vollmer was willing to turn to scientific researchers at local universities to provide knowledge about chemistry, biology, and medicine in order to help investigate difficult cases. Although he profited from such connections, he ultimately deemed them inadequate. What was required was the transfer of knowledge from the scientific community to under the policeman's cap.[68] The entire education of the police required a major overhaul so that the everyday common sense knowledge of the beat cop could be merged with the latest advances in forensics and other scientific approaches. For the Berkeley force, the minimum educational requirement was a high school education, although most police officers had taken some university courses. As part of this project, Vollmer began to employ men and women with advanced degrees in medicine, social work, and psychiatry as police officers.[69]

Among the most renowned of Vollmer's 'college cops' was John Larson. Where Marston had been developing his technique in a laboratory setting and through the reenactment of simulated situations, Larson had been experimenting with the deception test directly on police suspects. Larson had read about the technique developed at the Harvard laboratory and in 1921 began to apply it in criminal investigations. While Marston had begun by this time to venture outside of the laboratory setting, his excursions were infrequent and his aim was largely to confirm his experimental results. In contrast, Larson, as a

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[68]This phraseology is meant to evoke David Montgomery's argument that Progressive Era scientific management's goal was the transfer the artisan's technical knowledge into the hands of management. While true, it most also be acknowledged that the reverse also occurred during this era: the transfer of expert knowledge into the hands of lay people. See David Montgomery, *Fall of the House of Labor: The Workplace, the State, and American Labor Activism, 1865-1925* (New York: Cambridge University Press, 1987).

[69]See August Vollmer and Albert Schneider, "The School for Police as Planned at Berkeley," *Journal of the American Institute of Criminal Law and Criminology* 7 (1916-1917): 877-898; Anne Roller, "Vollmer and his College Cops," *Survey* 62 (1929): 304-307, 323-324.

practicing police officer, integrated deception tests into the everyday practices of police work and received institutional support from the science enthusiast, Vollmer.[70]

This shift in experimental object is crucial. It was one thing to be able to detect deceptive practices among college students simulating deception in a university laboratory; it was quite another to experiment directly on potential criminals. While Marston's visits to the courtroom remained infrequent and erratic, Larson applied deception tests in a much more extensive manner. When Marston had first used his test in a courtroom setting he had specifically selected cases from the docket in which the testimony given during the experiment could be verified later that day, for example, through a medical examination. In one instance, the police had arrested a former female drug addict since they found a syringe in her place of residence. Marston's test indicated that she was being truthful about no longer using drugs. A medical examination later that day indicated that no needle marks were found on her body and she had gained weight, two physical indications she was no longer using narcotics.[71]

In contrast, Larson would subject all suspects in select criminal cases to the test to see if it could detect deception in a less controllable environment. Contemporaries recognized the difference between these two methods of authenticating the deception test. As one psychologist wrote, Larson's work was grounded upon the belief "that deception tests can be applied much more effectively to persons to whom the examination has a very real interest, than to such persons who lie just for the sake of experiment."[72] In order to fully elicit an authentic deception complex something tangible had to be at stake for the experimental

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[70]J. A. Larson, "The Cardio-Pneumo-Psychogram and its Use in the Study of Emotions, with Practical Applications," *Journal of Experimental Psychology* 5 (1922): 323-328.

[71]William M. Marston, "Psychological Possibilities in the Deception Tests," *Journal of the American Institute of Criminal Law and Criminology* 11 (1920-1921): 551-70. With few exceptions, all test subjects in this report were women.

[72]Rollin Perkins, Review of Larson's *Lying and its Detection*, *Iowa Law Review* 18 (1932-1933): 575-576, 575.

subject. In these earliest of applications, the lie detector was used on cases where there were a large number of suspects for a single crime. The large of number of individuals tested was seen as a type of experimental control in that the guilty party's responses would stand out in stark contrast when asked the same questions as others. Larson's investigations suggested that the polygraph could be calibrated against itself in a police setting.[73]

In the police context, proponents of the polygraph emphasized its efficacy in extracting confessions in criminal suspects. The lie detector was evoked as a more humane, less violent method of obtaining confessions from hardened criminal suspects. While previously, police officers would have to resort to the violence and intimidation of the 'third degree,' now interrogations would be deferred to a scientific expert. The suspects would not have to confess in words - their own bodies would betray them. The polygraph had the added advantage of offering some therapeutic relief to the suspect. Lie detector advocates argued that a criminal's demeanor and personality changed dramatically once their lies had been detected. Most suspects would confess once their results were revealed. Once the confession was made, the physiological stress that had generated the higher blood pressure would dissipate, the subject would be calmer and mentally healthier.[74]

The polygraph could also be used as a tool to monitor and reform the police themselves. Larson related the example of a well-liked officer accused of raping a young woman who could not prove her claims because she lacked any corroborating evidence. While the polygraph indicated that the officer was lying about the incident, the lack of eyewitnesses or material evidence meant that minimal action was taken. Six months later the same officer was charged in a similar incident involving a fifteen-year-old female.[75] The

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[73]Larson, "The Cardio-Pneumo-Psychogram," 324.
[74]Larson, "The Cardio-Pneumo-Psychogram," 326.
[75] Larson, "The Polygraph and Deception," *Welfare Magazine* 28 (1927): 646-669, 662.

implication was clearly the preventability of this second incident had the lie detector results been heeded. In a celebrated Chicago case from 1930, the polygraph was used to determine which officer had stolen money and property from the home of a deceased woman that the police were supposed to guard.[76] As these examples indicate, the polygraph emerged as a mode of self-regulation for an efficient police force, bent on eliminating crime and corruption from its rank. The polygraph became a potentially powerful, practical tool in realizing Vollmer's progressive vision of modern policing.

In his popular exposition on the science of the deception tests, Marston expanded upon the moral vision of the polygraph. Not only could his test be used to detect the truth in particular instances but also, if properly understood, it could potentially eliminate crime. Marston argued that at the heart of criminal nature was "the power to deceive and the consequent habit of deception."[77] Although not acknowledged in the more 'scientific' literature, here Marston asserts that deception, as an emotional state, could not simply be reduced to the behaviorist sensations of fear and anger. Central to the young person's experience of deception as a psychological state was the thrill and joy of fooling others.[78] Due to the pleasure derived from this activity, the embryonic delinquent repeats deceptive activity until it has become an unstoppable habit. At this point, a psychotechnical intervention is required to return the criminal to an acceptable kind of behavior. Marston drew a parallel between a polygraph interrogation and the experience of undergoing psychoanalysis. By undergoing analysis the patient is forced to confront the deep, repressed emotional complexes that lie at the heart of dysfunctional behavior. This is an oft-painful

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[76]Leonarde Keeler, "'The Canary Murder Case' (The Use of the Deception Test to Determine Guilt)," *American Journal of Police Science* 1 (1930): 381-386. See also "Guilty by Lie Detector," *New York Times*, May 24, 1930, 2.

[77]Marston, *The Lie Detector Test*, 15.

[78]Marston, *The Lie Detector Test*, 8-9. For Marston's own idiosyncratic psychology of the emotions, see William Moulton Marston, *The Emotions of Normal People* (New York: Harcourt Brace and Co., 1928).

process but a necessary one in order to reformulate a more healthy sense of self. Similarly, when hardened criminals are confronted with the fact that they can no longer successfully deceive; their power is broken. Once the criminal is fully convinced of their inability to successfully deceive, "it becomes easy to break down all his habits of lying and build up instead mental habits of telling the truth. Then the person is no longer a criminal."[79]

Marston advocated the wide diffusion of knowledge about this aspect of the polygraph examination. He argued that dishonesty was at the heart of all American life from business to politics. He stressed the moral cost "for building civilization on the quicksands of deception."[80] With the wide diffusion of the lie detection methods, such deceptions could no longer form the foundation of social life. The businessman, the politician, the parent could no longer lie since they would be constantly faced with exposure. The end result of a polygraphed society would be a new moral order. Marston's utopia required the readability of all citizens. While Marston's utopian vision of a transparent, honest society is certainly over-wrought, it speaks volumes of the moral vision that was at the heart of the sciences of deception.

Among early advocates of the lie detector like Marston, Larson, and Keeler, women occupied a privileged place as objects of study. In other words, scientists argued that the female body and mind furnished particularly valuable objects of study. Implicit is the notion that an investigation of the female revealed something about the workings of human bodies and minds in way that the study of the male could not. There was a gendered dynamic between the male investigator and the female interviewee that shaped the knowledge being produced. Those experimenting with the lie detector recognized that this dynamic effected

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[79]Marston, *The Lie Detector Test*, 16.
[80]Marston, *The Lie Detector Test,* 17.

the physiological reactions of the body.[81] Despite the lie detector's claims of greater universality, it is striking that when Marston first applied his test outside of the laboratory, female subjects were almost always selected to affirm its effectiveness.[82] Among the early polygraphers in Berkeley, there was the often-repeated story of how the deception test was first used to detect the theft of some money among some sorority sisters.[83] More notoriously, in 1928, Marston orchestrated a sensationalistic spectacle using the polygraph to test the relative emotionality of blonds versus brunettes using Ziegfeld showgirls as his experimental subjects.[84] These examples illustrate how the sciences of deception were rooted in an understanding of female emotionality, particularly their greater legibility vis-à-vis the male.[85]

The sciences of deception were not only enmeshed in notions of gender but also in the work of materializing the boundary of the mentally abnormal. Although advocates of the lie detector conceived of abnormal forms of lying, its ontology was distinct from the Healys' notion of pathological lying. By the mid-1920s, a number of psychologists were interested in probing deception along the border between the normal and the insane. A series of experiments performed by Larson and Herman Adler explored the relationship between the deception of others and self-deception. In particular, they were curious to find whether the deceptive response would be found among institutionalized schizophrenics when discussing their hallucinations. These experiments suggested a new application for the test: to find the extent to which individuals would feign the symptoms of mental illness in order to minimize punishment for their crimes. While the experiments did find a class of psychotics whose

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[81]Marston, "Sex Characteristics of Systolic Blood Pressure Behavior," *Journal of Experimental Psychology* 6 (1923): 387-419.
[82] Marston, "Psychological Possibilies."
[83]Eloise Keeler, *The Lie Detector Man*, 5-7.
[84]"Blondes Lose in Film Love Test," *New York Times*, January 31, 1928, 25.
[85]The best account of the gender politics of the polygraph is Geoff Bunn, "The Lie Detector, *Wonder Woman*, and Liberty: The Life and Work of William Moulton Marston," *History of the Human Sciences* 10 (1997): 91-119.

responses indicated that they had some sense that their sensations were false, the tests also indicated that schizophrenics were genuinely convinced of their perceptions.[86] Another polygrapher, Walter Summers, reported on similar response on a former insane asylum inmate who claimed he heard the voice of God. Summer was convinced that the "subject really believed, and the record substantiated his belief, that he was receiving direct communication from God."[87]

These experiments probed the limits of the lie detector's applicability. It was determined that the test was only capable of detecting conscious acts of deception. If the subjects were genuinely convinced that they spoke the truth, then the measurements of their bodies would not indicate a deceptive response. The very emotional physiology of the pathological was different in kind from that of the normal. Normal liars come under the domain of the forensic psychology while the pathological are objects of psychiatry. Lying is detectable in a normal person because it was understood as a momentary lapse in an otherwise properly functioning body. In contrast, for insane persons, hallucinations, delusions, and self-deception are the very ontology of their condition and therefore cannot be isolated and measured. Each mode of deception is different in kind, thereby requiring a distinct disciplinary approach.[88]

III: The Legal Challenge

The designers of the polygraph managed to develop an identification technology that had considerably more reach than the Healys' notion of a pathological liar but neither technique was particularly successful in achieving the endorsement of legal authorities.

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[86]Herman Adler and John Larson, "Deception and Self-Deception," *Journal of Abnormal and Social Psychology* 22 (1928): 364-371.
[87]Walter G. Summers, "Science Can Get the Confession," *Fordham Law Review* 8 (1939): 334-354, 351.
[88]On the concept of the 'normal,' see Georges Canguilhem, *The Normal and the Pathological*, trans. Carolyn Fawcett (1946; New York, 1989).

Despite such a failure at achieving consistent legal sanction, these programs remained pervasive and the historical ontology of deception embodied within them continued to resonate throughout the twentieth-century. Despite its considerable commercial utility and a continued hold in American popular culture, the lie detector was rarely deemed admissible in court. When the notion of pathological lying became codified in legal doctrines, its interpretation differed considerably from the intentions of the Healys.

As early as 1923, the ruling in *Frye v. United States* seriously curtailed the use of the lie detector in court proceedings. Initially excluded from being administered while Frye testified on the witness stand by the trial judge Irvin McCoy, the decision was reaffirmed upon appeal. There Judge van Orsdel ruled that scientific evidence was only admissible if there was an overwhelming consensus within a given professional community over its validity. The judge argued that the polygraph had not in fact attained such universal assent among physiologists and psychologists.[89] Although not a binding decision for other courts, the ruling in *Frye* was retroactively identified as the ruling that established the standard for determining the admission of a scientific expert's testimony for most of the twentieth-century.[90]

The Frye ruling made manifest the multiple understandings of objectivity at work in the identification of human deception. The defense and Marston attempted to vindicate the test by highlighting its mechanical procedure. Deception could be detected not by relying on the fallible observations of human beings but through the quantifiable measurements taken by a machine that were in turn represented graphically. Although the test was novel, the various tools that it deployed had already been authenticated in other branches of science. Most importantly, human interventions into determining whether an individual was deceptive

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[89]*Frye v. United States* 293 Fed. 1013 (D.C. 1923).
[90]On *Frye*, see Bunn; Tal Golan, *Laws of Men and Laws of Nature,* 251-53.

were limited to the interpretation of the data and their registration. Although trained, subjective judgment and interpretation of the data was crucial to the application of the lie detector, the test's appeal lay on its technological measurement of bodily processes.

In contrast, for Judge van Orsdel, the test was excluded from the legal arena on the grounds that the status of objective scientific knowledge was founded on the consensus among a predefined community of experts. What counted was whether the majority of practitioners of a discipline had accepted the specific theory. As *The Washington Post* reported, the judge required that a legally admissible tool needed to have achieved the state of perfection reached by everyday and standardized technologies like the telephone or telegraph.[91] In this instance, the ideals of mechanical and consensual objectivity did not coincide. While it may have been possible to mechanically monitor the physiological processes that the body underwent when an individual lied, the judge could deny its reliability because such a practice was not widespread in the 1920s.[92]

Although best remembered as the case that set the legal standard for novel forms of scientific evidence, the *Frye* case ought to be put in its historical context.[93] After all, Marston sought to authenticate his technique by proving the innocence of an African American youth accused of murder in what was still a largely Southern, racially segregated Washington, DC. Beginning during the era of slavery, when the American legal system touched the question of 'race,' the law was frequently deployed to curtail the rights and freedoms of African Americans. This role for the courts had been reasserted following the failure of

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[91]"Holds Frye Guilty for Killing Doctor," *The Washington Post* July 21, 1992, pg. 2.
[92]On the distinction between mechanical and consensual modes of objectivity see Lorraine Daston and Peter Galison, "The Image of Objectivity," *Representations* 40 (1992): 81-128 and Theodore Porter, *Trust in Numbers: The Pursuit of Objectivity in Science and Public Life* (Princeton: Princeton University Press, 1995).
[93]Legal scholar Michael Saks notes that *Frye* was only retroactively transformed into the standardized rule for admitting scientific evidence, arguing it was not cited as such until decades later. See Michael J. Saks, "Merlin and Solomon: Lessons from the Law's Formative Encounters with Forensic Identification Science," *The Hastings Law Journal* 49(4) (1998): 1069-1141, 1073-1076.

Reconstruction in the famous *Plessy v. Ferguson* case (1896) that articulated the judicial concept of separate but equal access to facilities as constitutional, a decision that sanctified formal segregation and legitimated institutionalized racism following the abolition of slavery.[94]

In November 1920, an unknown assailant shot Dr. Robert W. Brown, an African American physician and community leader. Although the murder drew considerable attention and a financial reward was offered, no suspects in the killing were initially discovered. Nearly a year later, in August, the DC police arrested a young African American, James Alphonzo Frye, as a suspect in an unrelated robbery. Frye was persuaded by a fellow prisoner to confess to the Brown murder in order to share the reward money with his fellow inmate. Although Frye soon retracted his confession, it was too late and he went to trial for the murder. Frye's original lawyer wanted his client to plead guilty and seek leniency from the court. Frye refused. insisting on his innocence from the charges and a considerably more junior, court-paid defender was named his attorney.

Frye's new attorney, Richard Mattingly, was first to contact Marston to see if his lie detection test could be utilized in Frye's defense. Marston used this case to establish legal recognition of his systolic blood pressure technique in a federal court. An initial test was performed on Frye that indicated he was being truthful about not murdering Brown. Marston and Mattingly wanted Frye to undergo a lie detector examination on the witness stand to demonstrate his innocence in a spectacular display before the jury. McCoy refused this request and ultimately excluded the lie detector test as a legitimate form of evidence.

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[94]See Eugene Genovese, "The Hegemonic Function of the Law," *Roll, Jordan, Roll: The World the Slaves Made* (New York: Vintage, 1974); Peggy Pascoe, "Miscegenation Law, Court Cases, and Ideologies of 'Race' in Twentieth-Century America," *Journal of American History* 83(1) (1996): 44-69; Matthew Frye Jacobson, *Whiteness of a Different Color: European Immigrants and the Alchemy of Race* (Cambridge: Harvard University Press, 1998). On the tendency for court's to distrust African American testimony, see Michael Wayne, *Death of an Overseer* (New York: Oxford University, 2000).

Frye was eventually exonerated using other evidence, bolstering Marston's faith in his technique's accuracy.[95]

Marston's strategy in the *Frye* case was in stark contrast to the route taken by early dactyloscopers in validating fingerprints as a standardized identification technology. Like Alphonse Bertillon's anthropometry, expertise in the new science almost exclusively resided within the law enforcement community and rarely could defense attorneys produce qualified witnesses to back their side.[96] Furthermore these technologies were frequently used in the policing of racial minorities. Fingerprinting had first emerged as an administrative tool in India, deployed by the British to govern the colonial population. Subsequently, dactyloscopsy found its first institutional niche in Argentina as a state tool during an era acutely concerned with racially distinguishing its various immigrant populations.[97] In the United States, the early success of fingerprinting had been intimately linked to its perceived capability of identifying African American subjects that white witnesses claimed were indistinguishable. The legendary account where fingerprinting supposedly demonstrated its empirical superiority against the competing Bertillon system concerned two African American inmates both named Will West. In 1912, the state of Illinois hung Thomas Jennings, the first time that fingerprint identification had successfully been used as evidence in an American trial. As historian Simon Cole noted: "the Chicago Police Department called in its fingerprint examiners to individualize a 'colored' man, whom witnesses could not identify except to say that he was colored."[98] Rarely were emerging forensic techniques of identification used as

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[95]William Moulton Marston, *The Lie Detector Test* (New York: Richard Smith, 1938), 70-3.
[96]Cole, *Suspect Identities*, 186.
[97]See Cole, *Suspect Identities*, 60-96 and 119-139; Julia Rodriguez, "South Atlantic Crossings: Fingerprints, Science, and the State in Turn-of-the-Century Argentina," *American Historical Review* 109(2): 387-416; Chandak Sengoota, *Imprint of the Raj: How Fingerprinting was Born in Colonial India* (London: Macmillan, 2003).
[98]Cole, *Suspect Identities*, 140-181, quote 178.

mechanisms to exonerate the accused during the period of their initial legal validation. In the United States, it was even more unusual where racial minorities were concerned.[99]

Furthermore, by attempting to publicly vindicate his lie detection methodology using Frye, Marston implicitly made the case of a universal embodied emotionality across racial divides. Although Marston never articulated the precise meaning of racial differences in detecting deception, he seemed to have used a variety of ethnic bodies interchangeably in his initial research, noting the racial make up of the experimental group in some essays and not in others. The prominence of minorities as experimental subjects in Marston's early tests, a shift produced by his move from the university laboratory to the courtroom as a locus for experimentation, was in stark contrast to prevailing psychological procedures where the subject was invariably marked as Anglo-Saxon, wealthy, and educated.[100] Certainly when experimentalists did incorporate subjects marked as non-white, these minorities were invariably found to possess distinct, primitive mental qualities: a quickened response time or an inability to perceive certain colors. Marston's silence on the question of race, whether intended or not, advanced a vision of a universal psycho-legal body.[101] Its application in the *Frye* case reaffirmed the polygrapher's self-fashioning as more humane, liberal, and progressive administrators of justice.

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[99]Interestingly, the other major exception was Robert House's truth serum, where the initial tests in 1922 revolved around vindication of two Texas convicts, one identified by name and white, the other an anonymous African American inmate. See House, "The Use of Scopolamine in Criminology," 329-333.

[100]On the shift from laboratory to courtroom and the notation of racial differences among subjects, see Marston, "Psychological Possibilities in the Deception Tests." On the racial formation of the experimental subject, see Jill G. Morawski, "White Experimenters, White Blood, and Other White Conditions: Locating the Psychologist's Race," in Michelle Fine et al. (eds.), *Off White: Readings on Race, Power, and Society* (New York: Routledge, 1997).

[101]See especially R. Meade Bache, "Reaction Time with Reference to Race," *Psychological Review* 2 (1895): 475-86; W. H. R. Rivers, "Primitive Color Vision," *Popular Science Monthly* 59 (1901): 44-58; R. S. Woodoworth, "Racial Differences in Mental Traits," *Science* 31 (February 4, 1910) 171-186. On the meanings of racial difference in turn-of-the-century experimental psychology, see Franz Samelson, "From 'Race Psychology' to 'Studies in Prejudice': Some Observations on the Thematic Reversal in Social Psychology," *Journal of the History of the Behavioural Sciences* 14 (1978): 265-178.

A much more coercive deployment of the deception test, intimately braided with the crime control campaigns of the 1920s, was advanced by Leonarde Keeler. A close associate of both Larson and Vollmer in Berkeley, Keeler had helped develop the lie detection tests there. By the late 1920s, Vollmer, Larson, and Keeler had all relocated to Chicago and brought the polygraph with them. Vollmer became a visiting professor in police practices at the University of Chicago while Larson joined the staff of the Institute for Juvenile Research, a renamed version of Healy's former laboratory.[102] Holding only a bachelor's degree, Keeler held the rank of assistant professor at Northwestern University, attached to its Scientific Crime Detection Laboratory. Keeler was responsible for coordinating the various apparatus and experiments assembled around deception into a standardized and patented machine.

With its application in the courtroom curtailed by judicial skepticism, the lie detector found a more receptive audience among the police and corporations. Leonarde Keeler pioneered the commercial application of the deception test by encouraging financial institutions to polygraph all their employees in order to detect embezzlement.[103] While Keeler was pursuing these projects, he was part of the faculty of Northwestern University's Scientific Crime Detection Laboratory, not its the psychology department.[104] In contrast to Marston's style of public presentation, in his public self-fashioning Keeler played up his role as a self-aggrandizing, masculine crime fighter. If Marston's actions during the *Frye* case represented an attempt to align lie-detection technology to Progressive political culture, Keeler embraced the illiberal ideology of crime control. For example, newspapers from the 1930s would report how African Americans suspects claimed to be have been swindled by

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[102]"U of C Starts Cop Class," *Chicago Daily Tribune,* January 7, 1931, pg. 8.
[103]Marston, *The Lie Detector Test*, 108; Eloise Keeler, *The Lie Detector Man: The Career and Cases of Leonarde Keeler* (Boston: Telshare, 1983), 140-143.
[104]"Inventor Tells How His Device Picks Out Liars," *Chicago Daily Tribune* August 30 1930, pg. 4.

police into taking the test that did not exonerate them.[105] With employers often compelling employees to submit to tests, labor unions opposed screenings using the lie detector.[106]

The mass administration of examinations in police work and employee screening necessitated that polygraph exponents publicly refine the relationship between lie detection and the ideal of objectivity. The polygraph's early advocates like Keller repeatedly insisted that the device was not really a machine for the detecting of deception. The instruments assembled in the polygraph could measure physiological changes and graphically represent them but the detection of deception itself required the trained interpretation of the examiner. Properly speaking, deception tests consisted of a human-machine assemblage.[107] Keeler embraced such a strategy because he held the patent on the design of the most widely used polygraph machine and he also wanted to retain control over the training of his experts. These commercial pressures led the scientific entrepreneur to espouse an epistemology centered on judgment braided with his instrumentation.[108]

The Healys' notion of pathological lying had an even more controversial reception in the courtroom. Legal experts found that the insights from their psychological studies of deception could be used to advance quite different interpretations than the Healys originally advocated. Some commentators argued that the study proved that only in rare circumstances did female "sexual immorality" lead to consistent mendacity. This interpretation stressed that the Healys' investigations of pathological states of mind ought not to be read back into the legal understanding of 'normal' individuals. Similarly, when it came to the legal question

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[105]For example, see "Lie Test Fails Man who Paid for Taking It," Chicago *Defender* March 26, 1938, 6.
[106]In the 1980s it became a civil rights issue and the federal government prohibited its requirement under the revised labor code.
[107]Leonarde Keeler, "Debunking the 'Lie-Detector,'" *JAICLC* 25(1) (1934): 153-159.
[108]The training of judgment combined with the police officer's common sense was critical also to the more diffuse 'Reid technique' for detecting deceptive behavior through the analysis of bodily and behavioral responses during an interrogation. John E. Reid was a younger associate of Keeler and Inbau in Chicago and his technique was initially calibrated against polygraph examinations. See John E. Reid and Richard O. Arthur, "Behavior Symptoms of Lie-Detector Subjects," *JAICLC* 44 (1953): 104-108.

of whether one's bad character could be used to impeach one's testimony, C. W. Hall, writing for the *North Carolina Law Review*, found that the Healys' study could not used to sustain such a view since their object of study was precisely the extraordinary.[109]

The highly esteemed legal theorist, John Wigmore, was responsible for one of the most controversial applications of the scientific conceptualizations of deception. Wigmore was dean of the law school at Northwestern University and the author of one of the key legal textbooks on evidence in the courtroom. He cited the Healys' examples of pathological liars falsifying cases of sexual abuse as empirical evidence that the testimony of women was inherently unreliable in these matters. The Healys had emphasized that pathological lying, as a type of mental behavior, was a relatively rare phenomenon. As their work came to be interpreted through Wigmore's analysis, the notion of a specific pathology was erased. Citing the Healys' work on pathological liars as the scientific basis for his argument, Wigmore argued: "No judge should ever let a sex offense charge go to the jury unless the female complainant's social history and mental makeup have been examined and testified to by a qualified physician." In other words, based on psychiatric knowledge and its specific construction of a gendered deceptive subject, jurists ought to be incredulous towards female testimony on sexual matters.[110]

The qualities identified with pathological individuals were incorporated into the rules that framed how courts ought to treat the testimony of women in general. This was a spurious inversion on the conservative Wigmore's part, for it erased the Healys' emphasis on individual attention and therapeutics. Nevertheless, it is a telling indication of how the legal

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[109]See "Sexual Immorality as Affecting Female Credibility," *American Law Review* 61 (1927): 273-275, 275 and C. W. Hall, "Impeachment by Evidence of a Witness's Bad Character," *North Carolina Law Review* 5 (1927): 340-345, 341.

[110]For retrospective criticisms, see Abraham P. Ordover, "Admissibility of Patterns of Similar Sexual Conduct: The Unlamented Death of Character for Chastity," *Cornell Law Review* 63 (1978): 90-126, 120-121 and Leigh B. Bienen, "A Question of Credibility: John Henry Wigmore's Use of Scientific Authority in Section 924a of the Treatise on Evidence," *California Western Law Review* 19 (1983): 235-268.

community wanted to assimilate a concept like pathological lying into legal discourse and practice. An early example of this logic can be found in a Chicago 1927 case where a principle was accused of having contributed to the delinquency of two pupils, aged twelve and thirteen. The jury based their acquittal of the accused, Wolfrum, on the defense's arguments grounded in medical evidence that the girls were "pathological liars" and hence their testimony could not be trusted.[111] In this sense the pathological liar diagnosis mirrored the fate of the lie detector that also had its origins in the hybridity of progressive social justice ideology and crime control policy but ultimately had a coercive legacy.

These policing technologies both produced and circulated new ontologies of deception that were quite persuasive. Both argued that deception operated in the mind and body and could be located as a distinct thing, a psychological complex. Grafted onto one of the twentieth-century's most powerful technologies of the self, psychiatry and psychoanalysis, the Healys presented a vision of deception bound to the pain of trauma. Advocates of the lie detector similarly argued that deception existed as a complex that their technology could trace with instruments and graphically display. Their technique could measure the mind's deceptions because they expressed themselves in the workings of the physiological body – in a suspect's elevated pulse or increased perspiration.

Primarily engrained within a legal framework, these psychological techniques transformed deception's association with the marketplace in subtle but important ways. Certainly the world of commerce remained an important point of reference for the psychological study of deception. The pathological liar was essentially a commercial swindler, but one defined as usually female individual who could not derive a profit from her

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[111]Philip Kinsley, "Jury Acquits Wolfrum of Girls' Charge," *Chicago Tribune* May 25, 1927, pg. 1. Papers would occasionally report a defendant receiving clemency after having been identified as a pathological liar. For example, see "Lie Preventive Needed," *Washington Post* June 21, 1923, pg. 6.

imprudent and inconsistent schemes. In other words, they did not seem to be acting in their best financial interest. One could say that what was deemed pathological about them was they did not adhere the dictates of the marketplace. At a time when the lie detector was facing considerable scepticism in the courtroom, polygraphers were discovering a lucrative new avenue in the form of screening bank employees for embezzlement. Despite such ties, the linkages were erased in significant and lasting ways. More so than any technique previously discussed, here deception was interpreted as a psychological process that manifests itself in the body. Ultimately, deception was rendered an internal mental state particular to the individual and divorced from the commercial economy.

Conclusion

The marketplace was a problematic web of associations for nineteenth-century Americans. From at least the time of the Jacksonian market revolution onwards, freedom and liberty were equated with the possibilities of commerce in the political imagination. As the popular rags-to-riches narratives of personal virtue and success stressed, capitalism provided the means through which self-making and social mobility could be achieved. Commercial exchange was the nexus where providential will and the qualities of an individual's internal moral character manifested themselves in the form of success and material wealth.[1] At the same time, commerce also had the potential to unmake one's freedom and undercut the ideal of personal autonomy so important to nineteenth-century liberalism. Beyond the threat of financial failure in the form of debt and bankruptcy, a sense quickly developed that one's freedom was challenged simply through the everyday, mundane, successful transactions of commercial exchange. Buying and selling were passionate affairs and the individual's resolve could easily give way to temptation, desire, or greed. Virtuous exchange that served both the individual and society had a little too much in common with illegal fraud.

This ambivalence was beautify captured by an anonymous British observer in an 1851 article concerning the so-called 'science of deception.' For the proliferation of artful commercial trickery was a skill at which the "Anglo-Saxon race" had once again proven to be superior. He argued that he had: "a right to speak of the 'science' of deception, for it has all the dignity, symmetry, and order of the nobler sciences. It has its mysteries, which are

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[1]See John G. Cawlti, *Apostles of the Self-Made Man: Changing Conceptions of Success in America* (Chicago: University of Chicago Press, 1964) and Scott A. Sandage, *Born Losers: A History of Failure in America* (Cambridge: Harvard University Press, 2005).

utterly unknown to the uninitiated; it has also its professors, who are men very often raised by the administration of their own dupes to positions of high honor and great profit."[2] The 1849 naming of the confidence man as a particular a social type, the criminal predator who profited through commercial deception, signaled that many Americans recognized that this science did in fact flourish within their national boundaries. If nineteenth-century observers held that commercial fraud had coalesced into a science, what of its detection and policing?

A generation of American Studies scholars have rightly emphasized P. T. Barnum's critically important role in navigating the fundamental tension between the market's promise of freedom and its threat of deception. Barnum's humbugs were carefully stage-managed deceptive commercial commodities whose detection was simultaneously amusing and edifying. His American Museum and other exhibitory spaces provided venues where ordinary Americans could refine their commercial sensibilities and hone their skills of detection. This study began with the relatively simple questions: What happened following the dissolution of Barnum's museum? How did public understanding of deception change following the end of Barnum's stage-management? What role did the sciences play as the most esteemed technologies of truth of the era?

An array of tools, techniques, and technologies usually assembled around the burgeoning discipline of psychology soon came to light. Both observers of commercial life and psychologists shared a common concern in the complexities of human deception. In the years following Barnum's eclipse as a leading public icon, the human sciences were seen as offering a new foundation for the constitution of ethical relations. Through increased knowledge of the emotions and mental processes that led individuals to either deceive or be deceived, psychologists argued that they could provide techniques for managing commercial

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[2]"The Science of Deception," *The International Magazine* 4(3) (1851): 806.

exchange. They staked their claim for generating new possibilities of instituting ethical interpersonal relationships.

In developing this ethos, psychologists stressed the negative emotions in the assemblage that formed deceptive human subjectivity. Such connotations were most acute in the trauma at the root of the pathological liar diagnosis and the importance of fear and anger in lie detector technologies. These psychologists did not pay sufficient attention to the pleasurable aspects of deception that had been so important to the success of Barnum's public spectacles years beforehand. Although identified in passing on occasion, psychologists generally failed to capture the full complexity of deception as a mental complex. For example, G. Stanley Hall's student Norman Triplett noted in his evolutionary account a certain delight derived from being taken in by the magic show which occurred with the slackening of the observer's usual rigorous judgment and the reversion to a childlike, 'primitive' attitude of wondrous credulity.[3] In a complimentary fashion, William Marston noted in his initial report on the correlation between blood pressure and the act of deceiving that some of his experimental subjects, when asked to introspect about the process, recorded a sense of delight and pleasure in fabricating tales.[4] While the twentieth-century's dominant psychological models of deception stressed its links to anger, fear, and trauma, pleasure is an important, though neglected, aspect of the emotional assemblage. To capture this complexity has required constituting the psychology's boundaries far wider than the specific purview of academic psychology. To reconstruct the historical ontology of deception requires giving considerable attention to 'non-scientific' psychologies produced in spaces such as Barnum's

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[3]Norman Triplett, "The Psychology of Conjuring Deceptions," *American Journal of Psychology* 11(4) (1900): 439-510, 507.

[4]William M. Marston, "Systolic Blood Pressure Symptoms of Deception," *Journal of Experimental Psychology* 2 (1917): 117-163, 136.

American Museum, the tent that sheltered the Cardiff Giant, and the exposure of commercial swindlers.

The psychologists' narrowing of vision also meant that they neglected another way in which their experimental, truth-telling practices represented a continuity with Barnum's enterprise: that artifice and deception were central to both. As Kurt Danziger has rightly stressed both psychology's laboratory method and its experimental subjects are rife with artifice.[5] In the mid-twentieth-century, the increasing experimental approach to social psychology required that lying to experimental subjects in order to produce 'natural' results became even more prevalent. Such arrangements caused considerable epistemological anxiety in a scientific discipline consciously trying to craft practical applications to rationalize and restructure the social. The tensions among the psychologist's commitment to truth-telling, the artifice in laboratory design, and the perceived necessity of deceiving experimental subjects in order to elicit natural behavior came to a head with Stanley Milgram's infamous work on the nature of obedience. In the aftermath of the public scandal, as psychologists grappled to formulate a new code of professional ethics, something disturbing came to the fore: in order to be a reliable experimental science, psychology required the practice of deception.[6]

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[5]Kurt Danziger, *Constructing the Subject: Historical Origins of Psychological Research* (Cambridge: Cambridge University Press, 1990).

[6]See Benjamin Harris, "Key Words: A History of Debriefing in Social Psychology," in Jill G. Morawski, (ed.), *The Rise of Experimentation in American Psychology* (New Haven: Yale University Press, 1988), 188-212. See also James H. Korn, *Illusions of Reality: A History of Deception in Social Psychology* (Albany: SUNY Press, 1997) and Thomas Blass, *The Man Who Shocked the World: The Life and Legacy of Stanley Milgram* (New York: Basic Books, 2004).

Note on Sources

In exploring the perceptions and consciousness of the upstate New Yorkers who constituted the Cardiff Giant's initial audience, the vertical files of newspaper clippings housed at the Onondaga Historical Association in Syracuse, New York have been an invaluable resource. The coverage from two local newspapers, the Syracuse *Daily Journal* and the Syracuse *Standard* were particularly rich sources. Because these newspapers both covered the affair and reprinted local reactions, the historians is able to better reconstruct how a historical audience may have constituted their subjective experience of witnessing such as spectacular display. Although the audience responses are limited to those who wrote in or where observed, this is a considerable denser collection of responses than is typical for similar cultural spectacles. Since the audience is often the most elusive yet highly sought after aspect in cultural history, the Cardiff Giant truly is a particularly rich but understudied site of inquiry for the history of spectacle, perception, and American culture. I was also able to make use other part of the vertical file collection and their collection of ephemera to identity and flesh out the life histories of several locals who participated in the event.

To explore the shifting nature of confidence men in terms of both their practices and cultural perceptions, I made extensive use of the collections of the Library of Congress. Although a few volumes are unfortunately lost or missing, the various exposés and confessions published during the era form the backbone of this chapter. In this chapter and throughout the study, I made use of the digitized and searchable New York *Times*, Washington *Post*, Chicago *Tribune* and *Defender*. In pursuing certain local stories, I supplemented these searches with a reading of microfilmed versions of papers like the Chicago *Herald-Record.*

In order to reconstruct the history of the unwary purchaser I was guided by essays by lawyers and psychologists written during the period under consideration. From these reviews, I was able to begin to track down the relevant legal decisions where the unwary purchase was invoked. By following chains of reference and using the lexis-nexis legal database I was able to compile a list of a hundred odd federal decisions from the 1870s to the 1920s that centered on the question of how easily the consumer could be deceived and how the law ought to address this concern. These materials were supplemented by the annual reports and case files of the Federal Trade Commission available at the National Archives and Record Administration in College Park, Maryland.

Not surprisingly for a dissertation largely concerned with the history of the human sciences, the professional journals and monographs of the period have provided much of the infrastructure of this study. Before one can adequately contextualize scientific practice, one needs to understand the content of the discipline. No source provides better information on this than these disciplinary oriented publications. For the final chapter, the most useful journal was *The Journal of the American Institute for Criminal Law and Criminology* that published articles by psychologists, psychiatrists, police officials, lawyers, and others interested in criminology.

These published sources were supplemented whenever possible with manuscript collections that filled out the background to published research. Sadly, William Healy did not leave behind manuscript papers although I did consult a long (over three hundred page) transcript of an interview conducted with Healy and his wife and fellow psychology Augusta Bonner by historian John C. Burnham in 1960 housed at the Chicago Historical Society. Healy requested that the interview not be cited directly although it could be consulted. Hugo Münsterberg left behind an extensive correspondence housed at the Boston Public Library.

The collection illuminates the professional and commercial aspects of his career more than his process and procedure behind his research as an experimentalist. His correspondence is a rich source for exploring Münsterberg as a public scientist. In contrast, essentially the entirety of Joseph Jastrow's professional correspondence were destroyed around the time of his death as the historical society which housed them did not find them of particular interest. What has survived (mainly his and his wife's private correspondence to other family members) is currently held papers by the special collections of the Perkins Library at Duke University. Much like in his published autographical sketch, the personal aspects of Jastrow are largely effaced. The records of the American Psychological Association held by the Manuscripts Division of the Library of Congress have little material of direct relevance to this time period and are considerable richer for the post-WWII era.

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Biographical Sketch

Michael John Pettit was born in Ottawa, Ontario on October 20th, 1978. From 1997 to 2001, he attended the University of King's College and Dalhousie University in Halifax, Nova Scotia where he graduated first class honours in Contemporary Studies and History. In 2001, he enrolled in the PhD program in the History Department at the University of Toronto.