SWINDLING
AND
SELLING

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For my father Joseph Leff

Finally, one he would have read. . . .

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Myra J. Green and Klari Neuwelt, who, as students of mine at Yale Law School, wrote excellent and useful papers on, respectively, the swindler I call Marvin Sonnenlieb, and the one who called himself Charles Ponzi.

The National Endowment for the Humanities, a grant from which in 1972–73 allowed me the leisure to do some of the reading and thinking which eventually surfaced in this essay.

And my wife Susan, who kept saying, though with rapidly failing energy, "Nonsense. It'll be a wonderful book."

There might actually occur a case where we should say "This man believes he is pretending."

LUDWIG WITTGENSTEIN
Philosophical Investigations

Part I

SWINDLING AND SELLING

Chapter 1

WHAT AND WHY

SOMETIME IN 1962, Marvin Sonnenlieb, a nonpracticing New York lawyer and one-time tavern owner turned door-to-door vacuum cleaner salesman, discovered what was to him a new and dazzlingly attractive mass-merchandising device, the "Referral Sale." It was (and is) a sales strategy whereby consumers can be persuaded to buy quite expensive bits of merchandise secure in the belief that all they need do to earn back the whole cost, and maybe more, is give over the names of friends and relatives who might also be interested. Sonnenlieb embraced the idea enthusiastically, and, within only seven years, he was bankrupt and in jail.

What was essential to Sonnenlieb's scheme, however, was not unique to it. At its heart was a series of moves central to all selling and swindling. His story and all of the following stories, despite the vast variation in their surface appearance, are essentially the same story. For example:

One morning this summer, Arnold D'Amico, sales manager of Mastadon Appliance Mart, Paramus, New Jersey, noticed that piling up in the back room he had rather a nasty quantity of unsold 8,000–B.T.U. air conditioners, each previously priced at $150. He stacked them all near the store entrance and put a sign on top saying "Clearance Sale—Overstock—$139.98." He was pleased to note, a week later, that almost all of them were gone.

At about the same time, Morris J. Acme, owner of Acme Widgets, Inc., was writing a letter to his sometime customer, Heuser Instruments. After fully noting his abandoned joy at receipt of theirs of the 17th inst., he mentioned that, "A special purchase of widget metal allows us to offer you up to 100,000 Grade B two-inch (tol. $\pm$ .01) blasting widgets at the unprecedented price of $867 per M, F.O.B. our plant." During the moderately ugly telephonic wrangling which soon followed, Heuser finally agreed to take 68,000 at $854, F.O.B. its own plant.

Much earlier, no later than the fall of 1192, an uncommonly prosperous Angevin magnate named Pierre de la Crédulité was handed a letter by a hooded and self-effacing cleric, one Father Jaunnot, who had just arrived meanly mounted. The note, which certainly looked as if it had been sealed with the personal signet of Richard of England, asked whatever the addressee could spare toward a plan to bribe the King's freedom from his Austrian jailers. The letter pointed out that since the official ransom demanded by Henry VI of Germany was 150,000 silver marks (plus some immoderately embarrassing fealty ceremonies), the King's eventual gratitude to Pierre for helping him toward this cheaper egress would, once the King got home, be almost vulgarly ostentatious. Pierre handed over two silver marks. Neither Richard (nor, for that matter, his keepers) ever saw the money, nor did Pierre ever see the messenger again.

At this very moment, a very big man at a local advertising agency, one Alan P. Leviathan, is worrying about how best to introduce to the American public a new and surprisingly effective treatment for acne vulgaris. He is torn between accurate before-and-after shots of a treated adolescent, and a sequence showing two beautiful, clear-skinned models fondling each other on a beach blanket shared with them by a tube of The Product. Leviathan hesitates, but he will choose the latter.

It is now past midnight. Brother George has just finished his sermon. A few of the communicants are still writhing on the floor and the pastor's final exhortation to spread the word to the heathen is still ringing in the hall, mingling with the abandoned glossallia and wild affirmations of the congregation. Slowly emotion ebbs, and the hall begins to empty. As each communicant departs, he leaves a love offering, in cash, in the basket by the door.

If, indeed, all of these people (none of the names are real, by the way, and some of the people aren't either) are doing the same thing, it is not obvious, on the face of it, that they are doing so. Sonnenlieb's game is a subspecies of what is now America's top swindle, Pyramid Selling. D'Amico is just running a clearance sale. Acme is offering Heuser a marginally better deal than his competitors, a perfectly ordinary instance of what is the most common form of business salesmanship, what I shall call the "Squaresville Pitch." Father Jaunnot is pulling a medieval version of that classic bunco game, the Spanish Prisoner. Leviathan is hovering over that staple of effective advertising, Calvinist Causation. And Brother George is working a Godcon. If we placed all these activities against any number of different categorizing grids—legal, ethical, historical, or whatever—they would in every case fall into different squares. Jaunnot's Prisoner, for example, is a congame, while D'Amico's clearance sale is not. Leviathan is selling things, while Brother Joseph is helping the Grace of God freely to emanate. Acme and people like him have been doing a Squaresville since the beginning of commerce; Sonnenlieb's type of Pyramid Sale is a recent technological breakthrough in mass merchandising, perhaps twenty-five years old at most.

But underneath all this apparent diversity—not only among the examples given above, but between swindling and selling in general, and, within those two categories, among particular instances—there lies a fundamental, invariant, and apparently timeless structure. Among congames the Spanish Prisoner is not "the same" as the Gypsy Switch, the Wire, the Rag, the Pay-Off, the Ponzi, the Smack, or the Tip. As salesmanship, Squaresville Pitching is not the same as Clearance Selling, and an Introductory Offer is not identical with a One-Day Special. But these activities are, nonetheless, all constructed out of the same basic parts, in response to the same basic problems, and they can be described with the same basic vocabulary.

What I propose to do here is to tease out and display what I take to be the rather elegant, basic, shared structure of swindling and selling. There are several practical justifications for such an effort. Understanding how a thoroughly licit selling device like a Clearance Sale, say, is related to a form of sometimes subtle bunco like "Bait and Switch" may help in the design of laws directed toward stamping out the latter without playing havoc with the former. (I am, after all, a law professor, and such activities seem more important to me than to more broadminded men.) Moreover, since few of the users of these techniques seem to know very particularly what they're doing or why they're doing it, putting a little analytical light on the problem may help those not doing conscious evil to do good more efficiently (even if that may also help the crooks better to appreciate their own innocent cleverness). But the more persuasive ground for going to all this bother is that this question, what actually happens in effecting exchanges, has heretofore been almost ostentatiously neglected by almost all scholars in almost all the pertinent disciplines, thus denying all of us the aesthetic joy of contemplating what is really a very pretty story.

It is, for example, rather a striking fact that the most famous crossroads in the world of economics, that spot in the heartland of commerce at which supply and demand intersect, has never itself been thoroughly mapped by economists. Everyone knows that the intersection is there. It appears again and again on larger maps drawn for longer voyages—many of which, in fact, have it as their destination. But the place itself, the territory of the actual exchange, is still by and large an undiscovered country, not because analytical travelers have trouble returning, but because they rarely, if ever, go. For most economists, it has up to now seemed sufficient to show the land where fulfillment and desire meet as a dimensionless point, that place on one of their graphs where cross two of the great progenitors of fascinating curves, supply and demand. As far as many questions in economics are concerned, snapshots of the exchange process look like nothing so much as the tracks of two gently addled camels crossing on some vast and undifferentiated desert.

There is no reason, however, to be particularly querulous about economists. The actuality of buying and selling—trading—is, after all, a rather frequent and important species of human interaction, especially in a market economy. One would have thought that other scholars in disciplines more attuned to the dramatics of living, for whom the presentation of the sell in everyday life ought to have greater natural appeal, would have explored the matter in some detail. But, though there may be a few fascinating exceptions, by and large what the economists see as a desert, the sociologists and psychologists seem to see as a swamp, and one into which they would, apparently, rather not sink quite yet.

That doesn't mean that no one thinks the buying and selling process is interesting. When, several years ago, I last looked, there were one and three-quarter New York Public Library catalogue drawers (about 2,000 cards) under the heading "Salesmen and Salesmanship." But if you're inclined to run down for a good read, you ought in fairness to know in advance that there are, essentially, only two titles represented: "Nine Rules For Productive Selling" and "How I Tripled My Income Through Positivity." All in all, the salesmanship books bear the same relation to analytical understanding as a manual on apple harvesting bears to Newton's laws.

Naturally, I am overstating the situation. One needs to be of far better character than I not to exaggerate the uniqueness and power of one's own approach. Though I have certainly not read even one-quarter-inch worth of the public library catalogue's glut of salesmanship books, the few that I have dipped into have more than occasional moments of illuminating cunning and shrewdness. Moreover, a large number of things that the motivation-study psychologists have said about the deep drives that motivate the purchase of goods have the ring of persuasive, if tacky, truth about them. But more important than all that, even if strikingly few economists, sociologists, or psychologists have devoted themselves specifically to the actuality of "the deal," no one can even begin to explore swindling and selling without reference to economics, sociology or psychology. All of those disciplines have developed concepts—or at least metaphorical grids—without which it seems to me impossible to understand—or, harder, to describe to someone else—what in fact is going on.

From time to time, then, I will be using divers and diverse vocabularies which have their own rich development. I shall, for example, dip into social psychology for some primitive cognitive-dissonance talk of my own. I shall snatch some extremely useful class-definition and class-formation talk from sociology, and lift large chunks of role theory from the same cache. And I shall be borrowing huge dollops of modern microeconomics throughout. In fact, insofar as there is anything at all new in this entire book it is the attempt to put together the insights, vocabularies, and approaches of these various intellectual structures into a unified "explanation" of a discrete and limited, but still moderately juicy phenomenon, "the sell."

I have been cautious about the use of the word "explanation" in that last sentence, for good reason. The following two hundred–odd pages will constitute no such thing, at least not according to any reasonably expansive meaning of the word. I do think there is a way to braid the vocabularies of modern microeconomics and modern sociology and social psychology into a single internally consistent and predictively powerful strand of speech that will serve to illuminate some otherwise puzzling things about swindling and selling. I think, that is, that one can dissect out and display a compact, unitary logic of those activities. But I would still prefer, to the extent possible, to skirt both the holistic and the essentialist fallacies. That is, I believe neither that one understands nothing about something unless one understands everything, nor that understanding something any one particular way means that there is no other way to "understand," that is, to see a pattern which generates aesthetic pleasure in the perceiver. There are, most likely, an infinity of other amusing and instructive approaches. The only thing that distinguishes the one about to take shape is that it is mine. As these things go, then, this is a small collage, but there are some of us, I hope, who will love it.

Chapter 2

THE GENERAL PRINCIPLES OF SWINDLING AND SELLING

THE FUNDAMENTAL MESSAGE that must be gotten through to all marks and customers by all swindlers and sellers is this: Do the deal. But the world is a rich and variegated place, and everyone is being offered deals all the time. So to every such proposition there is, not necessarily articulated, essentially the same response: Why should I? To that invariable response there is only one general form of reply: Because you'll be better off if you do than if you don't.

Now that kind of general reply is exceedingly abstract. It is consistent with all sorts of situations—even with the progression: (1) Give me all your money; (2) Why should I?; (3) Because I'll beat your brains out if you don't. That is, "better off" is quite meaningful as the equivalent of "Not as bad off as you're going to be if you don't do what I say." But neither swindling nor selling are practiced in a context of open coercion. In both situations, both parties to the deal are presented, to themselves and to each other, as free—to choose this deal, or another deal, or not to deal at all. Thus "better off" is a promise of gain from trading (as compared with not trading), not a threat of diminution or destruction.

"Better off," in selling and swindling discourse, is very close to "richer"; you will be better off because you will have more goodies, or better ones, after trading than before. That is, the reason one deals—trades—is that one will increase one's store of the things one values by doing so.

But that generates, at least at first glance, something of a mystery: Where is the additional wealth one gains through trading coming from? It would not seem credible that what one party to a trade gains the other party to that trade loses, for if that were so, why would the "losing" party do the deal? Nor would it be initially persuasive to hear, as an explanation of the wealth, that it is coming from the pocket of some third party; why would *he* allow his pocket to be picked? But if one's post-trade wealth increase comes neither from the other party nor from some third party, where does it come from, thin air? As we shall see, then, every selling or swindling pitch will have in it someplace, express or implied, some explanation of the other party's surprising willingness to lose or of some third party's quiescence in the face of *his* loss, or some convincing depiction of the wealth-producing powers of thin air.

Every pitch does have worked into it some such explanation. But locating the source of the wealth, while a necessary element in every selling and swindling script, is not sufficient. For there is another question that must also be answered before the deal can be closed. Assuming that the source of increased wealth is somehow explained, every customer/mark must also be given a credible explanation of why the seller/conman is splitting with him. For assuming there is a bundle, and assuming the offeror knows where it is and how to get it, why shouldn't he just keep it all for himself? In other words, whether the source of the boodle is initially painted as the offeror's pocket, or someone else's, or even thin air, it still is, at least potentially, the offeror's pocket. Why then (wonders, at some deep level, the buyer/mark), is he transferring to my use that pile of value he could convert to his own? What the buyer/mark wants to know, in effect, is, what's in it for the other guy?

In form, these harassing questions—"Why are you splitting with me?" and "What's in it for you?"—are not exactly the same. One could, after all, answer: "There's nothing in it for me; I'm cutting you in because I love you." It is at least theoretically feasible for a conman or salesman to paint the proposed transaction as one after the completion of which he will be materially poorer, and to explain his willingness nonetheless to complete it as mere generosity. That is theory. In fact, I have never seen any such pitch ever made in any swindler's tale or seller's pitch. Never. I have not, of course, considered every pitch there ever was, or even every one there now is, but in what I have seen there is no instance (not even in the Godcons, where the Grace of God is what is "distributed") in which the burden of the story is that the mark is to end up materially better off while the other party ends up materially worse off. To put it briefly, if there is any message which neither conmen nor sellers *in practice* ever attempt to convey it is: "Come and get it—something foı nothing." It is always, instead, some form of "No gifts, I'm proposing a deal: something for something."

Now that is interesting. For the oldest behavioral saw in the books, including those written by conmen, is that everybody *wants* something for nothing. But since in practice, so far as I can tell, no one actually operates under any such assumption, then it appears that everyone's wanting something for nothing is one of those pieces of folk wisdom which, as usual, manage simultaneously to be accurate and miss the point. If there is in fact this pervasive desire for something for nothing, it seems to be engendered by everyone's quite clear appreciation that it's unlikely ever to happen. That is, in this case as in so many others, where there's a will it is because everyone pretty well understands that there is no way.

In fact, the picture that emerges when one studies a large number of swindling and selling techniques is of a society by and large profoundly skeptical about the possibility of love and gifts, at least from strangers. It is as if everyone had internalized some social equivalent of the first two laws of thermodynamics—(1) You don't get something for nothing; and (2) You don't even break even—and applied it automatically to every offered bargain.

It is also possible to put the matter thus. It seems that, at least in the interaction situations explored here, every man is in fact assumed to view every other man the way economists view all men. An economist's rational man is one who makes an economic move (like trading) only when it will improve his own "utility." Now an economist's "utility" is not necessarily based solely on material things; one may "improve one's utility" in these terms even by giving money away to one's children, or to a charity. But the enhancement of utility through a decrease in material wealth is a rare occurrence in the economic universe, limited to special contexts like the family and the annual Red Cross drive. Such special contexts are thus also rare in the usual scripts of sales or congames. As we shall see, a very few congames—"Go by my cousin Julius," for instance, or "Ripping Off the Man"—do attempt to counterfeit such a context, implying non-economic man attitudes. But if I read the pitches and contales right, salesmen and conmen almost invariably view the public as viewing itself as made up of "true economic men," people who never give except for material gain.

Such a view of human nature—man as *homo economicus*—severely constricts the range of possible answers to the "Whence the bundle?" and "Why the split?" questions, and thus puts relatively tight constraints on selling and swindling scenarios. If most people do perceive most other people as rational self-maximizing economic men, then anyone who *proffers* a deal must also be seen as himself expecting to grow richer through its consummation. But if he is indeed to grow richer, the requisite increase in wealth must have a source, which, the mark must recognize, can only be (1) the other party to the deal (that is, the mark himself); (2) some third party; or (3) the mysterious "thin air." Thus anyone shaping a deal must write a script which persuasively sets up a situation in which both parties gain but neither's gain is at the other's expense.

All swindles, therefore, offer something for something. Indeed, contrary to the prevailing clichés, so counterproductive to a good score is the offer of something for nothing that the most creative element of any good bunco script is that part devoted to inflating the apparent value of the *mark's* contribution. Certainly it is important that the conman make the mark's expected return, the swindle's payoff, as gigantic as credibly possible. But it is more important, and in the nature of things more difficult, successfully to increase the apparent value of the mark's contribution—that is, to *appear to give the mark something to give which you can then appear to need.*

Most of the rest of this essay will be devoted to uncovering and illuminating the several (but essentially similar) ways in which all selling and swindling scripts are written so as to operate successfully within these severe basic constraints. As we shall see when plays like the Spanish Prisoner and the Squaresville, the Gypsy

Switch, and the Differentiated Product are described, what is most interesting is the way in which these forms of human interaction, when viewed sociologically or even psychologically, track the picture of the same transactions that a classical economist would find congenial. In fact, if any generalization could be made about all bunco and all selling, it is this: Successful plays demand a convincing dramatization of the fundamental processes of microeconomics.

Let me go back a step. At this point the implicit dialogue is this:

Seller/Conman:	Do the deal.
Buyer/Mark:	Why should I? ("What's in it for me?")
Seller/Conman:	Because you'll be better off if you do than if you don't.
Buyer/Mark:	You mean you're making me a present? ("What's in it for you?")
Seller/Conman:	Don't be so suspicious. What's really happening is this:

Now, what follows that bland colon? Many varieties of one thing, the most basic thing in all economics, to wit: all the different ways of saying, "We need each other."

There is, you see, happily for commerce and providentially for conmen, a fundamental ambiguity about the relationship between parties contemplating a trade: at any given moment they are simultaneously partners and competitors. That they are competitors is perhaps the more obvious of the two characterizations, for the common drama of the haggle is the one that flicks first across the mind's eye. When Ahmed and Kevin contemplate exchange with each other, they bargain, each trying to get as much of the other's wealth as he can in exchange for as little as possible of his own. They each bargain toward *getting* a bargain, that is, toward maximizing their own utility *at the* expense of the other's. Ready-made pictures of that very familiar kind of human interaction abound, from the frantic gesticulations of the Casbah market to the cold mutual malice of telephone calls between sales managers and purchasing agents in a competitive industry.

Despite appearances, however, not all exchanges are exploitative. In fact, few are. When two people make a deal over things of value it is not necessarily the case that one or the other of them come out of it worse off than he went in. You don't have to have one of the traders dumber or weaker than the other in order for there to be a trade. Even in a situation of trading prefection (where both parties are equally free to trade or not, and where whatever one knows the other does also) there would still be trades. For it is frequently the case that what one has is worth less to oneself than to someone else, and, most important, vice versa too. In such cases, a trade will enrich both parties.

Within any "competitive" trading situation, then, there is almost always hidden a cooperative partnership: each party does try to maximize his utility at the expense of the other, but it is only *together* that they can increase the total utility in their joint system. It is over their respective shares of this newly created potential value that the parties really contend.

This mechanism, trading items of differing personal utility so as to produce more of value for both parties jointly to gobble up, appears in two different guises, both of which can be, and are, adapted to selling and swindling. The first involves what is essentially a two-party universe and hence shows up early in most elementary-economics textbooks. It almost always goes something like this (right down to the gustatory setting). If I have two large pizzas and no beer, and you have two large beers and no pizza, it is most likely sensible for us to trade. For it is likely that your second beer will give you less satisfaction than it will give me, and the same (though in reverse) is true with respect to my second pizza. Let us assume that there was a standard unit of comparative happiness-from-things; call it a "util." My first pizza is worth, say, three utils to me, and my second is worth one. Your first beer is worth four utils to you, and your second is worth two. Thus there are ten utils between us if we both stand pat; my pizzas, if consumed by me, give me four utils, while your beers, if you drink them, give you six. Now let us assume that your second beer is worth four utils to me, while my second pizza is worth six to you. If we trade, there will be seventeen utils of satisfaction in the system. That is, there will have been an exchange after which both parties are, in their own perception, better off. They will thus have created value out of "thin air." ("Where's the bundle coming from?" "Out of thin air.")

Once the two-party universe is opened up, there arises another form of usable ambiguity on the framework of which to construct puissant pitches. It is perfectly clear that people can form aggregates which are internally competitive among the members of the group, but which form a cooperative unity with respect to outsiders. That, after all, is the nature of any business firm. Each element of production—capital and labor, for instance—would like to arrogate to itself the largest share of "profits," and each will (and does) compete for that share; General Motors and the United Auto Workers are snappish about this with each other all the time. But G.M. and the U.A.W. need each other to realize those "profits" in the first place. Thus they are constrained to act together, even while contending among themselves, so as to maximize their joint returns at the expense of competitors.

Moreover, the situation is the same whether the productive elements are joined in some formal structure like a "firm," or are linked in their joint enterprise by a formal contract, or simply work together *ad hoc* and informally. Even deals made between "independent" factors at arm's length are still simultaneously competitive and cooperative. When I sell goods to you for your use in your own manufacturing process, we are still, in effect, working together to create a "surplus" which both of us can share.

Thus it is a perfectly rational and widely recognized model of general economic organization which identifies the source of "our" boodle as "them." If we together can form a team that outperforms, outdeals, outthinks, or even outsteals outsiders, they can be exploited by us, very much more successfully than either of us alone could exploit them, and usually much more profitably than we could exploit each other. We "need each other" still, but this time the source of our symbiotic gain is not the "thin air" of comparative advantage but the more down-to-earth "their stuff." As we shall shortly see, the ur-plot for substantially all selling scripts, crooked and otherwise, is this attempt to dramatize the creation and operation of a "firm" in which the buyer/mark has a useful, and preferably necessary, role to play in the plunder of someone else.

Once the two-party universe is opened up to admit the existence of outsiders, however, another matter requiring a good deal of creative-writing delicacy slips into worrisome focus. For while parties must frequently trade to improve their positions, and must often cooperate to maximize their joint and individual "profits," once it is made clear that "others" exist, it also becomes dangerously clear that neither the trading nor the cooperating need be with any particular other. Many "others" may also offer deals, and the terms of each are not necessarily the same; if you are a two-pizza man, there may be a six-pizza man who is quite willing to trade more than one of them for just one beer, whether for consumption or for a restaurant partnership. That is, if outsiders exist, they can be competitors as well as victims, and competitors sometimes undersell. It will become necessary, therefore, if you want to "make a sale," to do more than offer a deal better than no deal; you will have to offer a better deal than anyone else. You must, that is, be offering a "bargain." And given the most fundamental principle of selling credibility—thou shalt not appear to be making a gift—symmetry must be attained on this level too. In order to make the offered bargain believable, you must also convey that by doing the deal you will also be *getting* a bargain. Thus, for the proffered deal to be attractive, not only must it seem to offer more than the other party could get from anyone else, but it must also appear that the same deal will realize *for the offeror* more than *he* could get from anyone else.

The central problem for all swindling and selling scriptwriters, then, is to create a dramatic situation in which both parties need each other and, beyond that, need each other more than (or at least as much as) they need anyone else. That turns out to be one of those dramaturgical problems—like first-act exposition of the pre-curtain situation, or getting the ingenue plausibly and naturally behind the arras to overhear the villain's soliloquy—which admits of what looks like many solutions. All of them, however, turn out to be essentially the same.

All of this can, I think, be illustrated by concrete instances taken from common trading interactions, both licit and illicit. But because, as we shall see, the magnitudes of the elements of "the sell" deployed in a congame tend to be so large as almost to parody the microeconomic principles being dramatized, the place to start is with various ploys of classic bunco. Once we see the essential moves magnified in the swindling context, it will be considerably easier to see them—made more slowly and more subtly—in normal salesmanship. So let us now spend some time in the swindler's world.

Part II

SWINDLING

Chapter 3

TWO-PARTY PLAYLETS

The Prisoner

"THE PRISONER" (in this country, now most commonly known as "The Spanish Prisoner") is a sort of building block of bunco, a basic structural element. When looking at the structure of some congames—the Wire, the Rag, and the Pay-Off, for instance, the Smack, Tip and Last Turn, the Gypsy Switch, and Greengood's Game, the Ponzi, and the Referral and Pyramid Sales—it can be discerned in high relief around the level of the foundation. But it appears in every variety I have ever run across. And it also plays a role, muted but essential, in almost every salesmanship strategy. On reflection, this ubiquity is hardly surprising. For the cons known generically as "Prisoners" or "Spanish Prisoners" are merely particularly pristine crystallizations of the fundamental manipulation of all swindling and selling; viz., the attempt to create an *ad hoc* drama in which strangers are made to appear as nearly as possible necessary to each other, irreplaceable members of the same cast.

Why this bit of bunco is today generally called the Spanish Prisoner I do not know. There was a version very popular in the nineteen thirties and early forties involving allegedly jailed Spanish loyalists, but there were versions played at the same time which used the personae of jailed Jews in Germany and anti-Mussolini activists in Italy. My imagined opening vignette of a twelfth-century play would undoubtedly have been called "the Austrian Prisoner" by the English conmen of the day, and the Pope, in Gide's version (in *Lafcadio's Adventures*) was theoretically held, as I recall, in his own Vatican basement.

In any event, the specific geography is irrelevant to the success of the play. All one needs is a plausible prisoner convincingly privy to vast wealth and understandably in jail. Thus I shall set my own exemplary description in a nice, up-to-date context in which the subtler reverberations of the tale will resonate easily in the informed ear of any modern student of current events. Like this.

Spiros Tzourous (if that's anyone's real name, he has my sympathy) is a successful surgeon. He was born in New York City, but his parents came over as immigrants before 1910, and their tales of Greece and Greek history fixed his interest in his country of origin from an early age. He prospered in medicine, and found himself hovering happily, if somewhat surprised, someplace between great comfort and what may fairly be called wealth. Though anything but a wild radical, from time to time he lent his name and gave some of his money to organizations opposed to the Greek military government. In addition, like many doctors he acquired his money without ever having had to dabble in price theory; that nagging relationship between marginal cost and marginal revenue, known deeply if unsystematically by men who wear their hats in their offices and scream into phones a lot, was a terror incognito to him. He grew rich knowing nothing about the small ledges over deep precipices on which most wealth flourished. He was, that is, the perfect mark for a "Greek Prisoner."

One day several years ago, Tzourous was sitting at his breakfast table in Riverdale idly leafing through his morning mail when he came across an envelope bearing a Greek stamp, addressed to him in a rather shaky hand which he did not recognize. He opened it with desultory curiosity and read the following:

Honored Professor Doctor Tzourous:

Only my extremeness of condition influence me to adress to you so far away this pray of aid. Please do read with sympathetic it cost my last hidden drachmae to guards to bring letter out for sending.

Myself I am chief helper to Minister of Finance in real government not Colonels. Your name is known to us as friend though far away from free American press papers. Now I am in gaol by usurper colonels. Freedom of me is value but more of loved Hellas in chains now. I prayer help—myself and nation.

When army robbers rob nation I hide from greed paws last day drachmae forty million of nation treasure bonds money paid to holder no need for signing name. To bank in Swiss with number I send. At north border Colonels seize myself since over one year bonds in Swiss still now. For our cause this millions vital only I can get with recipe ticket. Even you is dangerous your help but for freedom myself and Greece one quarter to you your help us. Very very dangerous to guard to let me free wishes many many drachmae.

Why trust? Do not. Send small money Dr. 5,000 American dollars to address below. Only contact poor friend will bribe from bars other letter proof of faith and realness.

M. Athanagoras
Eleusis Street 19
Athens, Hellas

I prayer.

ELEUTHERIA (FREEDOM)

T. Dorakis

Doctor Tzourous reread the letter several times even after he had grasped its message: that the Deputy Minister of Finance in the overthrown Greek government was now in jail and wanted out; that he had cleverly put over a million and a quarter dollars worth of bearer bonds from the Greek treasury into a Swiss account before they caught him; that he was willing to pay over $300,000 to get out to get the rest of the money; and that he was willing to send more details and proof.

Doctor Tzourous did a little checking during the next several days. He discovered that there was a T. Dorakis who was an assistant in the Ministry of Finance. T. Dorakis had disappeared over a year earlier, and Papadopoulos had mentioned in a speech or two the shocking thefts and corruption in the old Treasury Department. That night Tzourous folded $150 in currency into an airmail envelope along with a note saying no more than "Please send further details" and mailed it to the Eleusis Street address.

It took several days for Tzourous's letter, forwarded from Athens, to reach Sean Mekas's post-office box in the Bronx. As soon as he got it (and put the money in his pocket), he went to his files and started to copy out (with an occasional emendation) his normal next move.

Honored Professor Doctor Tzourous:

From the base of my heart I give you thanks for trust myself. You are correct to be bewarey. Inside you find proof of my truth, report from press paper Greek and picture of most important invoice. Real original I keep hidden till when we need. Then Freedom for truth myself.

Drachmae need Dr. 250,000 for guard. Send same address same way.

ELEUTHERIA (FREEDOM)

T. Dorakis

Mekas selected one of the Greek newspaper clippings he had recently had printed and aged (when Tzourous had it translated, it would tell of Dorakis's imprisonment for stealing bonds from the government) and placed it in the envelope. He also included a photostat of an inventory, on the stationery of a Zurich bank, of bonds deposited for safekeeping which bore the legend at the bottom (in French, German, Italian, and English): "No withdrawal without official claim document." He then sent off the whole bundle to his cousin in Greece for mailing to Tzourous.

Eight thousand dollars was a lot of money, even to Tzourous, even after he had his mother translate the clipping and his broker calculate the value of the bonds on the inventory list. More than that, he began to catch the first vaporous odors of a rat—albeit the wrong one. "If," reasoned Tzourous, "it takes only eight grand to get him out, why don't his underground friends spring him, and they'd all get the bonds that way? Why? Because he doesn't want to split with them, that's why." Thus Tzourous's next letter to Eleusis Street read like this:

Dear Dorakis:

It isn't good enough. First, eight thousand is a lot of money and this is a risky business. Second, how do I know you

> won't just take all the bonds yourself (for the movement, of course) once you're out. Third, if you can satisfy me on that, it's still not enough. If I go through with this deal I want half. We'll decide afterwards how much each of us donates to the cause.

Sean Mekas received this heavy twitch on his line with trembling joy. Tzourous was all but landed. As all his other bobbins were still sitting placidly on the surface of Mark Lake, he turned with decision to the landing of this particular fish. In honor of Tzourous's ardor he scorned his files and drafted for him a customized reply.

> Doctor Tzourous:
>
> I am devastate at your letter. I am not trust. My honor is mudded. But I am your mercy. Even this letter I almost get not out. Better half *for the nation* than nothing. I cannot risk lifes of friends to find freedom?
>
> Enclose is one half "claim document." Without this person able not to claim bonds. (Look at bottom invoice.) Send Dr. 250,000 (or same dollars) to Eleusis Street. I will notice you when free and we together will claim in Swiss.
>
> I try forgive you shoeing my name.
>
> Dorakis

Hoping that Tzourous would not suggest taking the money to Athens himself, thus necessitating more of a payment to his Athenian cousin ("Prisoner Letters Forwarded—Face-to-Face Impersonations Extra"), Mekas sent the new letter out through the usual channels. To his abandoned joy, a week or so later he received seven thousand American dollars in a neat bundle from Athens. (After his joy subsided a bit he wondered how much his cousin had deducted for postage; Mekas was not a naturally trusting man.) From that point on, everything was gravy. He sucked another thousand from Tzourous "to bribe for myself out a visa for exit," seven-fifty more for "fishing Captain who calls themself patriot but leaches for money," and another five hundred for Yugoslavia-to-Zurich travel expenses.

At last, on the appointed day, Spiros Tzourous stood in front of the local equivalent of the First National Bank of Zurich. The large local battery of clocks struck noon. Any minute now Dorakis would appear, they would put together their halves to make one whole ticket, and together they would collect their boodle.

Tzourous's share would be worth more than half a million dollars. It was late fall and growing chilly, and Tzourous wished he had dressed more warmly. By four, when the bank closed behind him, he was still standing and still alone, and he wished he were dead.

This demotic Greek version of the Prisoner occupies something of a middleground position on the conman's sparse-to-rococo embellishment-and-complexity scale. More florid and busy versions exist in the literature of bunco: Yellow Kid Weil, one of the modern masters of big con games, not only has described more elaborate plays that he himself has run, but has also reported, with becoming ruefulness, a Prisoner (royal and French in that case) successfully worked on him. But the additional intricacies in those more filigreed versions are not analytically important. There are a few more letters, perhaps, a few better tokens of trustworthiness, maybe one or more credibility-enhancing face-to-face impersonations of the Prisoner's agents. It would, I guess, surprise me if as big a score as Mekas's could be made "playing against the wall" (that is, without props, stage settings, and live actors), but it is not beyond credibility.

At any rate, all of the basic formal elements necessary to a successful play of the Prisoner are in this version. Start with the source of the boodle. Where does the big pay-off come from? What is the nature of the breakdown in normal economic process such that this dazzling abnormal profit exists for the divvying? Theft. But more than that, as to the stolen and hidden bundle, the prisoner in the Prisoner is a *bona fide* (well, *mala fide*) monopolist. Only he knows where it is, and only he can get at it. The source of this extraordinary profit, then, is the source of most of the extraordinary profit in any economic system—monopoly power.

Theft, if successful and successfully concealed, is, of course, always the source of an *ad hoc* monopoly. It is useful if, as in my Greek version, the theft is illicit but not naughty; that is, one finds it easier to attract marks if the ultimate loser is a Greek colonel rather than widows and orphans. Few marks, it seems, like bad thievery; more prefer something which may be covered with an illusory patina of Robin Hoodery. But all that is only useful to the classic pitch, not necessary. The indispensable element in a Prisoner play is that the source and present catchment of the wealth is such that if it does *not* remain a secret, all its value disappears. That is, it is not really the theft that creates the monopoly, but the secrecy; theft is just one of those things that necessarily *requires* secrecy.

Thus the conman's answer to the first key question—Whence the wealth?—is an embroidered version of the following: "I have a monopoly over a uniquely valuable piece of information." But what is most lovely about the Prisoner is that the second critical question—Why are you splitting with me?—can be answered in almost identical terms, with no dramatic dissonance to mar the power of the overall tale. "I am sharing with you," answers the conman, "not because I love you, nor because I'm a fool or an idiot. I am sharing with you because I have to: I may have a monopoly over a secret, but you have a monopoly over me."

And what a monopoly the mark, at least on the surface, has. Note that in any case in which the source of the swag is theft, since the thief cannot advertise or merchandise normally, when selling a share in the booty he faces a limited market, a curtailed group of potential buyers. That fact functions importantly in pulling other swindles—the "Psst Buddy," for instance, to which we shall shortly turn. But in a classic Prisoner what holds the prisoner away from any normal buyer's market is not just the need for secrecy, but that most potent and pictorial (and thus dramatic) form of "market constraint," actual physical force. He is in jail. There are guards. There are bars. There are censors. The prisoner in the Prisoner is kept from a wide market for his "goods," one in which he could bargain among a large group of competitors for a good price, not merely by a need for verbal prudence lest he give away the secret (and lose the boodle and his freedom)—not merely, that is, by the necessity of avoiding potential evils—but by already actualized physical constraints. He is, in the classic Prisoner playlet, already encased in the tough and just barely permeable membrane of total state power.

Thus the two halves of the tale fit. The same persona and acts which account for the existence of the wealth also account for the conman's inability to keep it all for himself. If the mark can be made to consider even for a moment the initial premise of the play —that the prisoner is indeed who and what he says he is—it all fits neatly together. Was there once another government in Greece? Obviously; the army overthrew something. Did it have a treasury and administrators thereof? Sure. Might one not in sympathy with the couping colonels, who had access to that treasury, decide to make off with some of it and hide it in some secret place? Of course. Would anyone else know? Who, Papadopoulos? Is it likely that the only one to know that secret would be in jail, either for knowing it or on independent grounds? Absolutely; jail is hardly a surprising place to find a high member of a government just removed by military coup. Given all this, with the conman purportedly having that secret and being in jail, is it likely that his access to the bribe-money market is very severely restricted? It is likely; indeed, his access is restricted to only one possible supplier, the mark.

In brief, the Prisoner has been so designed that the parties are cast as sole complementary economic factors for the production of a particular bundle of useable wealth. There is (give or take a drachma or so) a million dollars in bearer bonds totally without value unless the conman and the mark, and no one other than this conman and this mark, cooperate. It is as if two men each held exactly one-half of a thousand-dollar bill. Until they get together each holds nothing; once they get together there magically appears a thousand dollars. (This is symbolized, by the way, in most plays of the Prisoner, including mine, by something like a halved claim check.) If they work together, there is something to share. If either holds back, there is nothing; they stare, separately, into the same void.

Thus the Prisoner may fairly be described as the bunco dramatization of a bilateral monopoly problem in economics, one in which *both* of two factors of production are absolutely and uniquely necessary to a certain positive and profitable result. In such a situation (and this is very important for the credibility and power of the congame version), there is no unique "solution" to the problem of allocating profits between the parties. In terms of game theory, *any* division that falls between the poles of "all to prisoner" and "all to mark" are "rational" solutions (that is, solutions wherein both parties gain something by going forward which they would not gain by standing off). If both factors—the prisoner and the mark—are absolutely and uniquely *necessary* to success, then neither has any more powerful claim than the other to a larger share of the loot. Indeed (as Thomas Schelling of Harvard has mathematically and elegantly pointed out), even a fifty–fifty split has nothing (other than aesthetics) to recommend it as a "solution"; it is not logically a "better" division than 60–40 or, for that matter, 97–3. Thus this extraordinary underlying situation, this very special problem in economics and game theory which the Prisoner parodies, is one of the few that would render rational and therefore "justify" the "split" proposed in my Greek comedy. It may be an unexceptionable fifty–fifty, but that still means that the mark is to get, over a relatively short period, better than a sixty-fold return on his investment—that is, a return of six-thousand percent over three months. That is bizarre in almost any business context—except, perhaps, when one true monopolist faces another. It may be an "interest rate" of twenty-four thousand percent per annum, but it is also, after all, just a gracious 50–50 division between two mutually and exclusively necessary factors dealing with each other over a million-dollar haul.

The Prisoner then is sort of the *Billy Budd* of bunco. As we shall see, all swindling to some extent involves creating, dramatically presenting, and manipulating illusory competitive advantages for *both* the parties to the illusory deal. But in the Prisoner two extremes—monopoly and monopsony (that is, a buyer's monopoly)—are created and then thrown together, with nothing and no one else, into the same play. In the Prisoner, we have Billy and Claggett, pure and all alone, without even a Vere to mediate the final agon.

Having said that, I must immediately take some of it back. Even though the Prisoner is the *Billy Budd* of congames, it is important to see that even *Billy Budd* isn't the *Billy Budd* of literature. There can be no action, and thus no drama at all, when nothing exists except polar perfections. If Billy were *perfect* innocence, there would be no story; Claggett would never have gotten killed by Billy's tongue-tied moment of rage. If the Prisoner is like the *Billy Budd* story, then, it is *exactly* like it; it is a play that cannot be performed unless the premises are just less than perfect. For if the prisoner in the Prisoner were *totally* cut off from any contact with the bribe-money market (that is, from the other necessary "production" factor), he would never have been able to reach even the mark. The mark's value to the prisoner lies in his scarcity but also in his existence. No one else is available, but he is.

In other words, if the prisoner were free of any constraints in reaching "investors" he would never offer any more than an ordinary return to any supplier of bribe money. But if he were self-cast as *totally* constrained, he would have no one to whom to offer a return. "Production" would then not be at the mercy of another monopoly factor; it would simply be impossible. And indeed, in the usual Prisoner play, this semipermeability of the prisoner's isolation is, in fact, exploited in writing the script. When, during the course of the play, the mark grows either too greedy or too cautious, the prisoner can begin to hint that perhaps he *might* be able to get a letter through to someone else. It is important to get the mark to see himself as a monopolist, but it is helpful not to let him get too secure.

This is also important for keeping the mark in line because, as a technical matter, the prisoner cannot prove that he is a *unique* monopolist either. Someone else may know his secret, or another one just as good. Thus there is no way of knowing what the mark's "opportunity cost" (that is, the value to him of opportunities he is foregoing by "investing" in the prisoner) really is. It is possible, for instance, that somewhere there is another prisoner, or another operator, who would offer more than a sixty-fold return over three months. It's not very likely, but it is possible. All marks, then, are, in a sense, "victims" of another flawed market, the market in information about crooked deals. This prisoner does not have a monopoly on all the illicit secrets in the world, but he does have possession of this one. It is hard to learn about any others (indeed, pretty close to impossible, especially for amateurs), and so the mark must treat the prisoner as his absolutely best deal.

To summarize, the Prisoner is a form of bunco in which two monopolies are personified and then dramatized in a play in which they are the absolutely irreplaceable complements of each other for the production of a particular (usually very large) bundle of wealth. Viewed that way, the Prisoner becomes the theoretical limit toward which all effective swindling (and, as we shall see, all salesmanship as well) tends. It is as close to the masquing of absolute mutual need as one can get in any reasonably credible (and money-connected) real-life situation.

I should point out at this point that my use of theatrical terminology in the foregoing description was not a fortuitous stab at a developed but otherwise irrelevant vocabulary. I find it fascinating that what the Prisoner dramatizes is a microeconomic bilateral–monopoly problem; but I find it equally interesting that it turns that abstract, arid concept into a drama. It is the conjunction of economics and role-theory sociology that is the most striking aspect of the whole Prisoner play. To adapt the vocabulary initiated by Irving Goffman and developed by his followers, the conman in a Prisoner casts himself as a prisoner. By so casting himself, he creates a role for, that is, "altercasts," the mark as a person holding the only other blue chip in the game. The mark is then made to play the two complex roles of coconspirator against "the colonels" and partner/exploiter of the prisoner. He is thereby, for the purposes of this interaction, blasted out of his divers other roles: in our example, for instance, doctor to patients, father and husband to family, mild protestor of military rule to the Hellas Marching and Chowder Society. But the casting and altercasting are dependent upon, and generate, still another phenomenon, what one might call "outcasting": the creation of classes of people designed to be outsiders, people off of whom the players score, or at least who are to play the duped audience for the drama put on by the cast and altercast players. We will see that process much more explicitly presented in the context of three-party congames—like the Pay-Off, soon to be considered—and again, oddly enough, when we consider some of the basic techniques of modern mass-media advertising.

Indeed the general process of casting, altercasting, and outcasting will be seen again and again during the remainder of this essay. It is variable only in detail. In all the interactions remaining to be considered—whether swindling or selling—we will see a play being constructed. The plot will change, and the *dramatis personae* will expand and contract (though always remaining economically rational). But the process of dramatization will remain invariable.

Varieties and Variations

The Prisoner, as I have already noted, is a foundation stone for most if not all other varieties of classic bunco tales and business pitches. Without the addition of any new script elements one can create out of it another very common congame, less lucrative in any individual play but more intrinsically believable and thus more playable. All one has to do is relax the absoluteness of the economic story being dramatized, moving it from a play about a nice young monopolist who meets a pretty monopsonist, to one whose main characters are oligopolist and oligopsonist—that is, persons with some, but not many, competitors.

Even in the Prisoner itself the monopoly–monopsony scheme is not thoroughly absolute. The prisoner might reach another investor; the mark might find a more lucrative prisoner. But even this limited amount of absoluteness is not a necessary precondition to substantial success in the world of selling or swindling. Any businessman will be glad to tell you that you don't have to be an absolute monopolist to earn a better-than-average profit. Being the paid-up member of a successful oligopoly (an industry with a less than optimal number of competitors) will generate very out-of-the-ordinary wealth—which can then be purportedly split with the mark. Consider, for example, the common garden-variety stolen-goods swindle. It has many names in its divers contexts (including "The Gold Brick" and "Hustling Slum"), but I call this nostalgic garment-district version the "Psst Buddy." Let the mark tell it.

I am sitting in this bar on 38th and Seventh minding my own beer and business, resting up from an aggravating day cutting patterns of teeny skirts in half sizes, when there walks in a middle-size guy with a middle-size dress box and nervous eyes. I am down by the front where the outside light still makes it through the front glass, so he hits me first. "Psst buddy," he says, "you want maybe a lady's silk blouse or two, unbelievably cheap, a fantastic bargain?"

"Do I look to you like a guy hot on the trail of ladies' silk blouses?" I ask him. "To you I look like I'm saying to myself all the time, what would really make my day now is a lady's silk blouse?"

"In these," he says, "you could easy work up an interest. In Saks maybe, Lord and Taylor, twenty-five, thirty dollars. For you, here and now, ten bucks."

"I get it," says I. "You're making it up in low overhead and clever merchandising. Saks and Altman's, they don't know how to sell."

He takes an even more shifty look around and comes on close in whispers. "At Bergdorf Goodman, at Saks, at Lord and Taylor, at Altman's, they all got an expense I don't got. They had to pay for theirs; mine I stole off the loading dock."

"It stands to reason," I say, this time to myself. "You got no entry on the books for cost-of-goods-sold, any accountant tells you you got what's known as a pretty good competitive advantage." So I turn to the guy and say "OK, you got a 42, I'll give you five."

"Five," he says. "Five. You think I'm working for the welfare? You're an object of society's charity? You're one of New York's neediest cases, even crooks should make contributions? Five?"

"Look," I tell him, "you don't like five, don't take five. Advertise. Take a few lines in the Post and the News. Open a nice little store. Put up signs 'Stolen Goods Shoppe' or 'Loading Dock Outlet.' You can get better prices, please do us both a favor, get better prices. Five."

"Seven."

"Six and done," says I. "So I get my blouse (a nifty number, my daughter will love it) and go back to my beer. He got six, I saved nineteen or so, and both of us are happy. Money from heaven."

Was the mark right to buy? Of course he was, provided only that the peddler was as big a crook as he said he was. As in the play of the Prisoner, if the protagonist in the Psst Buddy is who and what he says he is, then everything that follows, including the pricing, is absolutely rational in economic terms.

Let us assume that the blouses were stolen. In the New York garment district, after all, they frequently are. That would still not give the seller a zero cost for them (he has acquisition expenses, including a not inconsiderable figure of risk, and his own distribution costs), but he does have what is, to say the least, a very low cost-of-goods-sold as compared to other sellers. Having that gross competitive cost advantage, the seller can undersell his competitors; that is, he can undersell them and still make a profit. Thus the critically important first question—Whence the boodle?—has a reasonable answer. Indeed, the answer is initially more credible than the somewhat baroque equivalent used in most versions of the Prisoner. Petty theft is much more common than, say, treasury embezzlement, or six-ton marijuana impoundments. (It should be noted, of course, that the price of this greater plausibility is a necessary decline in the absolute amount of the boodle which can be used as bait. Little pilferings are much more likely than big and juicy thefts, but there's not as much in it for anyone, either. Of course, the Psst Buddy can be, and has been, played with "stolen diamonds," too.)

As usual, it's the second question—Why the generous split?—that poses the more difficult dramaturgical problem for the con-man. For even if the seller has this fantastic cost advantage in the acquisition of the goods he's selling, it is still the only economically rational course for him, if he can, to sell at the normal market price. If you can make a thirty dollar profit on a blouse with an effectively null acquisition cost by pricing it at its normal, fair-market retail value, why sell it for a fifth of that price? The answer in the Psst Buddy is deliciously obvious: this "retailer" must sell at a lower price because, given his method of goods acquisition, he faces a radically curtailed resale market. As a thief, he has only two courses open to him. He can sell the goods to someone else for ultimate resale, or he can peddle at retail himself. If he chooses to sell to a fence he faces a viciously tight oligopsony, a small group of buyers who, so it appears, cartelize instinctively and who haggle over terms, if at all, only very nastily. (This explanation of the economics of the fence industry is, in fact, frequently made to any mark who asks why the thief is doing his own peddling.) But if he does go the retail route himself, he must do so without advertising or settled-site merchandising advantages. And in either case, he can sell only to people who are willing to take the risks (moral and material) of dealing with crooks—that is, only to other crooks.

That's a far smaller universe of potential demand for ladies' silk blouses than the usual market constellation. Faced, therefore, with decreased demand in circumscribed markets, needing, furthermore, speed in turning over his goods lest he be caught with them, a stolen-goods dealer must do the best he can in his pricing. Hence the exceedingly attractive price tag; the thief still gets himself a fifth of retail in almost pure profit, while the buyer gets a thirty-dollar blouse for a mere six dollars. (Of course, the canny seller will start his pricing at, say, $22.50, and grudgingly sell for $6 only after a rotten and insulting slanging match.)

Now all of this makes perfect sense. Test it as a psychologist, question it as a sociologist, graph it as an economist, it all works out. And that is why when you play it as a bunco game it also pays out. If the seller is a thief, the deal and the price are right. But if the seller is an honest man in the way he gets his goods, he is well set up to be a successful conman in the way he moves them. For the whole thing *looks* just as rational even if the peddler bought a pile of three-dollar orlon blouses that morning for two dollars each. If he can convince the mark that they are, instead, stolen thirty-dollar silk blouses, even selling them at six dollars each quadruples his "normal" profit. And that is the essence of this con.

Thus the Psst Buddy has the same essential form as the Spanish Prisoner, only less extremely articulated. Where in the Prisoner the mark is altercast as almost a true monopsonist, in the stolen-goods swindle more normal economic dynamics are implied; the mark is just turned into a member of a suboptimally small demand group. In both cases, however, the critical structural move in the swindle is to explain, as part of a coherent and compelling story, why it is that the "seller" must do well by the "buyer." In both games the explanation is the same: I can't do business with most other people so I have to do business with you.

As we shall see, this same explanation—some variety of "Because I have to, that's why; because I need you"—figures in every congame. More than that, as we shall also see, it figures to some extent in every "normal" sale, including the most "straight" tale of all, the Squaresville Pitch. It has to figure everyplace. For it is the element in every selling tale designed to explain to the mark why *he* is one of the chosen. It is that element which renders the deal concrete and personal to him, which explains not just the abstract possibility of there being a bargain, but the factual underpinning of this particular bargain, *his* bargain.

Thus the central mechanisms of the Prisoner are central to all classic swindling and effective selling. But the Prisoner itself (and its attenuated forms, like the Psst Buddy) is, by and large, only a complex molecule to be braided into the grander strands of more fully developed, more powerful, and hence more lucrative plays. For in terms of effective dramaturgical technique, the Prisoner is, at best, one of those (admittedly recurrent) anomalies of the Broadway season, the two-character play.

Now a two-character play can succeed aesthetically, and the Prisoner can succeed financially, but it is not an easy subgenre with which to work. To make it go at all, the characters in the play have to spend most of their time, in effect, *telling* each other another genre altogether, the short story. The action, such as it is, is necessarily mostly offstage, and the mounted drama, such as it is, consists of a series of what film critics call "reaction shots."

But add a third character and the onstage action can really begin. Where in the two-party Prisoner the creation of the wealth to be shared must take place offstage, a matter for scene-one exposition, once the number of players is increased so that the plot can be rendered more complex, the boodle can appear to be created during the performance. In two-party Prisoners only one source of economic profits can be dramatized (as opposed to narrated), the mutual enrichment of comparative-advantage trades; for the conman must enter the drama already having the secret, one-half of the "value" of which is worth less to him than some small part of the mark's freedom of access to the world, which in turn is worth (grossly) less to the mark than one-half the conman's purported knowledge. Add more characters—add just one, in fact—and the other economic source of wealth can be written into the scenario and acted out—the "him" or "them" whom the conman and the mark, together, will nastily exploit. That is, the addition of a third character permits onstage outcasting.

To see the increased efficacy of this breakthrough in aesthetic and literary technology at work, let us then consider the most dramatically complex and developed of the classic bunco plays, those which David Maurer has dubbed (in his lovely book of the same name) "The Big Con." In these plays, the source of the wealth is still illicit, and it is a particular kind of illicitness, viz, games of chance which have been fixed. (The choice of that particular kind of chicanery will be seen to have great explanatory significance when we get to our discussion of Ponzis, Godcons, and Referral Sales.) In addition, unlike the situation in the classic Prisoner script, in a Big Con the apparent creation of the boodle is not something that takes place before the show, a subject for exposition; it is something that happens on stage, with the mark altercast into a major role.

Chapter 4

THREE-PARTY PLAYS

The Big Cons

SINCE IN THE BIG CONS the dramatization of interacting economic roles is carried to its most thoroughly detailed and developed state, let us see a typical Big Con—the Pay-Off—in its proper genre setting, as playscript.

THE PAY-OFF: A BIG CON IN TEN SELECTED SCENES

Dramatis Personae

THE PRINCIPALS	The Mark The Roper The Insideman
SUPPORTING PLAYERS	The Chief Bookmaker Other Horseroom Denizens (assistants, runners, chalkers, belly stiffs, *et al.*)

SCENE 1: The Roping

The Curtain Rises

[The scene is set in a boarding lounge at any major airport. Scattered throughout the plastic seating are travelers, draped around and surrounded by their possessions (including crawling and toddling children). The check-in counter dominates downstage left. Seated downstage right is our agonist, one Julius Mark. He shows something of the traveler's normal preboarding terrified fluster, but not much; he is obviously a practiced flyer. In fact, he seems a remarkably well put together businessman type: expensive leather dispatch case, expensive suit and shoes, perhaps just a touch of less-than-dignity: a dark shirt and white tie, for example, or a pinky ring showing too much stone. He is reading a newsmagazine.

After only a moment there enters downstage left our second principal, the roper, Eddie Roper. One can easily describe Roper by saying that he looks the way Mark, deep down, wishes he himself looked. They are obviously in the same class, but Roper is better at it. Roper stands near the check-in desk, partly screened by it, and carefully looks over the lounge. Finally, he sees Mark (still absorbed in his magazine) and scrutinizes him well—the shoes, the suit, the attaché case, the ring, and the tie. Not checking in until surer of his prey, he walks over and sits down next to Mark, stretches his legs luxuriantly, and knocks over Mark's attaché case with a satisfying *thwack*.]

Roper: (Setting Mark's case back on edge) Oh, I am sorry.

Mark: Not at all.

Roper: No, clumsy of me. And real leather, though I prefer it too, doesn't take abrasions very well. But the real thing is always the best if you can afford it.

Mark: (Lowering the defenses of his magazine) I agree.

Roper: (Taking up a copy of the *Banker's Journal* or *True Investment Banking* or some such thing) Well, sorry anyway.

Mark: You going to St. Louis?

Roper: [Here commences the Roper's first great aria, "We Lonely Men of Commerce." It will be continued on the plane and, if sung well and with perfect pitch, will end, just before landing, with the famous duet "Lucky We Met" and the patter song "Staying at the Same Hotel, Hot Damn."]

Scene 2: Tee-Off and Fore

[Near an open telephone stand at the St. Louis airport]

Roper: (To Mark) Just have to call this fellow on business, then we'll get a cab in. (Dials, then speaks into the phone) Mr. Strohsneider, please. Hello, John? Yes, tomorrow at 10:00 sounds fine. Don't worry. If we can iron out those few details, the deal is on. No, fifty thousand may not be too much—though I wouldn't bet on a hundred. No, thanks a lot, but I think I'll just dine at the hotel tonight—yes, the Chase, of course—and turn in early. See you tomorrow.

Scene 3: Finding the Leather

[The scene is set in the dining room of an elegant hotel. Roper and Mark are discovered at dinner together, talking with animation. Snatches of conversation—mainly money and women—can be made out, and the general atmosphere of the meal is one of mutual and expansive contentment. Suddenly, Roper stops in the middle of some long and spirited anecdote.]

Roper: Sorry.

Mark: (Puzzled) Why?

Roper: For treading on your foot.

Mark: But you didn't.

Roper: I didn't? What the devil did I step on then? (He pulls up the tablecloth and peers beneath the table.) What is that? (Mark pulls up his end of the cloth and reaches under the table.)

Mark: Why, it's a wallet.

Roper: (Coming around to Mark's side of the table) Let's see it. (The two open it and start inventorying the contents.)

Mark: Gee, seven, no eight hundreds.

Roper: Here's some business cards, "Paul Endoman, Investment Advisor."

Mark: Look at this, a newspaper clipping with a picture: "How does this man win?" Hmmm. Seems this guy is really picking up a bundle at racetracks.

Roper: A telegram: "Buy Beethoven's Ninth, Mozart's Eighth. No Shubert."

Mark: Hey, what's this card: "B–7, S–4, R–10, X–2 . . ."? Looks like a code. What should we do, give it to the waiter?

Roper: (Drily) I think we owe Mr. Endoman a somewhat better chance of his seeing his money than that. I bet he's registered here. Let's check at the desk.

Mark: Good idea. (They rush off singing the duet "Honest Men Like Us.")

SCENE 4: Telling the Tale

[A corridor, then a room in the hotel]

Knock-Knock

Endoman: (Querulous and suspicious) Who's there?

Roper: We have something to discuss with you.

Endoman: Are you reporters?

Roper: Certainly not. (The door opens a crack, chain still on.)

Endoman: What do you want?

Mark: Are you missing something?

Endoman: No, of course not. (Subtle touch of breast pocket, followed by frantic pocket paddling) My God! My wallet!

Roper: Can you describe it?

Endoman: (Door opens all the way) It's black alligator and contains business cards, about five or six hundred in cash, a telegram, credit cards. . . .

Roper: (Smilingly handing it over) Here it is.

Endoman: (After carefully checking wallet contents *other than* the money section—expansively) Please come in, gentlemen. I can't tell you how grateful I am. Do come in. (They enter the room.)

Roper, Endoman, and Mark: (Mixed bag of small talk, with basic theme of gratitude on one side and belittling of self-virtue on the other, culminating in:)

Endoman: (Peeling off two or three bills each for Roper and Mark) Please take this as a small gesture of my gratitude and respect.

Roper and Mark: Not at all—wouldn't think of it—very kind but no—only our duty, etc.

Endoman: Well, at least let me make a bet for each of you to repay you for your kindness.

Roper and Mark: (Exchanging slyly knowing looks with each other) I don't understand.

Endoman: Look, gentlemen, we're all men of the world, and you are obviously trustworthy. My business cards say "Investment Advisor," and that is close to the truth. Actually, I am closer to being an investment advisee. I represent a group of men of substance and importance who are, for various reasons unnecessary to divulge, in a position to know what the results in certain races at certain racetracks on certain days will be. That information is conveyed to me shortly before those peculiarly predictable happenings occur, and I, on behalf of the group, translate that information into wagers. This sometimes, though rarely, takes place at the track itself. Ordinarily I work at what are generally known as horserooms or bookmaking shops. I prefer my victims to be victimizers of others rather than amateurs. In any event, if you do not wish to accept my money in gratitude, I am in a position to place some of your money, ah, shall we say, advantageously?

Roper: Well, that's very kind of you and I certainly can't see any harm. (Reaching for his wallet) Would $100 be too much?

Mark: (Reaching for his) For me too?

Endoman: (Judiciously) No, I think that would be possible without upsetting anyone. (He takes the money.) Shall we dine together tomorrow? (They burst into song with the first trio of the piece: "We'll All Break Bread Together in the Evening," as Mark and Roper exit, giggling.)

SCENE 5: The Little Convincer and The First Prisoner

[At dinner the next evening]

Endoman: Well, here you are gentlemen, your winnings come to $800 each. You have remarkable taste in horseflesh.

Roper and Mark: (Various expressions of thanks and hints of stimulated but as yet unslaked greed, culminating in:)

Roper (or, if the team is lucky, Mark): You couldn't bet some more for us, could you?

Endoman: Oh, I couldn't do that. Well, wait a minute. Maybe you can be of service to me. I'm supposed to use this horseroom for a few more days, and because of those damnable reporters, I'm afraid I may have been recognized. Perhaps, if you gentlemen could place my bets for me. . . .

Roper and Mark: Why, of course.

Endoman: Well, fine then; meet me in my room at 11:00 A.M. tomorrow. I think we can work out something mutually advantageous to all of us, including my employers.

SCENE 6: The Big Store: Giving the Convincer

[This is the famous entr'acte ballet of the Pay-Off (and all other Big Cons), a dance involving a corps of professional conman actors portraying bookmakers, runners, chalkboard markers, and big betters. The scenery is that of a big horseroom, or at least a not very knowing mark's idea of one—telephones, wooden seats, betting slips, and, on both sides of the big "teller's" window (which dominates downstage right), big bundles of cash. At the entrance of Roper and Mark, the dancers are doing the well-known "Plungers Ensemble," runners ascurrying, phones aringing, odds achalking, and so on, all for staggering sums. Clutching an entry card in one hand, and the information on what to bet on what in the other, Roper and Mark are slowly drawn into the dance. Finally they do their pas de deux, "Stewball to Win in the Fourth," which culminates in their dancing off into the wings with something on the order of $20,000 in real money.]

SCENE 7: **The Prisoner's Aria and the Song of the Send**

[Back in Endoman's hotel room, the next day: Endoman, distracted and mysteriously agitated and angry, pacing; Roper and Mark puzzled]

Roper: Something wrong?

Endoman: Nothing. Nothing at all.

Roper: Have we done something?

Endoman: (Bursting out) Oh, it's not you, it's the damn syndicate. Ten years, I've worked for them, ten years; no mistakes, no hitches. Now they tell me I'm through. Me! After all I've done for them. And they just tell me, "Sorry, but at the end of next week, that's it." Oh, but I'd like to get some of my own out of it.

Roper: What do you mean?

Endoman: Oh, don't be a fool. Take the tip and make a huge bet for *myself*. The devil with them.

Mark: But why can't you?

Endoman: (Sadly resigned) No cash. You can't bet those horserooms without cash, and I haven't got any. (Smiling ruefully) I've had a good life, and I'm not very good at saving.

Roper (or even Mark, if he's a smart cookie): What if someone else put up the cash; would you split?

Endoman: Of course I'd split. But it'll take a lot to make the risk worthwhile. My—ah—colleagues are not going to like this at all.

Roper: (To Mark) How much could you raise?

Mark: I don't know; $50,000 maybe.

Roper: I might get up that much.

Endoman: That all? I'm not sure that for that. . . .

Roper: Well, maybe I could get up to 75.

Mark: Well, I'd have to sell out everything. Yeah, OK.

Endoman: That'll have to do. I can add 25,000 of my own. $175,000 at, say, 8 to 1 will get us a million four. I'll take half and you two split the other half, $350,000 for each of you!

Roper: Not so fast. You can't do this without us. I don't see why you should get more than us.

Endoman: (Giving Roper a look of pure, unguarded hatred) You think you can pull this off without me? (At this point, there is a trio cadenza of rather nasty haggling. Then Endoman says:) Wait. Wait. Why are we fighting? We'll need our whole team to pull this off. Look, you'll each have three times the cash I'll have in this, but I've got the secret. How about share and share alike. That'll make it, uh, $467,000 each. Otherwise, forget it.

Mark: (Eager) That sounds fair.

Roper: (Grudgingly, which earns him another look of hatred from Endoman, and perhaps one from Mark, too) Oh, all right.

Endoman: (Brightly, and all business) Fine. Now, here's what we'll do. Each of us will go and get our cash here by the day after tomorrow. Then, when we've got it. . . .

SCENE 8: **The Big Play and The Cackle-Bladder**

[Back in the Big Store, several days later: Roper and Mark enter, the latter holding a black satchel. Mark goes to a pay phone, dials a number, listens for a moment, and then crosses downstage left to Roper near the betting window]

Mark: (In a whisper) Here's the message: "Place it all on Flip-Top." (Mark and Roper stand awaiting the betting moment. The odds on Flip-Top shown on the blackboard settle down at ten to one. At upstage left Endoman enters the set and stands waiting just out of the action. The "chief teller" calls out "Last call for bets on the fourth at Aqueduct," and Roper approaches the window.)

Roper: $175,000 on Flip-Top to win. (Teller counts the money and hands Roper a slip calling for $1,750,000 if Flip-Top wins. Then, at the cry "They're off," the window is shut. Endoman comes slowly to where Roper and Mark are standing. The caller calls out the progress of the race, phone to ear. Then Roper shows Endoman his ticket.)

Endoman: (Exploding in whispered rage) You idiot! You stupid idiot! I said "place." Flip-Top is going to come in *second*. You goddamn lop-eared savage. (He dances around in a fury.)

Mark: I *told* you place. Didn't I *tell* you place? (Rage, contagious from Endoman and building as he realizes for the first time that he is going to lose everything) You. . . . (The caller announces, "Feetelbaum win, Flip-Top place, Hugger-Mugger show.")

Roper: (Advancing on Mark and Endoman, and apparently in a rage of his own) Don't call me stupid. It's your fault I lost my money. All my money. Every penny I have in the world! I ought to kill both of you. (He picks up a heavy chair and raises it over his head. Endoman takes out a pistol and fires. Roper collapses, blood spurting from [a bladder of chicken blood] under his shirt. Mark staggers back in horror. *Exeunt Omnes*, at a run.)

SCENE 9: **Cooling Out the Mark**

[A streetcorner not far from the Big Store]

Endoman: I shouldn't have done that. But I lost my temper. When I realized what that idiot had done to us. And then threatening us! (Thoughtfully) You're an accomplice, of course. But I don't want you to suffer. Here's what we'll do. You go to New Orleans, to the Pick Hotel, and wait for my call. I have a few useful connections. When I quiet things here, I'll join you and we'll recoup. You've been great, and I'll take care of everything.

Mark: Thank you. Oh, thank you. (He leaves.)

SCENE 10: **The Triumph of Vice: A Masque**

[Back at the Big Store. All the sets piled in the corner, preparatory to being hidden in storage. The whole cast (except Mark, of course, who only *thought* he was part of the cast) is assembled. Endoman hands a pile of cash to each of the bitplayers, who shake hands and, waving good-bye slowly and fondly, exit one by one. Finally, only Endoman and Roper are left on stage. Endoman counts off a very large pile of money and hands it to Roper. As Roper takes it he looks at Endoman and they stand frozen, hands joined over the money. Then Roper starts to giggle. And Endoman, despite an attempt to repress it, starts to chuckle too. At last they are simultaneously overcome by hilarity and break into huge, debilitating guffaws. As they sink into each other's arms, tears of mirth coursing down their cheeks. . . .]

The Curtain Falls

The foregoing is not, of course, for all its length, the full script of a typical Big Con. First of all, while the bare-bones outlines of the stages of the con—roping, introducing the insideman, telling the tale, giving the convincer, slipping in the Prisoner, acting out the Big Play, and cooling out the mark—are essentially invariant, the fine points of each stage vary sufficiently with each play to the extent that there is no such thing as a "typical" script. Moreover, my scriptlet is too allusive and truncated to give much of the flavor of an actual performance; the cream of each of these cumulative jests appears in my version with the paleness of skim milk.

Even this crabbed version, however, has some value in addition to introducing the reader to the plot line of a classic Big Con. What it also does is point out, and point up, the *dramatic* complexity involved in personifying and acting out economic dynamics. The script serves to show the way in which (or at least one instance of one way in which) a coherent economic story can be made to play out as sort of a living allegory of microeconomic theoretics. One can see the idea of "comparative advantage" being enfleshed. The "cost-free gift" is also made alive on stage, along with a subplotted version of the Prisoner. The whole burden of the play, sketchy as it is, is the dynamics of simultaneous conflict and cooperation among a group of predatory partners. Now having shown it put together in an integrated production, let me proceed to take it apart again.

The most obvious of the building blocks in the dramatic structure of this Big Con is now familiar; integral to the Pay-Off is an interpolated Prisoner. The insideman ("Endoman" in our partial reconstruction) takes the role of the prisoner and performs it onstage from the beginning. He plays a man who has a valuable secret, advanced knowledge of the fixed results of certain horse races. If he were such a happy being as to be totally free while so lucratively instructed, he would have no need of anyone else. But he is not really free at all, even though no walls or guards surround him. He is part of a firm which is the source of his information. Should he use any bit of it for his sole advantage, the least horrible thing that can happen to him, but the most certain, is that his valuable secrets will dry up instantly. Thus he is tied to them by a loyalty which in this case coincides with self-interest. Absent that loyalty and that hope of future gains, he could, on a one-shot basis, grow wealthy without aid. Then, the script has it, that hope and its dependant loyalty is cancelled, but so suddenly that he is still imprisoned: he cannot cash out big enough to justify the risk without a substantial sum of cash, but he needs that cash immediately. Thus his money market is, believably, enormously constricted, for the only "security" he can give, against which to borrow the money he needs, is his secret. Even crooked lenders, however, would demand proof of that, and he has no time to give it to them. He has not time, in fact, to give proof to anyone other than Roper and Mark, for they already have the proof. It is credible, therefore, that he needs them, and only them, and thus must pay their price.

But this use of a Prisoner motif creates a dramaturgical problem in the Pay-Off. How, credibly, can the insideman get to tell the roper and the mark about his secret, and show it actually working (that is, give them proof of his "security"), at a point in the drama when he doesn't yet *need* to? Or to put it another way, how can he bring them in, clue them in, and cut them in before they have anything to trade with? Or to put it in terms of conman cant, how can he "tell the tale" and "give the convincer" when the plot has not yet thickened?

In the version of the Pay-Off outlined above, the general form of the solution is standard, but its particular development is really very pretty. It is essentially all done in the scene in which Mark is led to discover Endoman's wallet underneath the dinner table, a subdrama generally known as "finding the leather." One of the functions of this plot development is quite simple: it provides the mechanism by which the mark can be gotten into mere physical proximity with the insideman while in the company (and control) of the roper. In short, it effects the critical meeting. (In some plays of Big Cons like the Pay-Off, nothing as elaborate as finding the leather is used. Instead, the roper simply points out the insideman in some public place as an old friend of his father's who . . . etc. This is called the Point-Out, and appears sometimes to work well enough.)

More than just getting the mark onto the right stage, however, the wallet scene also supplies some necessary pre-curtain exposition. The cipher card, the telegram, and the clipping start the process of filling in the mark on the insideman's identity and powers (that is, though not so perceived by the mark, the insideman's "role"). With respect to this expository function of the wallet, the money inside it is just a natural prop to add further verisimilitude. Endoman is, after all, cast as a track plunger, and even a couple of grand in cash would hardly be out of character. In fact, if that kind of money weren't there, it would subtly jar the characterization.

But the money has a further and very important dramatic function: it opens the way for a conventional outburst of conventionally expressed formal gratitude. The insideman can offer the finders a cash reward (one or two of the bills in the wallet), and when that is, naturally, refused, he can say, "Well, at least let me make a bet for you to repay you for your trouble." Now that is a lovely and important sentence to be able to say. First, it immediately requires that the insideman further explain his role in the imaginary betting syndicate. Thus the mark can be fully apprised, on the spot and early, of the *modus operandi* of the mythical syndicate, the fixed races, the cipher telegrams, the use of betting rooms to score off of, and so on. Moreover, it allows the conmen very shortly to introduce the mark into relatively small but instant profits. The insideman at this first meeting takes a relatively small sum from both the mark and the roper, and that night, at dinner, he presents them each with a five-or-ten-fold return.

But at least equally important, by couching the offer in the rhetorical form "No money reward? Well, OK then, at least let me bet for you"—that is, by allowing the conman to present the bet as a *less costly* (*for him*) *alternative to cash*—it facilitates the mark's perception of the bet as a mysterious process, vastly valuable to him but comparatively unimportant to the insideman. For at dinner what he gets, as an apparently less costly alternative to one or two pre-lunch hundred-dollar bills, is a post-magic dinnertime six or eight of them. In this manner the mark is introduced to one of the most powerful themes in the dramaturgy of swindling and selling—the magic-porridge pot.

Here, that theme, central to other congames (and sales strategies) is attenuated. Indeed, there are buncos (notably the religious swindles—the "Godcons"—soon to be discussed) in which this theme gets an absolutely extreme articulation; the mark is offered *infinite* wealth which decreases the wealth of no one else at *all*. In this Pay-Off play, it is much less drastic than that—the cost to the giver (the conman) is just made to appear strikingly less than the value to the recipient (the mark). Obviously, the return from any successful bet costs someone something. Unless the mark is a total idiot, he knows that every successful bet decreases the return to every other better on the same horse by affecting the ultimate odds. But in the context of our Pay-Off, the impact of that cost is minimized. First, there is no cost at all to the onstage donor, Endoman. He is just an employee of the syndicate, and it is clearly indicated that his returns from it are not so tied to specific results that a slight decrease in the syndicate's take will cut down his remuneration. Thus, not only is he not out-of-pocket by placing the mark's bet, but he doesn't even have any opportunity cost; that is, he does not even get less personal profit than he would have gotten otherwise.

Second, it is made clear to the mark that even the syndicate has *only* opportunity cost, and not very much of that. It is not as if it will have to shell out wealth it already has; it just won't make quite as much. In such circumstances, it is plausible for Endoman to give a large reward for a small service—finding and returning his wallet, for example, or dropping over to the Big Store to place a bet—because the cost to him is nil, and to his employers exceedingly modest. And that solves two other minor dramaturgical problems. Because so little is involved, and because that little is potential wealth only: (1) Endoman can give away his employer's money without appearing grossly and suspiciously disloyal too early in the game; and (2) it is unlikely that the syndicate leaders will even discover that something has been given away, which so cuts down the insideman's risk as to render his generosity even more credible.

This particular method of inflating the differential between what is given by one onstage party and what is received by the other—divorcing the "salesman" from his "employer" in the eyes of the mark—will be seen again when we get to in-store salesmanship techniques which are part of "honest" selling (as well as part of hardly honest variations like "bait-and-switch" selling). It is also, as we have seen, central to the Pay-Off itself, which essentially is merely a collection of purported exchanges between conman and mark which are designed to emphasize the low cost to the conman of the value offered the mark. In exchange for returning a wallet, the mark gets a bet worth, say, $800 to him but costing the conman nothing and his imaginary employers little—and that only the opportunity cost of foregoing slightly better odds. In return for placing a bet for the conman at the Big Store, the mark gets to cash in one for himself. And then, in exchange for a large sum of money, he is offered a gigantic instant return. But this last time a critical transformation has taken place. The roles of Endoman, Roper, and Mark have now been redefined; they are no longer members of the same firm—the syndicate—but have now formed their own separate firm, with the Syndicate *outcast* into the role of victim. The narrowly articulated distinction between salesman and employer (in this case, Endoman and the syndicate) has been widened into a huge rift, and the gentle complicity between Roper, Mark, and Endoman has been cemented into a new firm. It is as if one could design a Prisoner play in which the mark would be introduced to the conman while he was still Deputy Secretary of the Treasury of Greece, thus introducing the players in their *old* roles before joining them in their new roles in a new play.

Once again, the economic rationality of the Prisoner is dramatically vindicated in the Pay-Off. But a Pay-Off is not just a Prisoner, or even a collection of them packed into a pattern of ascending purity and power. It differs, not in the economic processes it embodies and parodies (not, that is, in its economic "content"), but in its method of presentation. The difference between a classical Prisoner and a conventional Big Con is not essentially, or even materially, a difference in characterization or plot, but one in genre. A Prisoner is a short story narrated to the mark; a Pay-Off is a play in which he has a role.

In the Big Cons, unlike the basic Prisoner, simultaneity of conflict and cooperation are not just asserted but are acted out, and with a thorough care for convincing detail. All the descriptions of the actual play of any Big Con emphasize this dramatic plenitude, the care and thoroughness with which the mark is drawn into a particular synthetic world within which these otherwise inexplicable plot movements (magnificent bounty to a stranger, sudden symbiosis) are made to seem natural. Everyone emphasizes the tenuousness of the mark's belief, and the consequent need to stay with him and reweave the fantasy world continually, if not continuously. The Big Store—a stage fully cast and filled with convincing props—must be used, despite all the danger and expense entailed in increasing the number of participants and the sitting-duck realism of the setting. A naked Prisoner cannot, ordinarily, shake free any really big scores. What provides the necessary credibility in the Big Cons, a verisimilitude so powerful that it enables the conmen successfully to put the mark "on the send" (that is, get him to go home alone for all his money and come back too) is this act of putting the mark into the play as a character. Or, to come at it from the other direction, the secret is to prevent the mark from ever seeing himself as *the audience*.

It is a testament to the dramatic skills of Big Con men that the play can be pulled off at all. For a Big Con is not your usual quasi-realist drama, nor a melodrama either. This is not Dion Boucicault, or even (if you think it a step up) Clifford Odets. The Pay-Off is pretty pure Pirandello. To the mark, the people running the Big Store horseroom are people pretending to be running something else, say a cigar store or pool room. They are bookies playing businessmen. But the mark knows that the cigar store is just the set for a play; its denizens are *really* bookmakers. To the mark, the inside-man is a man pretending to be a plain old traveler, but the mark is made to see through that; he knows Endoman is *really* a member of a fixed-race syndicate, *playing* traveler to his victims, who include the bookmakers who are playing cigar-store proprietors. Then the mark, who really *is* a plain old businessman, is allowed to *play* plain old businessman to the bookmakers, but only as a part in a new play he's "really" in, the operations of a betting syndicate of which he is an *ad hoc* member. That is, he becomes *really* a betting syndicate member by appearing in the role of plain old better in the play being staged by the bookmakers.

Thus the mark is made to appear to himself as a character in at least four plays with different audiences. He is, to the police and outside public, a businessman going into a cigar store. That is, he is part of the bookmakers' play, with everyone else the audience. But when he goes to the Big Store the first time to front for the insideman, he is also a member of the cast in a play performed by him, the roper, the insideman, and the offstage syndicate, with the bookmakers as the audience; he is playing ordinary plunger to the bookmakers but he is 'really" part of a criminal conspiracy of which they are the victims. But when he makes his second trip to the Big Store on behalf of himself, the insideman, and the roper, he is playing member of the syndicate to the syndicate as an audience while still playing square to the bookmakers, while he is "really" part of a conspiracy of three to defraud that audience (the syndicate) as well as the still larger audience (the bookmakers) who themselves are defrauding a still larger audience (the police and the public). And when the script finally gets to the cooling out the players are ostensibly reduced to two, with everyone else the audience: the mark and the insideman have "really" become accessories to murder, and they are now both off to play the role, once again, of plain old businessmen on a trip.

The general dramatic method employed by the conmen, who, after all, are writing all the scripts, is perfectly lucid and analytically transparent: the mark is moved, in successive steps, from the audience of each particular playlet into its cast. He is made to see *through* one play to another and then through it to another and another. In each case, part of the action of a given playlet is apparently unknown to most of the players in it, and those ignorant players become the essential audience for the subsequent play. But the reality is this: throughout the whole process of apparently seeing through successive plays and then assuming new roles as part of an ever-decreasing self-conscious cast which knows it is just acting, *the mark is the only audience*. He is made to see over and over that there are a plethora of plays and roles in the real world, including one role in each play for him. What he fails to see is that his role is never conman playing innocent in any of the plays, but always victim.

As we shall see, one of the most powerful *selling* techniques involves giving the customer a role by letting him see through another role that seems to have been tendered to everyone else, including him, thereby hiding from him the fact that he never gets out of the audience, always remaining, instead, a customer. But putting the mark into the conman's play apparently has another significance, one which joins sociological and economic vocabularies. A player is one who is necessary to a play. Without his role filled, you cannot put on that play. Thus by the mere act of giving the mark a role one acts out his necessity to that play, and that expresses his economic necessity to whatever nefarious scheme is supposedly involved in the play. Thus dramaturgical necessity stands for economic necessity, which in turn explains, and renders credible, the mark's otherwise inexplicably large returns. What happens in complex bunco games like the Pay-Off is that the mark's irreplaceability is not just asserted but demonstrated, for the production of the wealth is the plot of the final drama. Thus the power of the Pay-Off lies not in the particular role that the mark can be led to believe he is playing (though some roles would blow the whole play), but in the fact that he is made to believe that he has a role, and one such that without him the show could not go on.

The Short Cons

THIS CAN BE SEEN even more clearly with respect to the so-called "short cons" or "little cons." These are buncos of the same basic form as the Pay-Off (or other Big Cons), but less thoroughly developed, and thus played for lower stakes. In fact, the distinguishing difference between the Big Cons and the littler ones is that there is no long-term acquaintanceship built up, no series of convincers, and, most important, no Big Store. There is no opportunity, therefore, to put the mark "on the send" for additional money; the conmen must take the mark only for what he has on him at the time they meet.

Consider, for instance, "the Smack," which is a thoroughly representative short con. All I mean by that is that, as far as I know, all short cons can be seen to have an identical basic structure: the mark will be given what appears to be an essential role in a play the plot of which is the ripping off, in concert with a second party, of a third party.

In substantially all little cons (as in all Big Cons), the source of the wealth is an ostensibly rigged game of chance. In the Smack, one of the simplest of all forms of gambling is used: coin matching, a game in which three players simultaneously flip a coin, the two whose flips match paying off to the one whose flip does not. Played honestly, each player has a one-in-three chance of a three-to-one pay-off. If, however, two of the three conspire always to have one of them match the third one's toss (they to split the winnings later), then chance flees the game altogether. In the congame known as the Smack, it is into a performance of this rigged version of coin matching that the mark is led.

It works like this. Once again, the conmen form a two-man team, one to make initial contact with the mark, the other to join the play later. The latter, however, in this and almost all other short cons, plays victim from the start. The contact maker (roper) selects a mark who looks good for the play, a man who shows signs of being presently loaded (in at least the financial, and maybe also the saloon, senses), and none too bright. He strikes up an instant acquaintanceship, usually at a bar. On a signal, the other conman, the putative victim, approaches. His initial role is to appear stupid and repellant; this helps to justify any subsequent urge to cause him relatively drastic harm, while simultaneously making it credible that he would fall for even the crudest deception. (It is rumored that a conman team made up of one white and one black can enhance this effect by making the black conman play the victim, thereby taking advantage of the mark's racism.)

In any event, the two conmen contrive to get a coin-matching game underway, initially just for drinks. The insideman victim is made to win the first toss and perhaps a second, and on each win he screws his obnoxiousness to the highest possible pitch. He is an ostentatiously lousy winner. Then, casting taunting challenges to the roper and mark, he leaves for the men's room. At that point, the roper proposes the fix to the mark: "Look, that bastard is drunk as a loon. And did you see the roll on him? Let's take him. He has it coming. Every time we flip we'll take turns matching him. That way we'll take him for the whole stash and split it up later. OK?"

The play proceeds as designed, with ever-increasing stakes (as the enraged "victim" aggressively seeks to recoup by taunting the others into repeated double-or-nothing plays). The final and total loss comes on a play in which the roper is the designated odd-toss man (thus leaving the roper holding all the money, including the mark's) and the insideman walks away shouting and miming fury and disgust. Then the mark is "blown off": as the roper is about to give the mark his share of the boodle in the street in front of the bar, the "victim" comes back, screaming bloody swindle (and perhaps showing a bit of knife blade or gun butt). To mollify this enraged and apparently dangerous threat, the roper huffily denies any partnership with the mark. He proposes that they walk off in different directions to show their independence, their wink-conveyed understanding being that they will meet again for the split after the enragé is gone. The purported victim (naturally) agrees to this (not very convincing) mode of proof. The roper walks off East with the poke, the mark walks off West with what he thinks is his giggly secret, and (with luck) the conmen (meeting later across town) never see him again.

This simple short con, lacking all the rococo embellishments of productions like the Pay-Off, still answers all the implicit questions likely to be asked by any buyer/mark of any proffered bargain. Whence the wealth for us to share? Answer: We're running a fixed game of chance—that is, a system which provides large returns on short chances with the chance aspect removed for the nonce. Or (the same answer but in different form): because we're stealing from a third party. Why the generous split? Answer: We need each other, *mon ami*, each of us as much as the other. Not only can we not fix a coin-matching game without each other, we can't even play it straight. Perhaps, old scout, anyone else would do as well as you, but as you see, *you* are here right now and *I* am here right now, and since *he* is here right now, right now is when it has to be done.

And so, once again, the mark is moved from a role in the play "Each Of Us Against The Odds," which the "victim" is supposed to think he is playing, into a new, dramatic production (which to the mark is real-life), "You And Me To Rip Him Off." Of this new performance, the "victim" is to be the sole audience. *In fact*, however, the mark is a character in an altogether different play, "the Smack," which has only two conscious performers—the roper and the "victim." The plot line of that play, unknown to the mark, is not "me and him to take him" but instead "him and him to take me."

Thus, not only is the short con structurally identical to more gingerbread gothic variations like the Pay-Off, but in at least one way it is dramaturgically superior. In both the Smack and the Pay-Off the reason for the grossly generous split—the mark's monopolistic value to the play—is acted out onstage (that is, he and only he is *there* at the right time with the right information). But in the Smack (though *not* in the Pay-Off), the source of the wealth to be split—the victim—is also onstage. That is, that economic source of extraordinary profits most understandable to most people, a third party being exploited and robbed, is personified as a character in the play, and not just presented in the format of a report of offstage developments. Just as the Pay-Off is a play-writing advance over the Prisoner in that it allows the mark to be introduced to the insideman while he is still in his "straight" role as employee of the syndicate, whereas in the Prisoner the mark cannot be introduced to the other characters while he is still Deputy Minister of Finance, so the Smack is a dramaturgical improvement over the Pay-Off in that at the moment of final theft the "victim" is not an offstage "syndicate" but a flesh-and-blood character, the coin-matching victim.

Admittedly, a sharp price must be paid for the dramaturgical benefit of having the victim—the source of the wealth—onstage as a character in the play. It assures that the con must always be "short," in the sense of being able to take the mark only for what he then has on him. It is impossible to put a mark "on the send" to get additional funds with which to take a target like the "victim" in the Smack, who is presented as just happening to be there at the moment. Thus, for big killings dramatizing the source of the wealth remains a nagging problem. Any bunco play loses believability to the extent that the wealth production must be told about rather than acted out during the mark's performance, but it is very difficult to act out with respect to big amounts; even the costly and dangerous use of a Big Store in the Big Cons is only a partial solution.

Moreover, short cons like the Smack do not admit of repeat business. Once the particular mark is taken, it is essential never to run into him again. So not only have you taken him only for what he then had on him, but you can take him only once; he will certainly not come back to you of his own volition. Short-con operators, therefore, must spend a great deal of their time cruising for marks. They are like door-to-door salesmen, having to canvass a whole neighborhood in order to make an occasional and relatively modest score.

What if, however, you could design a congame with the following characteristics: (1) the source of the wealth to be split—the third party—can be credibly portrayed as being infinitely rich and willing to stand still for continually repeated touches; (2) the mechanism of the play is such that many marks can take part in it simultaneously, in full consciousness of each other's participation; and (3) the cooling out of the marks in the drama is so brilliantly conceived that not only will they not run to the police, but even after being taken they will never realize that they have been, and will therefore continue to return again and again to be taken some more. Such a congame has indeed been devised, and is one of the most commonly staged, now or at any time. Let us then consider at this point the religious swindles, which I shall call the "Godcons." They meet all of the above criteria and will thus serve as introduction to the whole important class of congames not based on the secrecy and illicitness of their wealth-generating mechanism.

Chapter 5

PUBLIC SPECTACLES

THE CONGAMES thus far considered have been private—that is, limited to two or three participants who are cast and altercast as knowing a particularly valuable secret exploitable in concert. This privacy is not accidental, or assignable to some unnecessary factor like the expense and danger of casting a few additional participants. Rather, secrecy is *essential* to the scripts heretofore explored. It explains the source of the wealth to be divided among the cast members as well as *why* the division with one-time outsiders must be made. One cannot credibly *openly* seek bribe money for Greek jail guards, or buyers for stolen goods, or partners in a syndicate rip-off, or cooperatively crooked coin matchers.

What this means is that the use of the conman's own labor in a "private" congame is exceedingly inefficient. He must put on a demanding performance, ordinarily in concert with at least one other highly skilled professional player (who thereupon becomes entitled to a large percentage of the profits) for the benefit of what is necessarily an audience of one—the particular mark in the particular play. Unless the successful conman is to be exhaustingly engaged in the continuous active pursuit of his profession (pulling off, say, a large number of short cons), he must make, at least sometimes, a big score. But big plungers off of whom big scores can be made are relatively rare. Thus a private-bunco conman is always either playing or looking.

If, however, he could find a bunco game into which his valuable dramatic skills and experience could be put for the benefit of a large audience, a cohort of marks who could join the cast fully cognizant of, and indeed encouraged by, each other's simultaneous and congruent roles, then the bunco artist would not need a few very large scores in order to prosper. Rather, a continuous and continuing aggregation of little takes could make him wealthy, and at a much lower effort-to-profit ratio. But to pull that off, a conman must find a source of wealth and a reason for sharing it with the marks that does not depend on illicitness and secrecy to validate the script. Like any legitimate seller, he must discover a way to offer credible bargains in the ordinary course of open and advertisable business.

The Godcons

A "Godcon" is a congame in which the conman (with or without a supporting cast) induces one or more marks to trade money and other things of this-world value in exchange for the promised delivery of quantities of exceedingly valuable divinely manufactured goods. The conman, that is, sets himself up as a broker of Grace.

Let me preface this discussion of religious swindles by pointing out that whether or not there is a God who has revealed to certain people the most effective method of approaching Him, if a person believes both in God's existence and in the efficacy of his own particular mediating techniques, there is no swindle, human or divine. Remember, the transaction in the "Psst Buddy" script is honest so long as the seller is a crook, and the Pay-Off would not be a swindle on the mark if he and his partners really were swindling the syndicate. In other words, I am not arguing that religion in general, or organized religion in particular, is a swindle. I am suggesting instead that if one does set out crookedly to acquire money for one's personal benefit, there are structural components in a religious context which make the job of the conscientious swindler very much easier.

Picture the following pitch: "There's this old guy I know, see, who has all the money he could ever need, and if he ever needs more, all he has to do is print it and it's good. If you know how to approach him, he'll give you all you could ever use. In fact, the only thing he really cares anything about is getting the good stuff to as many people as he can. Now, I know the right way to put the touch on him, and I've already got all I need. But he never gives away directly—he only uses organizations like mine. I'll put you in touch, even make you part of my organization, and then you'll have everything you need too. OK? I'll help you, and then you can help me help others."

One needn't be a connoisseur of swindles to see that this kind of tale is not very likely to shake the money tree successfully. Oh, it has some lovely aspects from a conman's point of view. The old guy has infinite wealth, so whatever his goods are worth to you, they cost him nothing to give up. Thus not only is his willingness to give things away economically understandable, but it's morally unobjectionable to take advantage of his generosity: a man who has infinite goods is not being exploited or ripped off when you take some from him. He can afford to be beneficent without economic pain, and thus you can afford to benefit without moral agony. Moreover, given the infinity of the old man's wealth, the broker's generosity is also understandable; with a boss like that, an agent always has all *he* wants. He has no reason not to split with you, or to avoid enlarging his organization by taking in partners. There's plenty for all.

Thus the two key questions—Whence the wealth? and Why the split?—have answers which, were the premises believable, would make perfect economic sense. If there were such a rich old man, one would actually expect him (and his agents) to behave according to the pitch. But there is a fantastic dramatic problem in gaining credibility for the existence of so extraordinary a character, especially when he must remain at all times off-stage. In no one's normal expectation, and certainly not in anyone's experience, is there anyone like *that* old gentleman.

But there is, of course. There's God. In most religions, and notably in most versions of Christianity, He is a being who produces Grace of infinite value infinitely and at no cost. He is the only entity in the universe not subject to the laws of thermodynamics (which immunity, after all, is just another way of describing His immortality), of whom a propensity to give rather than trade can be convincingly predicated. Indeed, neither physical limitation nor economic rationality can be predicated of Him without elaborate heresy and thoroughgoing blasphemy. God is, so to speak, in the business of giving gifts free or, at the very least, of distributing Grace and Salvation as a very good bargain. That is to say, there is a positive as well as a negative aspect to Pascal's Gamble (so aptly and pregnantly named for our present purposes): not only will God charge you everything, forever, for not behaving correctly towards Him, but for satisfying His requirements He will give you everything, free, and to eternity.

More important for congame purposes, it is perfectly consistent with the tenets of most major domestic religions that God does not, except on the rarest of occasions, Himself distribute at retail. Instead, He leaves the effective transfer of His grace to specially trained and certified middlemen, whose job it is to funnel this immensely valuable gift to individuals, using particular methods of organization and distribution. Moreover, it is doctrinally sound within the framework of most religions that the members of the distribution organization already have absolute plenitude of the valuable goods to be distributed, so that no additional quantity will improve their individual utilities one iota. In other words, this good, God's Grace, is something such that once you have it, you have all of it, and not only don't you need any more, but it is impossible to have any more. All you can do, in fact, is lose what you do have, and that only by not passing on the wealth to others with happy heart.

It is precisely this aspect of the story that for conman use is the critical one: the "broker's" gift to others is cost-free *for him too.* His zero residual desire yields an infinite supply for others. For him, more wouldn't be more, and might indeed be less. Notice how important this plenitude is to the normal Godcon pitch. In any ordinary business context, a "broker" with a zero cost ought to charge his "customers" a "commission" approaching as close as possible to the whole fair-market value of the good. That is, in a less transcendent context, a man who stood between free (or cheap) wealth and its possible recipients would be economically rational only if he tried to appropriate to himself almost the entire value of his employer's extraordinary economic superefficiency (infinite, zero-cost productivity) and nuttiness (free distribution).

After all, if you are lucky enough to be broker for a guy who is willing to give away a car for a dime, what you do, in effect, is pay the dime yourself and sell it to someone else for but a trifle less than the normal market price for such cars. That way you and your customer both benefit from the gift, but you take most of the bargain for yourself. But in a theological universe there is indeed a reason why you don't take all the Grace for yourself: once you have your Grace you have it all; trying to take more not only could get you fired, it makes no sense. Thus it is that a conman running a Godcon can counter the naturally extreme skepticism of anyone offered infinite riches for nothing from a stranger with a persuasive explanation: God gives free because He loves you (and never runs out of Grace); I give free because I love you, too (and it's no skin off my soul, either).

That, of course, can't be the whole pitch. To make a Godcon a paying proposition one has to do more than get credible Grace flowing towards the marks; one has to trigger an inflow of mundane cash. But it's not all that hard to make that next move. Once you get far enough in a Godcon as to seem an effective Grace broker, all you have to do is gently fold in a mildly contoured version of the heart of, say, the Prisoner, Pay-Off, or Smack. In those plays, as you recall, the script calls for making it appear that the conman and mark combine, entwined by synergistic greed, to despoil someone else's treasure. In all the Godcons, what happens is that the minister and the mark are again cast and altercast as a team, but this time they league in love rather than avarice, not to despoil victims but to bring nondiminishing treasure to the outcast. The "love offering" which the conman takes from the marks is just that, a contribution of (relatively useless) money which facilitates the joint production and distribution of ineffably inexhaustible wealth. In brief, the unavoidable trade is still in the picture, but this time it is a trade of Grace, cost-free to the donor, in exchange for money, henceforward comparatively valueless to the illuminated.

Of course, with recalcitrant communicants one can embellish the pitch with suggestions that Grace must be earned, salvation is shown through charity, and so on. But that is just a filigree. It seems to me more accurate and more interesting to see the mechanism of the Prisoner and that of the Godcon as merely elegant mirror transformations of each other. The Prisoner works by creating a fantasy world of infinite scarcity; each of the parties is a monopolist, able to totally exclude the other (and all others) from something infinitely desirable. In the Godcon, however, the activating image is infinite plenitude: each of the parties may share all that he has without at all diminishing that which he keeps. Thus in the Prisoner the parties conspire to exclude from bliss anyone other than themselves; in a Godcon they also conspire, but this time to cut in the rest of mankind. The only constant is that in both apparent collusions some of the mark's money, in the course of their grand joint task, comes to rest in the hands of the conman.

And so that incredible pitch about the kindly old gentleman, once translated into a transcendent sphere and vocabulary, ceases to be unbelievable. By being moved from the implausible to the impossible, it becomes persuasive. (Recall the remark by Chesterton that he could believe the story of Christ's rising, but not the tale of Gladstone patting Queen Victoria's bottom.) Put onto the right stage (in most cases what might be called "The Big Storefront"), the modified pitch—changed only in vocabulary—becomes this:

Hear me, oh my brethren. God exists. He is infinite. His Grace is infinite. There is never enough salvation to give Him joy; each new soul enriched with Him is His only happiness. If you can but reach Him, if He can but reach you, the unending beauty of His essence will fill you unto overflowing. By your own poor will ye cannot reach Him, but we have been vouchsafed the Way. Turn not from the Way. Believe in His commandments as I tell them unto you. Join us. Come through us to Him, and let Him come through us to you, and you, and you. There is no other path. Join with us. Join with us in love. Join with us in bringing the Word and its joy to those who do not yet know or believe. Join with us in powerful prayer and unstinting work to bring the Word of God to the benighted. Show your salvation; hide it not under a bushel, but share your joy, your strength, your salvation, and your mite of love. . . . The Deacons will now pass among you while we sing Hymn No. 123, "Oh Word of God Incarnate, Oh Wisdom from on High."

Replacing Grace: Precursors and Ponzis

THE POWER of the Godcon script—and a widespread and exceedingly lucrative congame it does seem to be—lies in its amenability to mass exploitation. Unlike the wealth sources in the Prisoner and the various Big Cons, the Godcons' source of the wealth to be shared—God's Grace—may indeed be a mystery, but it certainly need not be treated as a secret. The Godconman can trumpet his mystery to the whole world; indeed, given the theological premises of his pitch, it rings false if he does not. That is, the conman distributing amazing Grace can and even must go public and retail.

Now, as noted above, the possibility of a successful mass congame is a powerful advantage to any bunco operator. It allows him to grow wealthy, over time, on the basis of many small takes, without having to find one particular well-heeled mark. It allows him to do his own performance for an audience of more than one. And perhaps more important, the existence of this mysterious wealth source which need not be kept a secret makes it possible to altercast many marks simultaneously as public players, for each of whose roles each other is an audience. The marks / players can then intensify their belief and validate their roles by looking at each other. As we shall see, it is much easier to believe (to the point of being almost wholly unable to disbelieve, even in the face of large quantities of dissonant evidence) when a mass of people all around you are believing what you believe, openly and ostentatiously.

There is, however, only a relatively limited market in America today for a transcendent pay-off as the bait in a bunco game. Even assuming that most modern Americans have some belief in God, and also accept a framework of belief that would encourage the exchange of, say, an after-tax tithe for infinite riches, a commanding share of that market has been captured, and by and large is still held, by long-established "firms." That is, most Grace is still being delivered to those who are interested in the product by major religious denominations who have, over millennia, developed means to discipline brokers who seek to keep the congregation's contributions for personal high living.

The question naturally arises, therefore, whether there are contexts other than the theological which would support a nonsecret, publicly trumpetable source of vast wealth which in turn will support a simultaneous and mass congame. Can one successfully secularize the mechanisms of the Godcons so as to generate an earthbound, mass-market species of bunco? Is God necessary to such a play, or is He only sufficient?

It turns out that the potentiality of retailing bunco is not limited to God-based swindles. While God's Grace is a splendid source of infinite, plenitudinous wealth, the play can be written around the theme of merely huge (rather than infinite) potential pay-offs. Just as the absolute monopoly of the pure Prisoner can be successfully used even when softened to the moderate oligopsony of the "Psst Buddy," so the infinity of the Godcon's wealth can have successfully substituted for it something substantially less than the immensity of God's Grace. One needs only some plausible non-theological but nonsecret counterfeit of the disproportionate pay-off of Grace embraced. Surprisingly enough, such things exist.

There is, for example, one aspect of the world as everyone perceives it which startlingly approximates a situation of infinite payoff for minuscule "investment"—chance. In all forms of gambling, the otherwise universal human perception that one ordinarily does not "get something for nothing" is modified, its marrow-deep certainty softened. For in a lottery, if you do win you *do*, after all, get an awful lot "for" awfully little.

Strictly speaking, of course, chance does not function at all like the magic of Grace. One does not, in fact, get a million for one in any game; what one gets is a *chance* at a million for an investment of one. Thus, here as elsewhere, one gets only what one pays for. Disregarding differences in attitudes toward risk (that is, disregarding the fact that some people *like* risks more than others), a one-in-a-million shot at one million dollars is worth, to everyone, only the dollar invested. And even if one has a very strong preference for risk, one thing absolutely certain is that a one-in-a-million chance to win a million is not worth a million. The actual fact, nonetheless, is that someone (assuming an honest drawing) is going to get one million dollars "for" his dollar—that is, at the time of the pay-out, there will certainly be the *appearance* of a vast disproportion between return and investment.

In any system of pure chance, someone is going to win even if the odds are not rigged. It is not by accident, therefore, that the social subsystem central to the play of the Pay-Off (and most of the other Big and Short Cons, like the Wire, the Rag, the Smack, the Tip, the Last Turn, and so on) is a game of chance. True, in each of those plays, part of the plot is the rigging of the game; the uncertainty is made to appear removed so that the grotesque rate of return to the purported combo of conman and mark is assured. But it should not be overlooked that a return of the promised magnitude can be credibly promised only when the other innocent contributors will not be dangerously surprised at there being some such big winner. In brief, there has to be an understandable source of such disproportionate return before there can be a crooked exploitation of it. It is this "natural" disproportion between pay-in and payout in systems of chance which can be and is exploited for congames whose baseline move is something other than fixing the game. It is, for example, central to congames of great historical importance like the Ponzi, and indeed to all pyramiding bunco schemes, which constitute, in terms of gross take, the most important congames in operation in America today. So let me analytically creep up on the Ponzi, on the way to the modern Pyramids and beyond.

Consider the most prevalent form of primitive Ponzi, one so common as to be essentially unrecognized for what it is, the stock market. It is, of course, possible to buy and sell securities with reference to what the issuers do for a living. The theory is that certain companies will over time do better than others in earning profits, and that people will therefore be willing to pay more for the securities of those companies than for those of their competitors. And those earnings would be particularly relevant to people who buy securities in order to hold them for income, rather than with a view toward resale. But what if the middle explanatory term is allowed to drop out in the description of the process as it applies to those who buy with the intention of reselling? That is, the description given above assumes a company the stock of which sells at X at time T_1 and at $X + Y$ at time T_2 *because* between T_1 and T_2 it was seen by many potential purchasers as likely to earn more during the post-T_2 period. But the price of the securities of that company is not wholly a function of its earnings performance; it is also a function of the demand for its securities at the times T_1 and T_2, and the predicted demand at post-T_2 times. In order to decide, at time T_1 or T_2 or at any time, whether to purchase these securities, it is not at all necessary, and certainly not sufficient, to know anything about the company's performance. It is sufficient merely to guess the price at a later time—that is, to know the demand *for the* securities (assuming no new supply of comparables) at that later time. For instance, if at some particular point T_1 I *know* two facts about some particular company: (a) it is broke and moribund; and (b) at time T_2 someone will buy its stock for more than I will have paid at T_1, then it is still rational to buy at time T_1. Indeed, I'd be a fool not to.

In order for such a situation to exist, it is not necessary to hypothesize any magical or even peculiar world situation. One need only assume a "market" in which a vast number of people are totally uninterested in, and ignorant of, the operative facts about the issuer of the security at the critical points in time, the buying and selling times. Now, one can never be *certain*, but there are situations in which it is a good bet that if one buys something at a particular price and point in time, there will be, sometime thereafter, a buyer who is willing to buy at a higher price because *he* thinks that at a still later time there will be still another purchaser at a still higher price. These situations exist frequently; one need only recall the "hot-issue" markets of the 1960s, when no one knew or asked anything about a stock except the date of its birth.

Indeed, like all fundamental socioeconomic processes, this tendency for there to be markets in which goods are bought with regard to resale likelihood and with regard to nothing else not only appears in a normal mode, but is systematically (if intermittently) also produced as natural parody. There are, after all, the famous great bubbles—the Tulip, the South Seas, the Mississippi, the Florida Land. In those cases one can see, as actual historical artifacts, insanely accelerating sales and resales at prices which (in retrospect, at least) were grotesquely out of line with the "actual values" of that which was sold, always culminating in the bubble's inevitable pop, that terrible moment of sudden collapse which ensued upon the sudden shrinkage in demand at that most horrible of all market moments, the unavoidable and scarifying T_n.

But under the influence of viewing the economic carnage a popped bubble leaves, one should not overlook this critical fact: not everyone lost. In fact, those who resold before the collapse may have done very nicely indeed, the more so the closer to the time of the final disaster they opted out by reselling. In other words, even if the bubbling was a conscious swindle by some, others who were totally unaware of the swindle, even innocents designed to be shorn lambs, may have profited mightily in their ignorance. In still other words, if you were in early, and out in time, you could have grown rich without having been a crook. The source of your wealth was nothing more than the luck of having been higher on the buying and reselling chain than some unfortunate others.

Ordinarily, in the investment-bubble context (and, as we shall see, in the context of modern Ponzi games) this frenzy of sustained demand requires some explanatory mechanism, no matter how false, to get it going and sustain it, some plausible idea about the value of the underlying wealth-producing mechanism a share in which is being purchased. There must ordinarily be something to which one can point *other* than the mere likelihood of still another buyer in the future when your buyer tries to resell the acquired securities. Thus the Mississippi bubble and the South Seas bubble were bottomed on the mysterious, fabled wealth of faraway lands that each company was monopolizing under royal patent. But other bubbles seem to have flourished mightily without any "productive" base, no matter how shadowy; no one claimed or suspected during the Dutch Tulip bubble, for instance, that vast weights of gold were about to be discovered just under the pistils and stamens. It is possible, that is, to launch and sustain a bubble (at least for a time) *solely* on the basis of self-generating momentum, the increasingly hysterical expectation that if X bought for $100 yesterday and sold for $200 today, I can buy for $400 tomorrow and sell for $800 the next day.

Indeed, one can, so to speak, "abstract" from a bubble and successfully market its bare structure, with *no* content at all. There is, it seems, a way of organizing communications channels so as to induce ordinary men to participate in this species of economic hysteria. Consider, for example, that ineradicable feature of life in any place with an effective postal system, the chain letter.

In a chain letter, all there is to "sell" is participation in a structure which generates a likelihood of continuation. The problem is what one might call socioarchitectural: to construct a pyramid of communication channels along which messages move downward and money moves upward. In its most common form, the initiator of the scheme composes and widely distributes a letter proposing to the recipient that he send a dollar or five to the person (the conman) named at the top of an enclosed list of (allegedly prior) recipients, and then send out five or ten copies of the letter to others, having first deleted the name at the top of the list and added his own name at the bottom. Thus, when the name at the bottom (his) becomes the name at the top, he will receive money from below, and because the base of the pyramid will be very wide indeed by then, it could be a very large amount of money.

The initiator of such a scheme will almost certainly make some money. If he sends out an initial ten thousand letters even on a two-dollar caper, he is ahead of his postage even if only one out of ten marks fall for it. But those below the apex man may also make some money, with luck a great deal, if they manage to get a large percentage response from a wide pyramid base. Of course, as the chain continues, since the pool of prospective marks depletes at a geometric rate, the chance of "winning" also decreases geometrically. The ten people you write to will have to come up with an aggregate of one hundred more to provide thoroughly for themselves, and that hundred will in turn need one thousand more, and so on. At that rate it does not take very long to exhaust the world population (at "level" nine there must be a billion at the base of the pyramid), and it takes much less time to exhaust the subset of people willing to play any such games. But while the pyramid must topple eventually, it is not foreordained to collapse at any particular time. And as with any bubble, not everyone will lose when it does.

Most people, of course, *will* lose. While money can be made solely on account of one's position in a pyramid of sterile economic velocity, the chain-letter pyramid is, even as presented, wholly barren. It cannot create wealth, but only redistribute it among the participants. For every dollar "won" by somebody on the pyramid, there must be a dollar lost by some other participant. For the only source of money in a chain letter is the people in the chain, and when the chain breaks the sum total of money divided among the participants is the amount they paid in. The winners and losers are different people, but the wins and losses must still balance out.

Thus the chain letter, while persistent through history, has never been more than moderately satisfactory as a congame. It suffers from at least two signal weaknesses. First, it is rather obviously sterile. A large number of potential marks cannot have hidden from them the fact that the victimizers and victims must necessarily be drawn from the same group of people, differentiated only by the luck of the timing of their entrances and exits. No source of wealth exterior to the participants is ordinarily indicated in a chain-letter scheme; therefore the source of the pay-off is one's coparticipants and the amount of the pay-off can be no greater than the number below you on the chain multiplied by the amount each one invests. Admittedly, some potential participants seem able to contemplate the possibility of infinitely long chains without awareness of, let alone discomfort at, its radical unlikelihood, but most cannot.

But more seriously debilitating to the scheme, from the point of view of the aspiring conman, is the fact that the normal chain letter sets up, for him, a one-shot take. Once his immediately next level responds to the initial mailing, he is through; the rest of the "profit," if any, belongs to the later ranks of marks. Thus, when a chain scheme becomes the vehicle of a powerful conman there is a characteristic adaptation whereby first, some mechanism is introduced which indicates a net wealth inflow to the scheme from sources other than participants, and second (and more importantly), the flow of money can be made to pulsate up and down from conman to marks, growing larger with each oscillation until almost all the money "in" the system comes to rest in the swindler's hands at one moment in time. Then he can, if his luck and timing are right, make off with all of it at once. That most common chain-letter variation I shall call, after one of its most famous (and saddest and crudest) operators, the "Ponzi."

In the year 1920, in the city of Boston, 40,000 investors passed $15,000,000 through the hands of one Charles Ponzi, on which raging flood of money he floated swiftly into jail. His scheme (in the honesty and feasibility of which he may even have believed) was directness itself. He would give 50 percent interest in ninety (shortly thereafter, forty-five) days to any investor who chose to deposit money with him. (That works out to an interest rate of around 400 percent per year at forty-five days, or 200 percent at ninety.) How? Well, it was like this, he explained. Because of post-war instability in Europe, foreign currencies were severely depreciated below the normal exchange rate. He would buy foreign currencies at the depreciated rate, and with it buy International Postal Reply Coupons, the exchange ratio of which was pegged to official, pre-depreciated rates. (The coupons were designed as a means of sending a foreign correspondent prepaid return postage.) The profit to be expected from this astonishing arbitrage, had it been feasible, was about 400 percent.

Since Ponzi never bought a single coupon it is still not clear if the fiddle could have worked, even for small amounts. Most likely it could have, since one of the first things the government did when Ponzi's operation received wide publicity was limit coupon redemptions to ten per person per day, and the next thing it did was issue new postal exchange rates. But the scheme very clearly could not have worked for large amounts or over any extended period of time, even if the government had done nothing. For once the "secret" was out, that is, once Ponzi's informational monopoly was broken, if the government didn't step in, the market would. Exchange disequilibria that gross are not very durable; even fairly subtle arbitrage differentials melt quickly in the hot sun of greed. The hole in the scheme is that the "depreciation" of European currencies would very quickly disappear if that currency could effectively be exchanged for dollars at the official rate. For the "value" of that currency in dollars is merely how many dollars it will buy. Thus, if the exchange of coupons for dollars were really permitted and you could buy as many dollars at the official rate as you wanted by cashing in coupons, then the real rate of exchange would be the official rate. Indeed, Ponzi had competitors running their own "Ponzis" within hours of the moment the details of his own scheme appeared in the Boston newspapers.

Nonetheless Ponzi's Ponzi worked, though not, ultimately, for Ponzi; that is, it worked for the investors, or at least for those who were in and out prior to the crash. Up to the very moment of Ponzi's first indictment, no investor had failed to have his "share" redeemed when redemption was requested. (It could have worked for Ponzi too—if he had left for some sympathetic, non-extraditing clime in time.) For once the scheme got underway at all, it *had* to work for some of the participants. A Ponzi can, after all, be viewed as an adaptation of a chain or pyramid with a structure such that information moves downward pyramidically while wealth moves back and forth between the hub of a wheel and points on an ever-enlarging rim. In theory, it's a very simple scheme. Mr. Ponzi promises that if a mark will give him $100 today, he will give the mark $150 a month and a half hence. And he does. On the first of June, say, A, B, C, and D each give him $100. He thus needs $600 to deliver to them on July 15th. But on July 1st, six other guys, E through J, each give him $100, and their return, $900, isn't due until August 15th. So when July 15th rolls around, Mr. Ponzi gives A through D the $600 E through J gave him, and by the time he owes E through J their $900, at least nine other marks have appeared to kick in their $100 each.

Now assuming nothing is being earned by Ponzi with the money while he holds it (which was certainly true in Ponzi's own case), then the wealth matrix is as closed as a chain letter's. And sooner or later the operator will run out of new marks with new contributions of capital. But assuming that the magical moment of increasing velocity is reached, information about this marvelous scheme travels from friend to group of friends to their groups of only partly overlapping friends just like the money in a chain-letter pyramid. Most of the money itself, however, surges in and out of Ponzi's hands (after a few days Ponzi had to start stuffing it in bushel baskets and waste-paper cans), becoming a hugely greater sum with each oscillation. And this momentum is accelerated by the tendency of satisfied customers immediately to reinvest their pay-offs. At some point, as the theory of the game has it, Mr. Ponzi is supposed to inhale the latest and largest surge and disappear.

Given the exhilarating immediacy of these actual pay-outs, with real money coming into the hands of real people, it is possible in running a successful Ponzi never even to attempt to answer the fundamental question, *where is all the* money coming from? Or rather, it is possible for the Ponzi operator to make himself the answer: "Trust me; I've done it up to now and will continue to do it." For a time, I suppose, that might be sufficient, because it is buttressed by an accurate perception about the nature of every bubble: *if* the momentum does continue the marks *will* make money. But as the play goes on, it becomes increasingly apparent that the operator's need for cash is rising geometrically, and the more cash is involved, the greater the need is. It becomes more and more chancy that at your level of the pyramid there is room below you for still another level of investors on whose money you can get your hands. Thus it is almost invariably the case that some wealth-producing mechanism will have to be supplied by the Ponzi operator to explain how he can do it. Eventually he will have to (and thus he usually will do so from the beginning) indicate a source of wealth other than the later investors themselves. That mechanism need not be very plausible upon reflection (indeed, as we shall see, it *cannot* be), but it must be possible, publicizable, and complicated. The trouble is that while it is almost impossible to run a black-box Ponzi (that is, one with no explanation at all), a white box (fully disclosing one's actual earnings device) would also be fatal. One needs, as the heart of any successful Ponzi, a very peculiar gray box.

Look at the problem. The mechanism that is ostensibly to produce the conman's (and the marks') wealth must be an apparent source of huge profits with some stability over time. That kind of wealth, however, is a violation of normal "thermodynamic" expectations about the real world. It can exist only as a creature of

God, chance, illicitness, monopoly, or some other (if there is any other) instance of relatively stable gross competitive disequilibrium. But in the Ponzi, God, by and large, is out. That doesn't mean that a Ponzi with a mysterious God in the gray box is theoretically impossible. I think someone might come up with such a gimmick, perhaps one involving very expensive candles conducive to salvation. But God is out for any Ponzi seeking to tap the secular-mark market.

Chance is also out. Or rather it is, on the contrary, central to any Ponzi, but usually insufficient unless buttressed by something *in addition* to the aleatory factors which underlie the play. However much is added to the success of any Ponzi by the marks' sometimes subliminal, sometimes smirkingly knowing, appreciation of the value of pyramids to those high enough on their sides, it is just not enough. Somewhere there must be an assertion of a source for all this wealth other than the contributions of other marks.

But as already noted, the central mechanism of the Prisoner, the Psst Buddy, the Pay-Off, and so on—the conman's asserted possession of a monopoly which is both the product and the cause of illegality or at least illicitness—is also unavailable to the Ponzi operator. That type of cornucopia makes no sense unless it remains a secret, while the Ponzi is bunco gone retail. It must depend for its profitability not on one big score, but on a gigantic number of smaller ones. Its mechanism has to be hawked publicly, and there is no such thing as a public secret. To run a Ponzi you must abandon clandestineness, but that is very costly to the success of any swindle, for clandestineness contributes the credibility of two critical factors. First, it "explains" the possibility of great wealth to be shared; one always has what is, to say the least, a competitive advantage if one has no competitors in a particular business, and if no one else knows there is such a business, then one has no competitors. As long as the secret is kept, one has stable monopoly profits. Second, the clandestineness contributes to the creation of the mark's wealth, what he is "given" to trade back so that his share of the monopoly profits need not appear, unconvincingly, as a gift. Since the conman cannot appear to peddle his secret promiscuously, anyone in on it has his own near-monopoly to be traded and traded on.

Thus the Ponzi operator has to try to come up with a mechanism which is neither secret nor crooked, which nonetheless assures huge profits not subject to competitive erosion, and which, moreover, explains the conman's willingness to share so generously with marks who seem not to form an artificially restricted (and therefore valuable) class of partners/buyers/investors.

Obviously, coming up with a device meeting those specifications is exceedingly difficult, and that alone pretty much explains the comparative rarity of big Ponzis. Ponzi himself succeeded only for a short while; once his coupon mechanism reached the light of bankerish day it was blown to bits, and him with it. This sweet problem, however, can be and occasionally has been solved, and it is extraordinarily interesting to examine the form of those solutions. For not only are they monuments to human ingenuity operating within very severe creative restraints, but they have a wider applicability; as we shall see, some of these Ponzi-problem solutions have analogues among "normal" selling and advertising techniques. After all, every seller has to convince buyers that (a) he can give them a bargain; and (b) he is well motivated, in terms of his own self-interest, to do so. What leads the Ponzi operator to the moves described below leads the ordinary seller to, among other things, hold clearance sales, and market bourbon and beer said to be made from the waters of particular springs. Thus it becomes especially instructive to ponder what alternatives to secrecy-based cornucopia have been embedded in public bunco plays like the Ponzi, for cognates to these moves will be seen in "ordinary" salesmanship, and will help to illuminate its workings.

There is one form of very stable gross competitive advantage capable of generating huge profits immensely out of line with normal investment returns: stable monopoly. Ordinarily, however, one cannot assert a monopoly as the core mechanism of any public business proposition, because, by and large, monopolies are either illegal or, when they are not, are so highly regulated as to eliminate profits grossly out of line with normal expectations. Thus one cannot very credibly embed a conspiratorial agreement not to compete into a Ponzi. What the marks hear, so too will the Feds, notably the antitrust divisions of the Federal Trade Commission and the Justice Department. It's not just that they are likely to move to break up the arrangement when they learn of it (thereby making the profit disequilibrium anything but stable). It's more that few will believe the *public* trumpeting of a felony, no matter how lucrative.

Nor is it particularly easy to run a lip-smacking Ponzi around a lawful monopoly like, say, Consolidated Edison. The latter does have an electric power monopoly in a pretty good market, and the news that it does would not come as a shock to any governmental authorities. But, alas, the very openness of Con Ed's monopoly and others like it has already been the source of its undoing: in return for not having competitors, sanctioned monopolies have to put up with close regulation, most notably and particularly governmental procedures designed specifically to keep them from charging monopoly prices for monopolistically restricted production. That is, they can be monopolists only so long as they don't act like them. They are entitled to only "a fair return on investment," and a "fair return" is not the sort of return upon which attractive Ponzis are built.

But "monopoly" is nonetheless a magic word. If one could get one in the production or distribution of an article subject to great popular demand, especially if the demand were such that increases in the article's price would tend to be put up with because the only alternative was "going without" (that is, if the demand were relatively inelastic), then there could be extraordinary money in it. Thus "monopoly" will tend to prick up the ears of potential marks—even if, without further explanation, it is unlikely to satisfy whatever brain lies between them. And there is, after all, at least one situation in which even a government-sanctioned monopoly can pay off big: if, when granting the monopoly, the government misjudged the price to charge the grantee and thereby failed to take most of the monopoly surplus for itself (or its citizens), and as part of the grant also failed to insist upon rate regulation, then the holder of the monopoly would indeed have a much larger than normal rate of return when he exploited his grant.

It is thus no accident (as any jolly Marxist would put it) that many of the great historic bubbles had royal monopolies at their core. The South Seas, for example, and the Mississippi, involved royal patents to explore and plunder, with a cut to the crown, mysterious places of possibly vast, or at least vastly possible, wealth. Judging from contemporary sources, the message gotten across was that the Crown had failed to appreciate just how much wealth there was, and hadn't charged enough for the razing license. The rumor mongers had merely to emphasize the darkness of the continents involved (Who knows what's there?) and the amount of potential riches in so gigantic an area, and then let the chain of escalating speculative sales take their course. For behind it all was this understanding: if the wealth was there, it belonged to, and only to, the honorable adventurers who held the monopoly, shares in which were being sold. Unless the Crown reneged, the shareholders had only partners, and not competitors.

Nor were the great bubbles the only historic Ponzis with lawful-monopoly cores. One of the most famous of all Ponzis, Ivar Kreuger's, used as its base wooden-match monopolies actually granted by European governments. Kreuger, a Swede, was born in 1880 into a family owning a substantial wooden-match manufacturing business. It really made matches, and a lot of them, and Ivar inherited. During the 1920s Kreuger embarked on an aggressive campaign of expansion and acquisition. By 1928, he controlled over half of the world's wooden-match manufacturing capacity. But the heart of his business (and of its attractiveness to investors) was not the quality of his matches or his marketing; it was, instead, that Kreuger would acquire monopolies in the manufacture and sale of matches from European governments, usually in exchange for long-term loans to be supplied (ordinarily) by American investors. Even after the 1929 crash, for example, Kreuger was granted the German match monopoly in exchange for a loan of 125 million United States dollars.

Now note: (1) his monopolies were in matches, i.e., items of great ubiquity with respect to which demand was relatively inelastic; that is, people would pay quite a lot before being willing to do without them; (2) his monopoly was not an oddity; European states tended to monopolize (usually for the state itself) the manufacture and sale of cigarettes and matches; (3) since the monopoly was lawful and open, it could be hawked publicly; and (4) since the "payment" was in the form of long-term credits, it was not immediately obvious what the price paid for the monopoly was. This last factor made it less necessary for the public to face, immediately and crushingly, the fact that when something valuable (e.g., a monopoly) is sold, the price usually does not vary very much from its value.

Alas, the governments involved had in fact driven pretty good bargains for their monopolies. Relative inelasticity of demand notwithstanding, there was not all *that* much monopoly profit in the business. So Kreuger could continue his appearance of prosperity only by faking his assets, which he did principally by forging securities allegedly held in his corporate treasury. That was the only reason his Ponzi could go on as long as it did, which, depending on when you start counting, was as long as ten years; he met his demands for payments and loans in the equivalent of counterfeit money. But by 1932 the demand for cash outstripped even the supply he could credibly counterfeit. At that point Kreuger removed the hat in which, by legend, he kept all his business papers, and put a bullet in the head underneath. It took twice as long as Kreuger's Ponzi had run to unravel who got to lose what proportion of the more than 200 million dollars he had recirculated during his play. But from my point of view, that of a consumer and savorer of bunco variations, he had at least done this (for which I can forgive him even the crudeness of forgery and counterfeiting): he had conclusively illustrated the viability of a lawful, advertisable monopoly as the gray box of a Ponzi.

Lacking a genuine, government-sanctioned monopoly, however, Ponzi operators must always, to some extent, fall back on secrecy as the source of their extraordinary promised profit. Thus the usual gray box is filled with what one might call a "divisible secret"—that is, one enough of which can be told openly to convince the relevant public that something valuable exists, but enough of which can simultaneously be held back as to make the open part of the secret unstealable by any competitor. In the very recently played Home-Stake Production Company version of the Ponzi, for example, one which may have involved as much as 130 million dollars, the embedded mechanism was a very complicated but plausible tax avoidance scheme. But any discovery (as of a gold mine) or invention (as of a new nonpolluting engine) is popular for this purpose. Indeed, half the new-issue ventures in any raging bull market, which is the locus of most modern Ponzis, involve companies with quasi-secret properties or processes. If you show some gold bricks the marks may believe in the mine, even though you naturally don't show them where it is. For even if you've filed a claim, you don't want the price of surrounding land to go up, now do you? And a phony public "test" of your new engine will go some way toward getting "investors," even if, as you are quick to tell them, you don't want to blow the whole thing to competitors by handing out blueprints and specifications. It is almost touching, as a matter of fact, that that ultimate violation of the laws of thermodynamics, the perpetual-motion machine, still figures heavily in the category of Ponzi "inventions."

Judging from bunco history, however, it is not all that easy to come up with a mechanism that promises relatively durable extraordinary profits which will not be eliminated (because still "half-secret" or legally protected) by the very act of publicity necessary to solicit financial assistance in exploiting it. But even if one does come up with something—a convincing "secret process," for example—there is still the problem of justifying to the mark *his* generous split. For if you've got such a great asset, why not borrow at prime and keep all the goodies for yourself? It would be better (as a matter of technical consmanship) if one could come up with an independent ground, one other than their mere possession of some money, for *needing* a large number of marks (but not just anybody) who can be simultaneously convinced that they particularly need you. In our language, it would be nice to figure out how to drill a niche between the necessarily secretive two-party Prisoner and the unconvincingly open-ended *n*-party Ponzi.

All right then, here's the problem: how do you define a set large enough to justify a retail swindle—one with many relatively small contributors—which nonetheless embraces sufficiently less than "everyone" so that each member is "necessary," or at least relevant to the success of the purported money-making venture? Here's one answer: set up an "Ancient Estate" (sometimes called "Unclaimed Inheritance") swindle.

Ancient Estates

THE "ANCIENT ESTATE" is not, mind you, your uninteresting Tichbome Claimant or Boris Gudenov type of inheritance con, in which there is a real claim but an impersonated claimant. Such swindles are as productive of analytic ennui as counterfeiting and forgery. No, in the type involved here, the conman manufactures a claim, thereby manufacturing claimants, to whom he then sells his secret knowledge and managerial skills. In a representative version of this kind of swindle, the conman merely asserts that he has (actually, *almost* has) proof that some gigantic estate is in the wrong hands. If he can just get a little bit of funding from those persons in whose hands the property rightly belongs, he will be able to assure their title and make them inconceivably wealthy—taking for himself, he admits, a very large but thoroughly justified share for his own efforts on their behalf.

Consider, for example, a famous Ancient Estate played on a rather large scale as recently as the late twenties. The "estate" in that version was Trinity Church's vast real-estate holdings in lower Manhattan. The way the tale went, the property was owned in the mid-seventeenth century by one Anneke Jans Bogardus. She willed it to her children, they conveyed it to a Colonel Francis Lovelace, he conveyed it to the British crown, and Queen Anne, in 1705, granted it to Trinity Church. But, claimed Willis T. Gridley, the conman-in-charge, the conveyance from Anneke Bogardus's heirs to Lovelace was defective, in that all of her heirs had not joined in it. Thus the property really belonged still to Anneke's heirs, and it was on this basis that Gridley—before going to jail for five years for mail fraud—managed to extract at least fifty dollars apiece from at least three thousand of those "heirs."

Now in the Bogardus Ancient Estate the value of the property was only about one hundred million dollars. Another version, also played in the twenties, involved the estate of Sir Francis Drake which, according to Oscar M. Hartzell, who ran the bunco, was wrongly conveyed after his death to Elizabeth I, and had now grown, what with interest and all, to about twenty-two billion dollars. But it is not the size of the boodle that is significant; it is the reason it must be so large: to accommodate the desires of a very large *but determinate* set of secret sharers. If the conman can convince any mark that he is one of the rightful heirs, and hence that any recovery must be on his behalf (the reason the "Ancient" is in "Ancient Estate" is to assure that almost everybody is, more or less, at least possibly one of the heirs), it makes perfect economic sense for the mark to contribute to the claim chest.

But that's only the half of it. The mark's heirship doesn't just grease the logical slide under his cash; it provides, in this mass-market congame, the strongest element in the Spanish Prisoner, the symbiosis of necessity between the conman and the marks. For while the conman has the organization and the proofs, the claimants are the claimants, and no one can replace them. If he wins he wins for them, and he gets nothing unless they cut him in. Once again they need each other: he needs all forty-thousand of them and all of them need him.

Now this is a nice move, and the Ancient Estate swindle has, I suspect, by no means faded away. So far as I know, neither the Bogardus Estate nor the Drake Estate nor anything else on that big a scale is currently being worked; but one should not mistake the play because the sets are changed. After all, at the heart of every Ancient Estate is just a legal claim for a vast amount vested in a large number of people. In the Ancient Estate that legal claim is one of legal right to property by inheritance. But in theory any claim would do, so long as it produced a large enough number of claimants to satisfy the conman and a large enough potential recovery to satisfy the marks. Thus if I were to look for a modem Ancient Estate, I would look not for inheritance claims but for actions on behalf of other large but determinate classes, the principle of class formation being a common injury (for a suit in tort), a common contract breach, or some common entitlement under some wide-ranging statute (some antipollution law, for example). That is, I would look for an example of that generally beneficent modem legal development, the class-action suit on behalf of some large class of injured claimants, all coordinated by a conman with a law degree.

I have not looked. So far as I know, all recent, present, and proposed consumer and environmentalist class actions are what they purport to be: innovative legal attempts to gain legal redress for large classes of people with real injuries. But what a temptation. How easy it would be to sell, at very low per-unit prices, a share in, say, a suit against General Motors for violation of something or other on behalf of all buyers of, say, Chevrolets during the last ten years. How much could one get in litigation expense contributions from a mark list made up of ten million legally aggrieved people, each preselected to be rich enough to own a car? And how nice it would be if, in addition to living well off the war chest during the ten years of case pendency, one could, at the end, get a nice chunk of any settlement for oneself. Again, I have no knowledge that any such twisted use of class-action procedures has ever yet been made. But I will wager this: it will be.

For the form of the Ancient Estate variation on the Ponzi, with its creation and then use of a large but not infinite class of public marks who have some necessary place in the gray-box scheme, seems to be an important natural form for any mass movement to take. Consider, for example, the movement among Mexican Americans in the Southwest associated with Reyes Tijerina. In bare outline, the premise of the operation is that the present owners of much of the land in that area, for the most part "Anglos," hold their tenures under defective titles, and that the land "really" belongs to the unlanded Mexican Americans. It is therefore in the interest of these dispossessed people to support Tijerina while he seeks to have their rightful inheritance confirmed. But, as in any irredentist movement, the leader also needs this large but determinate group of claimants, for it is *their* claim he is pressing, on *their* behalf. Thus the form of any irredentist movement is the form of an Ancient Estate dodge: the leader gathers the claimants into a force with which he hopes to press the claim successfully, taking as "payment" for his absolutely essential organizational skill and services whatever it is that leaders get out of leading, which might even include feelings of ethical and political rectitude.

Thus, in a perhaps rather bizarre fashion one can think of today's Northern Ireland and Middle East conflicts as considerably more nastily financed and operated Ancient Estates, with the national bliss assertedly at the end of the liberation process as the vastly valuable boodle to be divvied up among the true believers. Even the Melanesian "Cargo Cults," quasi religions the central tenet of which is that the World War II GIs will someday return, bearing once again the magical bounty of western consumables and gadgets to be divided among the natives, seem to have the same basic form. Compared to, say, Northern Ireland or Palestine, the only difference is that the cargo-cult pay-off, by being concretized into consumer goods, rather parodies the more etherial joys of cultural reunification promised at the end of the irredentist bloodlettings.

Having said all this, I must add the cautionary note that two things with the same form are not necessarily the same thing. The Tijerina, Irish, and Palestinian movements are not "swindles" just because they share important structural components with the Ancient Estate congame. If they differ in no other way, they differ in that their leaders seem to be genuinely interested in pressing their followers' claims, not in enriching themselves at their followers' expense. All of these irredentist movements, whatever their methodological failings, are genuine political movements. Indeed, while they might all profit (at least in terms of conserving the lives of innocents) from the cynical detachment of a conman coordinator, their central vice is not hypocracy.

The Momentum of the Openly Chosen

WHY THIS ATTRACTIVENESS, even in non-Bunco, indeed noncommercial, contexts of the Ponzi–Ancient Estate format? It seems to be this: once one of these open retail-consumption congames gets off the ground, the very massness of the operation, the very fact that many marks are publicly involved and by their own choice, seems to generate powerful forces of continuance—at least for a time. The precise mechanism of this mysterious momentum seems exceedingly complex; but some things can, I think, be said about it which are useful in approaching an understanding not only of congames but of modern mass merchandising as well. For there does seem to come a point at which the conman/seller's reinjection of additional selling energy per unit of response can radically decrease, so that the curve of expansion begins to look like an atomic pile's sustained-reaction graph. Implicated in this process are not only congame desiderata like the acceleration of new investors in a true Ponzi, but also things like brand loyalty and the advertising designed to build and sustain it. What, then, can one say about this process of mass public commitment?

Let us examine the roles the marks in a Ponzi play for *each other*. For as each mark in a Ponzi is a coactor with each of the others in the conman's play (since that performance has abandoned secrecy as a central plot element), each of the players is simultaneously each other's audience as well. This has very pretty consequences.

First, as a matter of economic rationality, if the mass of marks make up each individual mark's audience, then they constitute his pool of potential customers as well. If all those other guys are believers (and by having initially joined they have necessarily proven that), then they form for him a pool of people more likely than the public at large to go on believing in the "product." This becomes, then, a rational source of economic security for each mark. That is, the operator's little gray box, that which purportedly produces the "company's" wealth, is neither the most direct nor the most important source of security for any "investor." The primary security for anyone who buys shares in anything is not the earnings but rather the likelihood that if and when he wants out, someone will be there to buy him out. The buying out may be direct—as in a bubble, where the marks sell to each other, or in a Ponzi-type Ponzi, where they supply funds to the wheel-hub operator with which he can "redeem" the "investments." But what is important, as always, is not the value of the company but the value of the shares. And the value of the shares is solely a function of other people's desire for them.

But this same mass of marks has, in addition to its economic or marketplace significance, a psychological effect which also tends to retard the swiftness with which the bubble bursts or the pyramid crumbles. The marks are not just each other's present partners and future potential customers; as an *audience*, their mass mutual presence also validates for each of them his own participation in the scheme. If *all* those people believe in something, it can't be total twaddle, can it? I may not be able to really understand match monopolies, or international postal reply coupons, or perpetual-motion machines, but surely some or all of those others must understand, and they certainly seem to believe. There must be something in it, because they are risking their money too. That is, not only do the other marks ensure the value of your own "securities" by presumably being willing to buy them, but their already having bought their own "shares" testifies to the value of the ones you bought.

Thus the mechanism in any retail bunco play need not be sufficient to convince the mark of its gross profitability but need only convince him that it has convinced, and might continue to convince, others who do not understand it. Thus he can accept a scheme with slight surface plausibility which he finds he does not quite understand on the ground that others are also investing and they presumably must understand it better than he. (And indeed some do understand it very very well, but they are always careful to get out before the collapse point.) It is apparently inconceivable to the mark that everyone can be as dumb as he, and also cannot understand match monopolies, or international postal reply coupons, or corners in gold, because each of the marks validates his trust by the trust of so many others.

If the Ponzi operator can manage to procure—corruptly, falsely, or through luck—the names of successful plungers or, at least, apparently sophisticated operators to associate themselves with the game, so much the better. That seems to have been the case in the Home-Stake Production Company story, which involved prominent lawyers, accountants, entertainers, and business executives whose participation was continually pointed out to potential participants. But such celebrity invoking seems not to be all that necessary; mere numbers will, at least for a reasonably lucrative time, be enough to fuel the necessary hysteria.

There is still a third factor at work in creating the surprising momentum of certain mass-market congames, which is also a partial function of openness and mass, but more precisely revolves around the *kind* of participant class that the typical gray box in a typical Ponzi creates. By and large, when the operator is (always tacitly) asked by the prospective investor why he is willing to give such a large return on investment—that is, why the operator needs him—the reply is always in the form: "But I don't need you. There's nothing special about who you are. I need anyone who has money to invest. You're just lucky to have been asked early in the game and to *believe* in me."

The point is that the gimmick in the Ponzi gray box cannot be presented in such a way that it would be convincing to everyone. If it were that clear and powerful, and could be so presented, it would defy understanding why so great a pay-off is being offered by the entrepreneur. Thus, every such mechanism must be not only believable but understandably *unbelievable* as well. That is, if it were perfectly clear that there was an inexhaustible diamond mine or a nonpolluting perpetual-motion machine in the sole control of the conman, he would not need to pay his "backers" much more than ordinary interest. Since, however, there are other reasons (detailed above) why he cannot yet make public his irrefutable proofs, some people will *not* believe. Those who *do* believe, now, when so many others do not, must be compensated for their greater faith (and superior prescience). In a Ponzi type of open operation, then, the mark's relative scarcity, and thus his value, lies not in anything as vulgarly pictorial as the stone walls and bars which seal the prisoner and his sure thing from other collaborators, but rather in a strongly asserted psychological differentiation: the world is made up of believers and skeptics, and the mark is one of the former.

But that means that, given the self-selection process at work in forming the participant class in mass-market cons, those who join such mark pools are "believers," in a more general sense than that they happened to believe in this particular scheme. This seems (admittedly on the basis of scanty empirical support) to have great importance in determining their behavior during the period that their Ponzi is on and running. The members of an operative Ponzi seem to have a larger-than-usual complement of a common psychological impulse which may be called "commitment momentum." This tendency—which may be described as a psychological set on account of which it requires more energy to get out of a commitment than to get in—is peculiarly useful in retail buncos like Ponzis and Ancient Estates. (It is also, as we shall see, at the root of most advertising strategies.) For if you think about the running of these cons, what impulse in a Ponzi is the conman trying hardest to dampen during the run of the con? The impulse to "unbuy." Because of the form of these cons, the early marks must be strung along for a considerable period of time if the conman is to build up a maximal score. During that early period the mark himself ordinarily can get out, and to the extent that marks do so they become competitors of the conman in making the score. In effect, they become his true partners by taking down a partner's draw before the managing partner can abscond with all of the firm's assets. If, moreover, the mark in a Ponzi cashes in, he puts that much more pressure on the conman to come up with new marks from whom to get the funds to pay off that redemption. And every time a mark in a bubble sells out to a later mark, he uses up part of the geometrically decreasing mark pool available to the conman. Thus it is exceedingly important for a conman, once having sold a large number of marks on a scheme, to keep them sold. One must delay disillusion, for in the inertia of the participants lies the momentum of the game.

This is true, of course, in secret-based cons too, where huge amounts of dramatic energy go into keeping the mark's fantasy world alive and well. It is a common complaint among ropers that the worst part of a Big Con is having to live continuously with the mark and cope on short notice, at any odd hour, with his sudden, powerful, unpredictable seizures of doubt. The professionals in three-man closed cons deal with the problem face-to-face, keeping up the necessary folie-à-trois with art and energy. But it is in the mass cons that this perverse loyalty is most striking. Even after conviction, people like Ponzi and even the far less attractive Oscar Hartzell, who ran the bizarre Drake Estate swindle of the late twenties, found little trouble in continuing to raise very large sums of money from their "believers," even when they had to be addressed to them in jail. It appears that there is, in these cons, much more for the marks to lose than money. Oh sure, to lose the faith *is* finally to face up to the loss of the money with which that belief was implemented. But more vital, it seems, is the loss of self-esteem involved in admitting one's prior commitment to have been a laughable fraud. To devote oneself money and soul to a view of who one is and what one might become and then to discover that it was the willful creation of a cynical manipulator is apparently, for some people, almost unbearable. For the conmen frequently became heros to their followers. Ponzi was cheered wherever he went, and his followers wrote embarrassing eighteenth-century doggerel broadsides in and to his honor. To have felt and behaved like that and then to admit the truth must be as painful for a mark as it is for an eminent scientist to admit, finally, that phlogiston and the ether just don't exist. It is not easy, and for some people it is not possible, to face having made of one's life a farce.

This self-selection for gullibility on the part of the marks who fall for a public mass con seems to be only an intensification, however, of a very widespread mechanism. It appears that the tendency to delay acting upon, or even perceiving, one's earlier errors is so widespread as to have gotten separate notice, in separate vocabularies, in two different scholarly disciplines, economics and social psychology.

Among economists (and financial types in general), this tendency is called the Sunk Cost Fallacy. It works like this. Let us say that in 1974 you buy a stock at 100 on the expectation, or at least the hope, that by 1975 it will be at something like 200. But when 1975 rolls around, your stock is at 50. What do you do? Well, if you're sensible, you do whatever you do without reference to the stock's prior market history. For (except for the costs of unloading the old stock and buying something else, and perhaps with respect to certain tax considerations) *what you did in the past is irrelevant for your investment decisions about the future.* This would be true even if the old stock had gone up. The only relevant question you have to answer is where you can now put your money so as to get the best possible return. It is possible that hanging on to the old stock will get you that, *but not simply because you already own it.* When you are searching for the best possible investment for the future, the investments you made in the past should have no special status, superior or inferior, in the universe of your opportunities.

Nor does this fact apply only to securities decisions. Consider this example. You are a widget manufacturer and yesterday you bought and paid $100,000 for a new widget stamper. It allows you to stamp out widgets at ten cents per unit. Today you learn that a new widget stamper, capable of producing widgets at five cents per unit, has just gone on the market, and it can also be bought for $100,000. Do you junk your brand new widget stamper, into which you have just sunk $100,000 cash? Ah, that's asking the wrong question. The question ought to be, "What investment decision ought I to make which will maximize the profits from my widget-stamping business?" It is probable that if the question is asked that way, the answer will be that you indeed ought to spend another $100,000 for the newer stamper. True, by doing so you will "lose" the $100,000 sunk cost of your just-bought, brand-new, undepreciated widget stamper. But the alternative, "using up" what you paid for before buying something else, will, in any reasonably competitive line of commerce, put you swiftly into bankruptcy. After all, it is not an awful lot of help to be able to make widgets if in order to sell them you have to price under your own cost. (Of course, if you can't buy the new machine, and the returns from staying in business with the old, inefficient one exceed the returns from the now-negligible resale value of the old machine and still cover your direct-cost outlays, you might stay in business with the old machine anyway, for you might still be doing better than you could under any available alternative. But buying the new one, if you can, is likely to be a better move.)

Now when these sunk-cost stories are told this starkly, it would seem that the wrong decision (in each case, sticking with one's initial decision) would be seen by any reasonably intelligent person to be obviously fallacious. One would expect that the "right" decision would generally be made. In fact, however, it seems that it is very frequently *not* made. One continually runs into people tenaciously unwilling to sell a dog of an investment in the hope that it will "come back." And it is not all that rare, I suspect, for even a businessman to hold on to a "paid-for" factor of production until he "uses it up," even though the maximizing decision would have him junk it early and replace it with something more efficient. It is, in fact, very much worth mentioning that the so-called "Peter Principle," that people in bureaucracies rise to the level in which they are inefficient and stay there, depends for its validity, if any, on the existence of some variant of the Sunk Cost Fallacy as applied to the central factor of "production" in bureaucratic organizations, people and their labor.

Nor is this profoundly conservative tendency to cleave to states of the world previously "invested in" limited to business decisions. One can leave the financial analysts behind and come upon another vocabulary in another discipline which seems to speak, or at least mutter, to pretty much the same point. This is social-psychology's concept of "cognitive dissonance."

The research and writing on cognitive dissonance theory is often subtle and elegant. For our purposes, however, we need not look at the concept in all of its theoretical and experimental richness. It will serve our present needs to oversimplify the basic idea to this: after a man has committed himself to a particular course of action, especially if making the decision was important enough to have filled him with great stress when he made it, he will tend to suppress (to the point that he will not even perceive) any information which would tend to indicate to him that he made a mistake, and he will tend to seek out (to the point of inventing) data supportive of the decision he made.

As I just pointed out, much of the research and writing on the suppression of cognitive dissonance is remarkably subtle and intelligent, and no one sensible in the field would argue that the impulse to protect the rightness of one's prior decisions is universal, or strikes all people with equal intensity even with respect to essentially identical decisions. Indeed, there seem to be some people who *seek out* proof of prior error, apparently reveling in feelings of inadequacy. The consciousness of having once again been taken, just as expected, by still another "other" (or, preferably, conspiracy of others) is, apparently, sometimes sweet.

Nonetheless, it does seem as if "patsy" is an extraordinarily unattractive self-image for most people. When a used car turns out to have a nontransmitting transmission, or brakes about as gripping as a true-life adventure of Fort Wayne, Indiana, there appears to be a tendency to be loyal to the lemon, suppressing even the consciousness of its sourness rather than facing having been taken in the original deal. Certainly that applies to strong, stress-filled political and economic commitments. Many (though hardly all) American Stalinists seem to have in this way survived the disclosures of Ribbentrop in 1939 and of Khrushchev thereafter. Certainly a shocking number of American politicians thus suppressed consciousness of the disasterousness of the country's Vietnam adventure. And in personal affairs there are most likely more cuckolds than Othellos, people who find it easier to smother their suspicions than their suspected.

In any event, whatever the strength and extent of this particular social-psychological mechanism in the various contexts in which one would expect it to operate, it seems to exist to a fare-thee-ill among the victims of bunco games, especially of the mass-retail variety. Though there are notable exceptions (a rancher named Norfleet, taken for $100,000 or so on a Big Con, spent a roughly equal sum chasing down the conmen—and then wrote a book about it), it is agreed among all observers that, by and large, fleeced marks go home nice and quiet. That, of course, could be understandable as an attempt to avoid the obloquy and shame of public exposure. What is more to the point is the "clinically common" experience (reported by all conmen) of not being able to blow off the mark *because he wants another play*. That is, the mark isn't merely avoiding the consequences of facing his rip-off; he cannot even bring himself to see himself as a rippee. Thus it is explicable that mass-market cons, however grotesque they might appear in the cold light of a retrospective view, can have a run, and sometimes an extended one, once they get underway. The social-psychological tendencies they tap are apparently deep and pervasive. We shall meet them again when we consider things like brand-name loyalty in "normal" merchandising.

Crude, Ponzi-like mass cons, however, even when modified into something like Ancient Estate plays, retain several serious weaknesses which together pretty much assure their ultimate failure. (Ponzi, after all, went to jail, and Kreuger, by his own hand, went to his reward.) These all stem from the necessary peculiarity of what has to be put into the gray box to make the game begin. Ancient estates, match monopolies, arbitrages in postal coupons, mysterious inventions, quasi-secret gold strikes—all of these are economic rarities, bordering on the incredible. And they have to be. How else could one promise huge pay-offs on significant investments by a vast number of takers as the result of some publicly acknowledged gimmick? If the gray box were opened to disclose, say, a grocery store, or even a steel mill, it is hardly likely that one could on that basis induce the requisite investment hysteria. People know, by and large, what ordinary business returns are.

But what if one could devise a play which was basically a Ponzi, but in the heart of which was nothing as exquisite as a perpetual-motion machine, but only down-to-earth things like salesmanship and advertising? And what if the pay-offs predicated on that mechanism could be so shaped as to give a highly attractive return to the "investor" even if it were, in absolute dollars, small? Suppose, for example, you could promise each mark an essentially *infinite* return by giving him a modest but not trivial return on what seemed to be *no investment* at *all*. If you could design such a gorgeous mechanism, you would have, if it were well run and cunningly exploited, a most lucrative congame. It would be widely played, extensively accepted, and (because of its closeness to "legitimate" business) relatively durable against legal and regulatory erosion. If you could do all that, you would make a fortune. Some people did.

The Referral and the Pyramid

To OBSERVE this development, and begin to place its mechanics into the stream of "normal" salesmanship, let us get back to that Marvin Sonnenlieb whose sad career précis began this work. It was not until 1966, quite late in the development of his fiddle, that I first ran into Sonnenlieb. (That, by the way, is not his real name, which I have suppressed more out of pity than from fear of litigation. Of course, considering what happened to him between 1962 and 1969, I doubt that he still has the same name he had then; I only hope that when he came to change it he didn't pick Sonnenlieb.) He and I met, as it happens, in volume 275 of the New York Miscellaneous Reports (Second), more particularly in the narrow corridor between pages 303 and 330. There appeared there a rather detailed description of an elaborate action by the Attorney General of the State of New York which sought to bring Sonnenlieb's business to a halt on the ground (backed up by pertinent reference to a startling number of New York statutes) that it was at least a quashable outrage and perhaps a criminal fraud. Once the annoyance of the People of the State of New York, incarnate in their Attorney General, had gone so far as to thrust Sonnenlieb against his will into that particular straitened passage in Misc. 2d, it was unavoidable that we should meet. As a Professor of Law specializing in the law of consumer protection (such of it, at any rate, as there then was), part of my job involved walking just that beat.

I should mention that I conceived an immediate fondness for Sonnenlieb, albeit of a rather special kind. What I experienced, I think, was that peculiar warmth one feels toward anyone who, like a five-year-old with his first prepared lie, carries out one of the complex strategies of living with such transparent crudity as to expose, for the first time, the pure, basic structure of something usually hidden by a mantle of sophistication. Sonnenlieb's swindle, so much more gross and obvious than most, went like this. After earlier career ventures into law and pub-tending, Sonnenlieb was, at the time the Pauline illumination which was to change his life struck him (in his case, apparently, on the road to Indianapolis), engaged in so-called "direct selling" of "vacuum cleaner systems" under a dealership from their manufacturer (which we'll call "Pullaire Products"). Now "direct selling" means, more or less, door-to-door selling, which in the case of vacuum cleaners is already part of American folklore. And the "system" part of "vacuum cleaner system" means that instead of getting what is in effect a box with an inhaling motor in it which one has to drag from room to room, the buyer gets a vacuum outlet in each room to which the cleaning attachments may be directly connected; flip the master switch and your hauling days are over.

For all I know, at least for some people vacuum cleaner systems are well worth their price, and "direct" is a sensible way to buy them. But that price is high (Sonnenlieb's Pullaires were, ten years ago, about $800 each), and door-to-door is a tough selling scene. Since you are not, like a storekeeper, necessarily dealing with people who, by showing up at your shop, indicate that they are interested in buying, you hit an enormous number of totally "dead" prospects. And since you are going to them, you expend a huge amount of time and labor (i.e., money) reaching the very few "live" ones you do find. Thus you must make a very large profit per sale to make any money at all; but the higher you set your price, the stronger the customer resistance.

While Sonnenlieb seems to have been making do door-to-dooring Pullaires, his wealth was still well below his dreams of avarice. Then, some time in 1962, apparently as the result of research visits to Norfolk and Indianapolis, where the con was then in operation, Sonnenlieb discovered the "Referral Sale." Pursuant to this new dodge (in surface appearance if not in basic structure a technological breakthrough in crooked merchandising), Sonnenlieb was able vastly to increase his profits while changing neither his product nor his sales locus. For the referral device enabled him to make one critical change in his sales presentation: whereas in the past he could offer his customers a vacuum system for $800, now he could offer it to them absolutely free. How?

I'm glad you asked me that question. You say you can't afford it. You say you've got a mortgage on the house and payments on the car and your little girl is having her teeth straightened by an orthodontist who is also a compulsive gambler. You say your cat is in analysis? Say no more. Because this isn't going to cost you a penny. I'm not selling you anything. What I'm going to do is I'm going to enroll you in our advertising promotion plan.

You've seen advertising on television, in big picture magazines? Sure you have. You know how much that costs? Thousands. Millions. But we've found out that the best advertising is word of mouth. Yes sir, plain old word of mouth from one satisfied user to his friends. If you heard from someone you knew that something he got was good, really did the job, delivered everything it promised and more, you'd want it too, right? Of course you would. Well that's our marketing plan. We will put this beautiful Pullaire Central Vacuum System in your home. For every person you recommend to the company who also joins our plan we will pay you a commission, $50 for each of the first five, $100 for each after that. Why, you'll more than earn your own central system if only ten people, that's right only ten people, join our plan.

You're still worried? You're afraid you don't know ten people like that, people who are ready, willing, and able to spend the *money for even a fantastic product like the Pullaire? But you don't understand. We're not selling it to them either. We're going to give them an opportunity to join up too, just like you. They're going to get the same incredible opportunity to get their own Pullaire system absolutely free, in exchange for their helping us in our advertising promotion plan. Why, with an offer like that I'll bet six or even seven or eight out of every ten names you give us will end up joining.*

Ah, I see you got the idea. Some people have trouble understanding new ideas like this. Just sign right here and we can get down to work together. Sign right here. That's it. Thaaat's it. Thank you very much; you won't be sorry.

Now that, of course, is just a very compressed, general form of the Referral pitch. It bears roughly the same relation to the pitch as actually delivered as choreographic notation bears to dance. Even the tone is most likely somewhat off; mine, notice, hovers on the edge of self-conscious parody, and that is a very unlikely slip for old-pro door-to-doorers to make. But if one can judge from the considerably longer pitch outlines Sonnenlieb provided to his salesmen and the recollections of marks (both, in this case, preserved in the transcripts of Sonnenlieb's various trials), whatever embellishments the salesman added, none of them ever altered the basic pitch: to wit, the mark was merely signing on as "representative" of an "advertising promotion company," in which status he would, by recruiting other "representatives" for the company, earn "commissions" or "rebates" at least sufficient to make his acquisition of goods absolutely free.

In other words, while the reality of the deal was that, at the moment of signing, the consumer had just bought himself something for from five hundred to fifteen hundred dollars (Sonnenlieb's prices and products varied over time), the appearance of the deal was that the seller and the consumer had just entered into a cooperative joint venture, beneficial to both of them—and at no third party's obvious expense. The most magical possible moment in the economic universe had, at least in appearance, once again been achieved: something had come out of nothing and was there for the sharing.

The mark, in this type of play, thus appears to get something "free." The basis of that apparent gratuitousness is actually two-fold, however, and it will prove useful to separate the strands. The first sense in which the customer pays nothing is that he never turns over any substantial amount of cash (or even writes any large check) at the time the deal is closed. *All he has to do* is sign a note, that is, make a promise to pay in the future.

This particular development, this way of creating through sociolegal technology an appearance of getting something for nothing, well antedates Referral Selling. It is, in fact, the development of negotiable promissory notes in consumer transactions that made big-ticket (i.e. expensive-item) door-to-door selling, even honest door-to-door selling, at all economically feasible. It will take a small excursion into the arcania of commercial law to see how this techno-legal device works.

The negotiable promissory note, along with its most important correlate, the holder-in-due-course doctrine, is, as these things go, ancient in the law, dating from at least the eighteenth century in England (and most likely earlier on the Continent). Put legally, succinctly, and unintelligibly, the heart of the matter (also known as the cream of the jest) is this: the holder in due course of a negotiable promissory note takes that note free of (substantially) all defenses against its payment which the maker of the note might have. What that means in practical fact can best be seen in the context of one of the everyday dramas of commerce.

Let us say that Nadir Notions Corporation wants to buy ten thousand widgets from Acme Widgets, Inc., at one dollar a widget. Nadir could obviously pay the price in cash, either before or at the time of delivery. Or it could just say, "Bill me," and, if Acme were agreeable, sometime after getting the goods and the bill (maybe thirty days, maybe ninety—whatever the understanding is) it could draw a check and pay. But Nadir and Acme can also handle the matter of payment another way. Instead of handing over cash or a check, Nadir could instead—before, while, or after getting the goods—deliver to Acme a signed piece of paper reading something like this: "Ninety days from date, Nadir Notions, Inc., promises to pay to Acme Widgets, Inc., or order, the sum of $10,000.00, with interest at the rate of 6% per annum."

Let us assume that Acme, having gotten this piece of paper, doesn't want to wait ninety days for its money. It can go to Perigee National Bank (or anyone else with idle cash) and "negotiate" Nadir's note (which means little more than sign the back of it and hand it over). Perigee will, in effect, have bought the note from Acme, usually at some discount from the face value to compensate it for the risk of Nadir's eventually not being able to pay. Then, when the time comes, Nadir is supposed to pay the bank instead of Acme. Assuming that the bank, at the time the note was negotiated to it, had no actual knowledge of any "infirmity in" or "defense to" the note, then, when the note falls due, Nadir must pay Perigee. No matter what was wrong with the widgets or the deal between Nadir and Acme, Nadir must pay the bank. More specifically, even if, among other horrors: (a) the widgets were never delivered (in law, "failure of consideration"); (b) they were delivered, but sculpted from cream cheese instead of the promised and expected vanadium steel ("breach of warranty"); or (c) they were purchased in reliance upon an intentionally and materially false statement of fact made by a crooked and sneaky Acme ("fraud"), *Nadir still must pay the bank*. Nadir will not even be allowed to tell in court any of those three gripping stories (chronicling the three most common defenses in sales law). As *against a holder in due course*, what the payee (seller) has done, his failure to perform, his defective performance, even his outright fraud, are all legally irrelevant. The *maker* of the note has to pay the *holder*.

Although the previous paragraph is hardly calculated to convince anyone of it, there is a place in the law for that kind of result. From the point of view of the bank, all it is doing is lending money, albeit indirectly, to the buyer Nadir. If Nadir's president had come into the bank to borrow, on behalf of the firm, ten thousand dollars, the bank would have loaned it or not, charging interest for this rental of its money and for the risk that when the time came Nadir would be unable to pay it back; but it would certainly not expect Nadir to argue that it was not obligated to repay it to the bank because it used the bank's ten thousand on a deal that didn't work out. It is entirely arguable that commerce flows more smoothly (and more inexpensively) if financial institutions need not concern themselves with the quality of transactions between the people who use their money. Fraud and nonperformance occur at the risks of the parties involved; they are in the business of knowing each other and the product. The bank takes over only one risk—insolvency of the borrower—and thus has no duty to learn anything about the honesty of those with whom their borrowers deal, or the quality of the things they sell.

Moreover, it is not as if Nadir is without remedy if its deal with Acme curdles. Even though Nadir must pay the bank "for" widgets never delivered, or grossly defective, or which it would not have bought at all but for a successful lie, that doesn't mean it has no recourse; it can, after all, on the basis of those facts successfully sue Acme and get back every penny it paid out. Nadir is no worse off (even if no better off) than if it had paid cash in the first place, its own cash or cash borrowed on its own from the bank.

This argument, that "it's no worse than paying cash," makes relatively good sense when it concerns deals between businessmen, who by and large know what they're doing. With respect to consumer transactions in general, however, it is sufficiently problematical to have led to an accelerating movement to abolish the holder-in-due-course doctrine in such transactions. And when it comes to sales of big-ticket items door-to-door or in fly-by-night shlock houses, the holder-in-due-course doctrine becomes little more than an engine of clever oppression. For if "paying" by negotiable promissory note is "just like" paying cash in the eyes of the law, it is no such thing in the eyes of ordinary people.

This is true even if the signer more or less knows what he's doing; that is, if he understands, however remotely or subliminally, that if the deal blows up, a bank, of all things, is not likely to take the loss. But it is frequently the case that the marks don't even have that much to go on. It is one of the arts of sleazy salesmanship to make this puissant note just another item in a "stack signing":

Now if you'll just sign the participation agreement—thank you—and the advertising brochure receipt—that's it, right by the X mark—the Pledge of Allegiance to the flag—gooood—this thing here (hee hee), and the warranty card—fine. Welcome aboard.

But even if that game is not played, or is played so badly that the mark actually knows he's signing a promise to pay later, this mortgaging of his future is still not for him even like signing a check; that, in law and life, is quite well recognized as an order to your banker instantly to deplete your checking account. And it feels even less like actually handing over a pile of real cash money.

For present purposes (that is, Sonnenlieb's and those of others like him), that power to make the customer fail to perceive that the future is as costly as the present is critically important. It is most likely a necessary requirement for successfully pushing big-ticket sales—that is, for running a lucrative merchandise-based swindle. For with the help of the negotiable promissory note, and the holder-in-due-course doctrine which envelops it, any conman can transform this "Short Con" situation into a moderate-sized equivalent of a "Big Con."

Now, as noted earlier, the distinction between Short Cons and Big Cons is an important one for swindlers, with respect to both status and finances. In a Short Con, the mark is played for whatever he has on him. If, for example, you play the Smack with a mark, you can match with him only for what he happened to have in his pocket, and that's the maximum of your take. But in a Big Con (like the Pay-Off described earlier), the mark is "put on the send," that is, sent home to get a much larger sum of money, even if that involves liquidating property or investments, which he then brings back into the play. In order to effect *that*, the conmen must generate enough dramatic power to keep a fantasy going even during intermissions. As we have seen, that takes quite a play—skilled "professional" actors to portray both principals and walk-ons, realistic sets, the slow unfolding of foreshadowing subplots—a mass of dramaturgical creativity and coordination.

In a game like Sonnenlieb's, however, any such play is inconceivable. The mark has to be roped, tied, and *taken* without loss of contact. A bare promise to pay would hardly do, even if you could get that far. Once the mark woke up, which he might do as soon as the spell cast by the door-to-door wizard left with him, and which he certainly would do once he found out how hard it was to get his "commissions," it would be impossible to collect much on the promise. Indeed, much door-to-door salesmanship depends on a "You must sign now—this is your last chance" pitch. For the economics of no business allows sale-and-lawsuit as the normal mode of payment, and that is certainly true of sales of shoddy goods at inflated prices brought about by good, old-fashioned, common-law fraud. Given the nature of Sonnenlieb's business, the last place he next wanted to meet his marks was in a court before an apoplectic judge.

But the negotiable promissory note, together with its partner, the holder-in-due-course doctrine, means that, for almost all of the conman's practical purposes, it is as if the mark had at home, with him, not only all his present wealth, *but all his future earning power as well.* For that is what is available to any holder in due course when the note is not voluntarily paid off. In this respect, the promissory-note route is even better than the normal Big Con "send," for no conman playing a Big Con has ever found a way to get at the present value of the mark's future earnings. The operative fact, then, is this: since conmen understand holder-in-due-course doctrine, and marks, by and large, do not, the conman knows that the mark has an available treasure—his incautiously given signature—and the mark does not.

But necessary as it may be, it is not sufficient merely to get things sold against a note (rather than actual payment); that indeed makes the deal feasible for the mark, but it does not necessarily make it attractive. One *can* buy that way, but one *will* buy, that way or any other way, only if the deal is otherwise attractive. *That* convincing remains to be done, and that is the second sense in which the customer in a Referral Sale appears to get something for nothing. And in the context of this study, this second sense is considerably more interesting. It is not just that the mark does not strongly perceive what he is instantly and quite irrevocably giving away when he hands over his written, negotiable promise, but that he does not even expect that finally, when the whole transaction comes to rest, he will be out of pocket *anything* of value to himself.

The central problem in the Referral Sale, as in any other con-game, is to explain to the mark why and how the conman will be enriched by a transfer from the mark, while that same transfer will not make the mark poorer. In the Sonnenlieb type of Referral game, this problem of creating this apparent equivalence of eventual exchange was particularly difficult to solve. For what Sonnenlieb had to give was hardly problematic. He had a central vacuum cleaner system (and, later, a quartz broiler and a stereo–color television combination). Though these articles were overpriced and misrepresented (and, at least in the case of the broiler, lousy), they were still *things* of value, things the mark could see and *touch* and which he, in fact, would actually get. Indeed, once it was established (1) that "payment" was not going to occasion any outpouring of cash, or even the dread signing of a check; and (2) that under the proposed deal the mark was to earn more than enough to cover his future payments by turning in his friends, then the higher the price the better the deal looked. After all, wasn't it better to be getting a $500 quartz broiler free than a $75 one?

Thus, what Sonnenlieb was *giving* was no problem. The problem for Sonnenlieb was not creating out of nothing something in *his* hands worth having, but rather creating something of value *in the hands of the* mark. For if he could not succeed in doing that, it would be impossible to deflect the marks' attention from what was in fact the case: that what they had that he wanted was money. That perception would be fatal, for money was too valuable to most of Sonnenlieb's victims for them to give it away (at least in those amounts) in exchange for vacuum cleaners, broilers, or TVs. Sonnenlieb had to convince them that they had something *else* which, though it had no great value to them, was so valuable to him that he would trade a whole central vacuum cleaner system for it. And what he found for them in the way of hidden wealth and put on their balance sheets for them (most of his customers didn't even know that they had a balance sheet, let alone what was on it) was this asset: the greater likelihood that certain people would listen to a proposition which they endorsed over one which they did not. If that were on the books of a business corporation, it would be part of "Good Will" and would belong on the left (good) side of the balance sheet. After all, what "good will" means on a financial statement is nothing more than that the income statement is lovelier than one would have predicted just by looking at the balance sheet's list of assets and liabilities; Dr. Johnson perfectly, if inadvertently, defined it when, turning down what he considered a grossly insufficient offer for Mrs. Thrale's brewery, he said, "We are not here to sell a parcel of boilers and vats, but the possibility of growing rich, beyond the dreams of avarice."

In any event, the underlying structure of the pitch in Sonnenlieb's Referral Sale was this:

Look. I sell door-to-door. My product is marvelous, but it's very hard to get a foot in the door to make a sale in my business. Yet the number of sales I make and the cost of each are directly dependent on how many doors I can get through, and how receptive the people I find there are. With respect to some people, really quite a large number, their doors are open to you and to others whom you recommend. You are trusted by them. If you had *a business, that trust would have an economic value, the difference between the likelihood of your making a sale to those people and a stranger's doing so.*

Here's my proposition. You have good will, but it's of no value to you because you have no business to attach it to. I have no good will (in that sense), but I do have a business to which such a thing, if I had it, could be attached. Let's trade. You attach your good will to my business, and I'll attach this central vacuum cleaner system to your home.

The beauty of this pitch is, of course, that it happens, in a perverse sort of way, to be economically sound. That is, in form there is nothing irrational about it. The marks did have something to trade, and they did trade it, and it did benefit Sonnenlieb mightily. After all, it was their telephonic introductions which got his men in close to the other shearable sheep. The only thing wrong or untrue about the pitch is in the predicted magnitudes: no one's good will (in that sense) is worth eight hundred dollars. Most people's is worth, say, about $2.34, and thus most of that with which the marks would pay for their goods would still turn out to be money.

The secret of this overvaluation of good will is, naturally, the chain-letter pyramid artfully hidden underneath the Referral Sale facade. The mark's value to the scheme (and thus the value of his referrals to himself) is a function of the number of other marks he can bring into the scheme. But the value of each of their contributions is a function of the same thing—the number each of them can bring in. Thus, as in any pyramid gimmick, the mark's wealth depends on his position on the pyramid. If he were relatively low, there would be a vastly depleted pool below him, and each of those below him would find, available to each of them, an even more vastly depleted pool. If it were sensible for the higher mark to buy in, it would be much less sensible for anyone lower to do so in the hope that many more would still be available to join. But to buy in without such assurance (or hope) would be to buy a vacuum cleaner system for eight hundred dollars cash. The only way everyone could earn his Pullaire free would be for the chain to go to infinity, and infinity (except for mathematicians) doesn't exist.

But in the context in which a Sonnenlieb-type Referral Sale operates—door-to-door sales in relatively poor urban neighborhoods—there is even less reason for the good will ostensibly traded to have or earn the value assigned to it. While Sonnenlieb's operatives implied that each mark's good will was a monopoly asset, each mark in fact shared his good will with many other marks. That is, his friends and relations were likely also to be other marks' friends and relations, and friends and relations of each other. Thus it is likely that insofar as he used them as his contribution to the "advertising scheme," each of them would be using each other. Indeed, it was more than likely that he had already been used by one of them, and if that were true, others of his friends and relations were very likely to have already been "used up" too. Thus the vice of the Referral Sale is not just the general one of using a geometrically decreasing mark pool as an "asset" for a member thereof, but the even larger rate of depletion that overtakes small, local groups using their own acquaintances as the relevant subpool.

Despite this eventual insufficiency of the mark's contribution, it was still this redefinition and rereification of the basic source of true economic profit—the partnership of two "production" factors rationally joined—which made the play go. Sonnenlieb had the business; the mark had "good will." Put the good will into the business and they both could share the profits. The good will may appear to have been acquired by Sonnenlieb at bargain rates (for instance a broiler). But it was an even bigger bargain for the mark, for his good will was (economically) totally lacking in value so long as it remained in his hands, unattached to any business. The mark's good will in the Referral Sale swindle is thus in precisely the same analytical category as his mere availability in the Spanish Prisoner, the Ponzi, and the Pay-Off. It is something to contribute that is worth much more to someone else than to oneself.

For all of these reasons, a Sonnenlieb-type Referral Sale swindle can work. It has built into it, however, a serious limitation on the grandioseness of its success: it is all mixed up with goods. The mark is paid off in goods. His pay-off depends upon the sale of goods to others. True, the "buyers" of those goods are, like him, supposed to get them free, but by and large that's all they can hope for or expect to get—a quartz broiler, a home-entertainment center, a good freezer. Goods, alas, have a rough but obvious upper limit in value, the market price of comparable goods acquired in ordinary ways. It is impossible to entertain a really unbridled fantasy of joyous wealth when the pay-off and the product are things.

Things, moreover, are a terrible pain to any conman. They break. They fail to do what they were supposed to do. And when they do these things, they do them very obviously. Not only do goods in a congame increase the ways in which a mark can be disappointed, thus increasing the need for some eventual process for calming and getting rid of ("cooling out") an angry mark; but in addition, goods that go bad are much more palpable sources of mark fury. Reading the Sonnenlieb transcripts, for instance, one gets the impression that the angriest marks and hence the ones most enthusiastic about testifying against him were these driven to bemused despair not so much by the failure of the referral promises to pan out, as by the propensity of Sonnenlieb's vacuum systems and quartz broilers to disintegrate on their first, gingerly use.

As we shall see in considerably more detail when we consider "straight" selling and advertising, the best form of cool-out is so to shape one's promises that when they are not fulfilled the mark will never even notice or, if he does, will blame himself for the failure. This is true of swindles as well. Substantially bigger and safer scores could be made if somehow one could combine the heart of a Referral Sale—a mutually valuable association in a mercantile venture—with a nonreified product, something which would neither wither nor disappoint, nor be easily placed in any limited category of value. It is in effecting that critically important transformation—from things to relationships as the items to be sold—that there lies the exquisite power of the Pyramid Sale swindle, which has become the most widespread public bunco game being played in America today.

Recall that in the Sonnenlieb version of the Referral Sale the basic proposition was put in this form: you trade me your good will, in the form of introductions to friends and relations, in exchange for a broiler (or freezer or vacuum system or burglar alarm). In effect, the conman was offering to hire from the mark some quantity of sales help, a kind of advertising or public-relations service. But the manufacturing and selling profits were to be retained by the conman. To put it in the dramaturgical vocabulary heretofore used, the marks were offered but a small role, not much more than a walk-on part, in the conman's play.

What if, however, the offer were modified such that the mark were offered *the play itself*, for him independently, and for his own benefit, to cast and perform? In such a case the mark's ultimate return would include some part of the profits to be earned by selling the goods. And if there were added a right to license the right to sell to still others (that is, to use the script), then the mark's return would include those potential profits too.

Now notice that if all that is sold to the mark is the goods and the right to sell them, then all we have is the kernel of a normal retail business. The mark is being asked to become a seller of goods; whether wholesale, retail, franchised, or door-to-door, it doesn't make much difference. He is being given a role in a very general and widely diffused American script, the distribution of things of value. When one person sells goods to another for resale, there can be all sorts of naughtiness involved—lies about the goods, for example, or about the market for them, or about additional services to be provided by the manufacturer. But selling for resale is not per se crooked. It is, moreover, frequently most efficient to effect the distribution of one's goods through others, and frequently those others ought to be independent or quasi-independent businessmen rather than salaried or commission-earning employees. That is, the "independent" distributor trades money and labor to the manufacturer in exchange for goods and the right to sell them (and, in franchise operations, for other services, including a well-patrolled trademark). The efforts of both parties together produce wealth which they then both share. The labor value of the reseller, valueless if not attached to a business, gains value from that attachment, and the manufacturer, whose goods are worse than useless if never sold, gains the value of their enthusiastic distribution. So far then, we have a normal example of ordinary economic synergism producing ordinary profits.

Those profits are real profits in the sense that they flow ultimately to both parties from outside their organization. Consumers buy (in a competitive market), and it is their money which goes to enrich the seller/manufacturer and his distributor. That, indeed, is what is insufficient about this kind of profit for the purposes of any swindler; such profits are limited by the state of the resale market for the goods involved. If, for example, a distributor were offered goods at one dollar a unit which he could not resell for more than ninety cents each, he would be insane to buy. But even if the dollar-a-unit goods could be resold in some quantity for one-ten, he still might not enter the business. It would all depend upon how many he could sell and at what price per unit of his labor, as compared with some other use of that labor.

To put it more technically, it all depends on the relevant opportunity cost of labor, that is, the cost of forgoing the value of that labor in some alternative use. A man is effectively swindled if he is lured by lies into entering even a profitable business, if by going into that business, he thereby loses the opportunity to enter another, more profitable one. If, through some artifice, a swindler could lure a mark into contributing his labor to their venture at well below its normal market price, he would prosper mightily. If he could, in addition, make the mark pay extra for the privilege of working for less than the market return, he would profit fantastically. It was through the development of such artifices that the Pyramid Sale version of the good old-fashioned Ponzi was born.

Let me describe one typical version of this post-Sonnenlieb play. (Once again I shall change names and other details, this time not because the key parties have already been through jail, but because by and large they haven't, and by and large they know all about libel suits and lawyers.) Beauregard Beaufort is the manufacturer of BeeBee Wigs. They are good wigs: neat, convincing, long-lasting, and nicely varied. Having made them so well, Beaufort has to sell them; what use, after all, could he personally have for 10,000 wigs? He could sell them to existing specialized wig stores, department stores, or beauty shops, or he could set up shops of his own, either franchise operations or stores staffed with his own employees. He could have his wigs sold door-to-door, again either by salaried or commissioned employees of BeeBee, or by independent peddlers who would buy the wigs from BeeBee (or file orders for wigs to be directly shipped), making their profit out of the difference between the price to them and the price to the consumer.

Any one of these distribution methods, or any combination of them, might be the right one (the income-maximizing one) for BeeBee. It all depends on the labor market and the wig market. Any number of elements of the folklore of marketing as particularly applied at this time, in this place, and to this product might suggest one move or another. Each method has its advantages and costs, and it's hard to know, without experience and careful calculation, which distribution method will yield the largest profit. But one thing is clear. If you could radically cut the costs of any of these methods you would have a radical commercial advantage, at least over any competitor using that same method, and more than likely over any competitor using any other.

Let us assume that BeeBee chooses, for the most part, to distribute its product door-to-door. We shall consider the strengths and weaknesses of door-to-door selling once we get to our discussion of advertising strategies as cognates of congames, but it will suffice here merely to assert as a fact that a door-to-door strategy for BeeBee wigs would not on the face of things be silly or even unlikely—even though door-to-door selling is *very* hard on salesmen.

Now a door-to-door salesman can make money. But then again, so can a hold-up man, an editor, or a garbage collector. In door-to-door selling, as in most other jobs, the money one makes is, as a general rule, unlikely to be some mysterious bonanza unrelated to the particular worker's (or, here, seller's) talent, training, and persistence. If the individual is a good, hardworking fellow, he can prosper in a door-to-door setting. But there is nothing about that method that ensures, or even promises, any wildly spiraling mountain of wealth. Thus, to get any clear-eyed prospect to sell wigs door-to-door, you have to project for him a return greater than he could get by applying an equal amount of money and labor to some other field. Given the obvious difficulties of door-to-door selling, you will have to pay him plenty (through high discounts, high commissions, or high salary) in order to get him to perform, for the particular acting job required of a door-to-door salesman is so very demanding a role that the salesman has to get a big percentage of the box-office receipts. And the impressario's profit in this type of selling is a direct function of the price at which he can hire the actors: the cheaper they are relative to the gross return he can get from them, the greater the amount he, the distributor, makes.

From the manufacturer's point of view, all that counts is gross sales. Whether he reaches a million a year with ten salesmen or a hundred concerns him little, so long as he reaches it at the same sales cost and can continue to do so. But as to the number of salesmen used, the salesmen and the manufacturer are in conflict. For assuming a finite market (hardly an unrealistic assumption), each salesman is a competitor of every other, and thus strongly interested in minimizing the sales force. That is, not only will each seller fight for a larger split of whatever returns there are on his sales, but he will also fight for a restriction upon the number of people trying to get those sales. If you were to buy a rabbit hunting license for a particular place, the price would naturally be set with relation to the number of rabbits, their rate of increase, and the amount you could legally take over any time period. You would at least want the price lower, and you might not want the license at all, if competing hunters were likely to multiply as fast as their targets.

But what if the deal is this: as a distributor you can sell the goods to consumers, and you can also sell the right to sell the goods to other sellers, who in turn also get *both* those rights, *ad infinitum*. Selling the right to sell—that is, selling selling to other sellers—is not a "cold canvass" (that is, a pool of potential customers made up of uninterested strangers) at all, or at least not to the same extent. You have friends and your friends have friends, who in turn also have friends. If you talk five friends into each recruiting five friends of theirs, and each of those persuades but five more, there will then be one hundred and fifty-five people working for you. (If anyone cares, the formula for how many will be in on the deal at the end of this third level is $\sum_{i=1}^{3} x^n$, where x is the number each person signs up and n is the level. At the end of ten levels, with $x = 5$, the number in the game reporting to you is 12,207,030.) If you get some rake-off on all the business *they* do, your earnings are no longer limited by the amount of time and labor you can expend on selling goods. More importantly, neither are your recruits' earnings limited by their labor, for they can do the same thing you are doing. You can, that is, get them into the plan at bargain prices for the same reason you were initially willing to join.

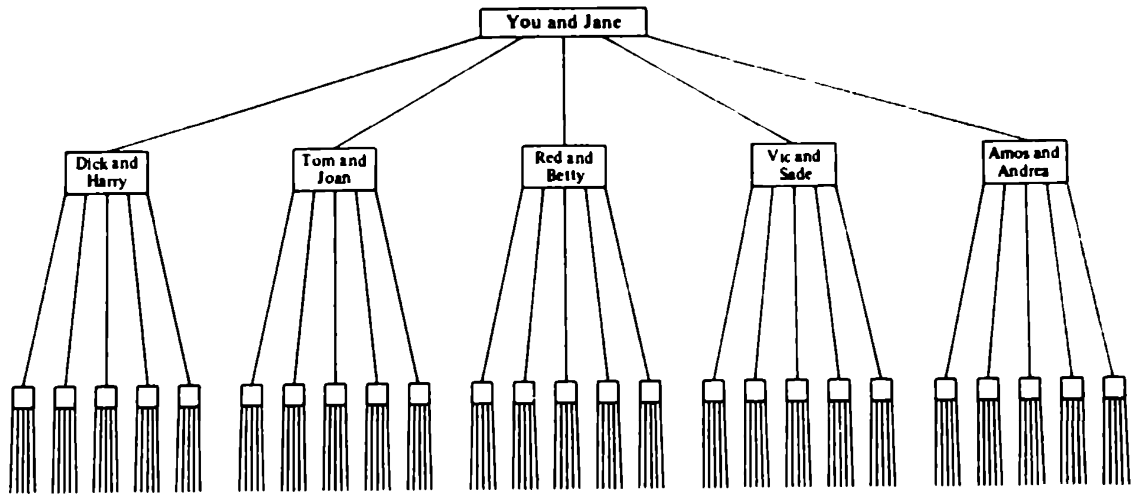
At bottom, of course, this variety of Pyramid Sale is no different from Sonnenlieb's. In fact, at rock bottom it is no different from a Ponzi-type Ponzi—that is, a chain letter with a plausible chute to the outside world through which profits can slide into the system. But the bottom isn't what counts; it's the surface that makes all the difference. For to be profitable, an operation like BeeBee's need not take from the marks even a promissory note. It need not take from them anything—except the differential marginal utility of their labor. That is, to prosper while running a

Pyramid Sale swindle all the entrepreneur need do is talk a large number of people into doing a sales job for him at a price to the entrepreneur materially less than the ordinary wages for such a job, the difference being made up in plausible helpings of pie from someone else's sky.

Here's the way it works. The Pyramid operator presents to a prospective seller the chance to sell wigs *and to sell others on selling* wigs. In many of the operations, the prospect was obligated to pay a cash fee for the opportunity to join, with the amount of the fee related to the height of one's initial place on the system's pyramid. But that technique, since it had to pry actual money from the mark, demanded a great deal of showmanship on the part of the entrepreneur—films, revivalist-type mass meetings, and so on. If all this were well done, vast profits could accrue to the conman, but simpler and less dramatically demanding variants were (and are) also lucrative. In the BeeBee version, for example, no entry fee was charged; the mark merely had to buy a relatively small amount of initial inventory.

Let us say that the mark is to get his inventory at 40% below retail. Thus his gross profit on every $1,000 sold would be $400. But door-to-door selling is hard work and demands not inconsiderable salesmanship talents. One can make a living, but one doesn't move a thousand of inventory in a day unless one is very, very good, and no one can be that good very often. In other words, if all one were selling were the goods, the job would be a job, to be chosen from among the general pool of options available for what is known as earning a living.

But what if the initial presentation to the mark, while taking note of the possibility of making profits by selling the goods door-to-door, emphasized the other aspect of the conman's "plan": not only will one earn 40% on one's own personal sales, but one can also earn, as a "General," 5% on the sales of one's Colonels, 7% on the sales of one's Majors, 9% on the sales of one's Captains, 12% on the sales of one's Lieutenants, and 15% on the sales of one's troops—not to mention 3% on the sales of other Generals "directly sponsored" by oneself. And what if that presentation were accompanied by a bit of story-board graphics looking something like the illustration on page 106. That is the picture of an organization which, by the time it reaches this fourth level, has 155 participants



operating under the mark (and Jane), *on all of whose labors the mark is earning a nice override*. And it will, of course, not be all that hard to interest those 155 in participating, because they too can work their way into the kind of slot now occupied by "You and Jane."

When one finishes tacking actual numbers of projected sales onto a chart like that, what emerges is not some ratty $100 or $200 or even $300-a-week job, but really marvelous figures: $50,000 a year, or $80,000, or $120,000. Sure, it's not a certainty. No such pyramid may build for the mark, and he is even usually warned (sort of) about that. But there is a *chance* of real riches, and it does look so easy once one looks at the pretty picture, doesn't it? But, as we know by now, it isn't easy at all—no easier, in fact, than "earning out" one's vacuum cleaner system.

We can now return to our typical mark. Let us say that, on the basis of such blandishments, he invests $500 to get goods with a retail value of $1,000. It is altogether possible that he will eventually sell out his inventory, and he might even buy and sell considerably more. But he almost certainly would not originally have entered the scheme at the same price if not for the delusive hope that he could recruit others to sell for him and that they could do the same thing, and so on (just as Sonnenlieb's marks would not have signed up to buy quartz broilers at $500 each unless they believed in a sufficiently long chain of later participants to cut the real price to them to zero). Thus, even if the mark stays in the program and continues selling, it is not because he has not been swindled, but because the swindle was complete as soon as he signed on. That is why it does not really make much difference to the achievement of substantial success in a modern, post-Sonnenlieb Pyramid Sale swindle whether the marks buy in with *any* cash at all, as long as they come in with themselves.

This mechanism can be made clearer by referring to that fine old in-store swindle, the Bait-and-Switch sale. Let us say that I take an ad in the local paper advertising 21-inch Zenith television sets for $250 (their normal market price being, say, between $290 and $310). You come to my store to buy one. When you get there the scene goes something like this:

You: I'll take one of those $250 Zeniths.

My Salesman: (Who has been instructed that the one Zenith on sale is nailed to the floor and if he sells it, he'd better find work elsewhere) You want one of *those*?

You: Why shouldn't I?

M.S.: (Putting on a pretty good performance of hunted furtiveness) Look, buddy, you don't want one of those. They were in the Scranton flood [or, "Their tubes are busted"; or, "Their chasses are sprung"—or anything else he can think of].

You: Oh?

M.S.: Come on. I'll show you some honest stuff.

Let us assume that the salesman thereafter sells you a $300 television set for $300. Have you been swindled? Yes. In fact, you were swindled the minute you were moved to voyage to that store rather than any other. Once there you had already *spent* time, labor, and money to go there rather than elsewhere. That you got a "fair" deal there means little; you were defrauded of the "sunk cost" of going there rather than elsewhere the minute you went. If you had left that store without buying, whatever you bought elsewhere would have had tacked onto the price you paid a second shopping cost. That is, the value to you of the TV set equals its value as a thing, minus its price, minus the cost of going and getting it; when you get it elsewhere it is worth less, for its value then becomes itself, minus its price, minus *two* shopping costs (including the emotional cost of "shopping stress").

Now notice, once again, that the critical con move was that initial push in the right direction; damping the later impulse to unbuy takes further energy. But an in-store sale inherently involves less cunning than a more long-term, bigger-ticket congame. Not only are salesmen trained precisely in closing with a customer once he is lured into the store (more on this later), but once the customer is there he is, in effect, a partial prisoner in a sort of spatial monopoly. Put at its most abstract, what happens to a customer in a store is very like what happens to a person in cognitive-dissonance and sunk-cost-fallacy situations: the present and actual has a competitive advantage over the future and hypothetical. The stock I already own appears somehow different from any other I might own simply because I have already invested in it and it is *there*. Once I am *in* an Ancient Estate dodge, the possibility of prospering through it seems better than that attending any alternative uses of my money. Or to put it another way, whatever alternatives there are, are not around to present themselves as alternatives.

Once I am in a particular store, the same effect takes over, perhaps in an even clearer way. Once I am at Mad Man Morris's, the universe of choice begins to seem limited to what is there. It is constricted to his kind of goods (instead of all other possible uses of my money) and his examples of those goods (rather than everyone else's). Once I am there, only what is also there is there with me. The contours of choice are, therefore, distorted: there is a tendency in favor of finishing one's business wherever one already is *without regard to any nonpresent alternatives*. Thus, eliciting a move in a particular buying direction creates momentum in favor of a particular sale.

In the case of Pyramid Sale marks, the same mechanism is at work. Let us say that, in pulling a Bait-and-Switch, instead of offering you a product bargain, I offer you a job bargain. Let us say that everyone is offering \$100 a week for a particular job, and I offer \$100 plus 1% of sales. You come to me and take the job. At the end of the first week I tell you that the 1% was misunderstood;

it's only paid on sales over $50,000 per week. Have you been taken, even though you are going to get the "going rate" of $100 per week? Of course; you're now committed to the extent of the cost of changing direction (and job) *after* having already made a change and a commitment. In fact, if I am a really shrewd rat, I should pay you less than $100 by an amount equal to the cost to you of recommitting yourself and changing your mind. For to you, not leaving in such circumstances will still maximize your return as compared to leaving. The larger that cost the less I can pay you and still have you come out ahead—that is, ahead of where you'd be if you fled my web after having gotten stuck in it, rather than avoided it in the first place. And that perception (subliminal as it might be) makes it hard rationally to evaluate the alternatives. The job is here, while the alternatives are nowhere.

That, essentially, is how the post-Sonnenlieb Pyramid Sale schemes work. Some of the best-known do make you invest substantial sums of money for the right to recruit. Some others get you hooked by a significant investment in inventory that you must sell (no matter what the labor involved) or eat. But those two moves are not absolutely necessary. It is enough for a modestly or even generously profitable swindle for the swindler to get you emotionally committed to his organization over any other source of employment. He will have gotten your labor value at a cut rate (by promising recruitment profits which cannot, mathematically, be delivered) and thus will have attained a competitive advantage over all other sellers. That the loss to you is subtle—amounting to fiddling with the opportunity-cost comparisons of your own labor —does not make the profit to him any less real. He has manipulated you into selling wigs door-to-door, something you would never have done if all you could expect to earn were the normal profits from such extraordinarily hard work.

Swindling / Selling

WITH THIS CONSIDERATION of the most subtle of the Pyramid Sale swindles, the product of a whole series of intellectual refinements upon the basic moves of the Prisoner and the Ponzi, I shall end my explicit consideration of the logical structure of classic bunco.

I do so not because with the Pyramid one exhausts all the varieties of swindle, nor even all the variations with enough differentiation to be given independent names. I am stopping here for two reasons. First, while I have come across many other congames, none that I have seen adds anything illuminating beyond what we have covered to what I take to be the underlying structure of swindling. But the second reason that the BeeBee Wigs play is a good place to turn from an analysis of swindling to a discussion of the basic structure of selling is that it lies so clearly on the borderline between what most people would distinguish as those different realms. It would take very few modifications in the BeeBee pitch to change it from what most people would call dishonesty to what most of those same people would consider ordinary business practice. Even the Federal Trade Commission, made up of people sensitized by experience to the ambiguities of defining commercial honesty, only with considerable pain adjudged the company on which my BeeBee Wigs story is based as behaving in an "unfair and deceptive" manner as defined by the Federal Trade Commission Act—and a Federal court on appeal somewhat limited the Commission's judgment.

Indeed, as will become immeasurably clearer as we proceed through the second part of this book, any distinction between swindling and selling must either remain a vague one or else rest on a rather arbitrary definitional system. Certainly any sensible dictionary would make "swindle" a product of "lie," but as we all know, "lie" is unfortunately a function of "truth," and what that might mean, at least much of the time, is not all that clear. No transaction is ever made on the basis of complete or completely accurate information. Nor does any party to such a transaction ever do everything within his power to dispel whatever misperceptions or misconceptions the other party might have. Nor, indeed, do very many parties totally refrain from every action that might have any chance of bringing about such misunderstanding. Swindlers and sellers in the midst of deals (and you and me in the midst of life) are involved in trying to persuade, and "true" and "false" are egregiously crude measurement terms to bring to any analysis of persuasion.

We can, of course, tell commerce from crookedness much of the time, just as it is not *always* beyond our power to tell truth from lies. (Hannah Arendt once mentioned Clemenceau's reply to the

German ambassador who several years after the First World War wondered what future historians would consider the cause of the war: "One thing they will not conclude is that Belgium attacked Germany.") But as we shall see in the next section of this work, there are assertions—open and tacit—which in ordinary selling closely parallel the assertions basic to any successful congame. That does not mean anything as vulgar as "all selling is swindling." It means, rather, that the converse—all swindling is selling—is true, and that one can understand much of selling only by seeing it as a response to the same problems of customer resistance faced by professional bunco artists, a response which cannot help but have, in many cases, the same logical form. It is the principal aim of the next part of this book to give content to, and back up, that assertion.

Part III

SELLING

Chapter 6

BARGAINS: FACE-TO-FACEWORK

IF ON THE BASIS of our examination of all of the congames thus far described, one were to summarize the essence of every con, it would be this: the creation of a state of affairs in which both parties to a transaction appear to get a bargain, with "bargain" being defined as a greater return on one's investment than one could get from any other source. Thus the chief dramaturgical problem of every bunco artist is writing and acting out a convincing script in which the mark's gain is not the conman's loss, but rather is *his* gain too. Gifts are not allowed in credible cons, nor is any overt invocation of other irrational economic behavior by conman or mark.

As we have seen in the various plays of classic bunco we have considered, particular tactics toward that strategic (if superficially self-contradictory) end have been tried and, in varying degrees, found to be good. Those that have succeeded have done so because they have, most likely unconsciously, exploited the critical insight, basic to even the most primitive economic analysis, that questions about "value" and "cost" are empty except in the form of "value to x" and "cost to y," with x and y standing for people. This fact, the very economic basis of the real existence of mutually advantageous exchange, makes it a normal, acceptable, indeed expected life situation for a trade simultaneously to increase the satisfaction of both parties to it. That is, in any transaction between two persons it is possible, as we have seen, for "value" not only to appear to be, but actually to be, created *ex nihilo*.

This mechanism by which perceived value can be created by the mere act of exchange is enormously significant in shaping everyone's perception of the real world, including most particularly the whole system of market transactions. As we have seen, it can also be used, by conmen playing a bit of bunco, to explain to the mark his otherwise suspiciously inordinate good fortune. The conman's message is this: what I am giving you has great "value to" you but little "cost to" me, and what you are giving me has great "value to" me and little "cost to" you. In other words, the critical moves in bunco plays have one or more of the following aims:

1. Increase the apparent value to the conman of the mark's "contribution"
2. Decrease the apparent cost to the mark of the mark's "contribution"
3. Increase the apparent value to the mark of the conman's "contribution"
4. Decrease the apparent cost to the conman of the conman's "contribution"

Under the first heading, for example—increasing the value of the mark's contribution—one may group all those devices designed to altercast the mark as monopolist, or oligopolist. Naturally, if the mark's contribution can be made to appear literally unique and absolutely necessary, it is thereby given an apparent value to the conman which approaches a bilateral monopolist's share of a deal—that is, anything up to all of it. As the mark's created position slides from monopoly (e.g., some versions of the Spanish Prisoner) to oligopoly (e.g., the normal Psst Buddy), the apparent value to the conman decreases, but it can still be made to seem inordinately high.

As a necessary corollary, the cost to the mark is made to seem extraordinarily low; that is, the second category of tactical scriptwriting is simultaneously satisfied. For it is extremely rare that any mark will have any alternative use for his contribution nearly as productive as the proposed quasi-monopolistic use. It is easy to solve an opportunity-cost problem when one is asked to use $1,000 to buy half of $1,000,000 instead of half of a used car. And sometimes the specie of the contribution is such that it has no use if it is not invested in the proposed scheme: one of the most lovely aspects of referral-sale and pyramid-sale swindles, for example, is that the "good will" or labor traded by the marks to the conman is valueless unless it is attached to someone's business.

Similarly, script elements like the insideman's betrayal of the boss in the Pay-Off or, for that matter, the use in all the Big Cons of large aleatory systems as the source of wealth or, even more clearly, the use of the Grace of God as a product for sale in the religious swindles all serve to decrease the cost to the particular conman of giving the gift he offers (the fourth tactic). In each case the script is so set up that there is no correlation between the value of the "gift" to the mark and its cost to the giver, for in none of these cases does it appear that what is given would, if kept, improve the conman's wealth position. This "cost-free" feature removes most of the constraints on the scriptwriter when he seeks to increase the value to the mark of what he is offered (tactic 3). Of course, it does not follow that all transfers of things of value which have little value to the donor will have large value to the recipient; indeed, in most normal situations the disproportion between values, different utilities notwithstanding, would not be great. But situations leading to gigantic "profit" can be invented (especially those the product of chance, Grace, and monopoly), and if those amounts are large enough, even if the "gift" would seem to cost the conman *something*, the marginal utility of each additional dollar to the conman "automatically" becomes less when compared to its apparent value to the mark.

Let us assume that the technical problems of swindlers are just a special subset of those faced by salesmen in general. If that is taken as true, then it would hardly be astonishing to find that the methodologies of salesmanship in "normal selling" are at least cognate with those of classic bunco, sharing structural similarities growing out of similar conditions of origin. More particularly, one would expect to find in salesmanship scripts a patterned attempt to convincingly portray the proffered deal as a unique mutual bargain. For the central tenet of microeconomics, which, even more clearly in normal selling than in the exotica of congames, ought to govern public expectations, is, after all, that (all other things being equal) demand takes up supply at the lowest available price, and supply gives in to demand at the highest one. Even more concisely, one would expect everyone to expect that everyone will try to do the best he can. That deep internalization of the socioeconomic equivalent of the laws of thermodynamics—that ordinarily nothing is given away for nothing—which I have posited as the instinctive initial mind-set of most modern Americans, would seem to be felt most intensely in the *real* "stores," big and little, of normal merchandising.

But in approaching normal selling from the perspective of con-games, it must be reemphasized that whatever the theme of the selling technique, the presentation is still a matter of effective dramatization. As we shall see, salesmanship scripts, constrained as they are by the "normalness" of the settings, sets, and properties, will necessarily tend toward less flamboyance than is manifested in, say, the Prisoner. But even in ordinary selling, both the seller and the customer will still have to be given roles in a joint drama which will explain and make unexceptionable and unexceptional their mutual good fortune in appearing onstage together. And that play will have to be dramatically (and economically) coherent. If the setting is a store, with the seller cast as a maximizing seller and the buyer altercast as a hard-shopping customer, then the bargain must be explained in terms that allow for *joint* maximization. If the seller tries to take the role of someone not maximizing, someone trying instead to make, in the particular transaction, a gift, that behavior, so grossly aberrant in a normal selling context, must be somehow credibly justified by some special aspect of his role in the unfolding drama. And if the customer is to be convincingly altercast as a member of some specially favored subclass of all consumers, some criterion of selection bringing about that oddity must be successfully dramatized.

The Squaresville Pitch

IF ONE IS SELLING goods or services, wholesale or retail, the most direct and instantly intelligible dramatic structure is the following: the seller is a normal businessman intent on maximizing his profits;

the buyer is a normal purchaser attempting to minimize his cost. The seller then seeks to convince the buyer that he can sell the goods the buyer wants more cheaply than can any of the seller's competitors, and that it is thus in the seller's interest to buy, for what he wants is not available any more inexpensively anyplace else. If the buyer is willing to pay the seller's price, then he is, in the eyes of the seller, a member of that class of buyers willing to do better by the seller than any others. Each of the parties, therefore, ought to deal with the other, for if these premises are true, then each is getting a bargain. This selling script, the most common in all merchandising—including transactions among themselves by traders along the course of the production and distribution river as well as consumer transactions bunched at the estuary—is what I call "The Squaresville Pitch."

On the surface, the Squaresville seems a straightforward enough approach, needing little or nothing in the way of explanatory detail or dramatic construction. But deeply embedded in this approach—which is, after all, nothing but the liver and lights of normal marginalist competition—is a profound analytical mystery. It lies not in the parties' response to the presentation of a bargain, but in the fact that bargains can exist. In a perfect market—one characterized by perfect, instantaneously available, cost-free information and total participant freedom—there could be no bargains; every identical item of goods would have an identical price. In such a market it would be a matter of economic indifference from whom one purchased a good. For if everyone knew what anyone else knew, and had no restrictions upon his power to do what it was in his interest to do, the very concept of a bargain would be unthinkable.

But whenever access to information and freedom to act on that information are not definedly perfect, bargains exist. In fact, in any imperfect market (and all real ones are) different sellers and buyers possess different information and variant constraints, and therefore bargains *have* to exist. Not only that, but if bargains do exist, then there must be antibargains, offers of less for more; bargains *entail* antibargains. Moreover, even if information and power were distributed randomly, that is, were not the product of conscious search, so long as that distribution were differential among sellers, some would have cost advantages over others and one would have a cost advantage over all others. In other words, at any moment in time in an imperfect economic world, some sellers will have *gotten* bargains, and one will have gotten a bigger bargain than any other.

What that means is that bargains are explicable but any given bargain must be explained. It is a natural thing, in the sense that it is hardly uncommon, for bargains to exist, yet in any given case a bargain can exist only as the result of some imperfection in market processes. There must always be a reason for one of many sellers to have lower costs, and some explanation of why he is passing on some part of his lower costs in the form of lower prices. All Squaresville pitches, therefore, must attend to at least this one script element: believably accounting for a specific seller's cost advantage, his particular breakdown of market perfection, which permits and mandates his specific price advantage.

For there is always one natural explanation of why Morris's goods are cheaper than Herman's: they are not the same goods. As we shall see, much of selling, especially much mass-media advertising, is devoted to keeping out of the mind of the buyer that awful explanation. For it is not a bargain to get less for less, but only to get the same for less, or at least a lot more for a little more. Almost all product differentiation and identicalization devices have been created to convey that the goods offered are not less good goods. For to sell at all, what one must convey is this: my price is better for some reason other than that my goods are worse.

Such other reasons exist. Some sellers do have cost advantages which can be used as a basis for price advantages on goods identical, for all relevant purposes, with those of their competitors. Consider, for example, information about manufacturing technology. Let us say that one (out of three) manufacturers (call him "A") has discovered how to make goods so that his average cost for each item over a particular volume range is x — y, while his competitors, B and C, can do no better than x. He may or may not have paid extra for that valuable piece of information (such as by hiring more or better engineers than his competitors), but it is also possible (though not, of course, necessary) that he got a bargain in acquiring it, that is, he got more out of his investment (or out of cost-free luck) than B and C got out of their innovation investments, if any. If so, even assuming he did invest something in research, he will have a per-unit cost advantage of y minus the allocable portion of his search expense.

I recognize that I have made all this sound rather arcane, much more arcane than it really is. In fact, all that I have done is restate one kind of precondition for having a bargain to offer. It is not the only kind that exists. There is another basis for a "bargain" as correctly perceived by a customer, involving successful price discrimination by a seller which allows certain buyers to take advantage of their personal propensity to hold out against prices which many other purchasers will accept, and I shall discuss that later. At this point, however, I want to explore the salesmanship significance of being able to assert the possession of a cost advantage in the production and/or distribution of a particular good. If that is the asserted basis of the bargain, and all other factors (including rate of return) are constant, only one who has a monopoly on a cost advantage can afford to offer a bargain. The capacity to offer a bargain, that is, is not a product of pure will, but is subject to an actual constraint, the seller's costs of acquiring and distributing the good. If he has the same costs as his competitors, and chooses to have the same rate of return, he must sell at their price. Only in one situation can he undersell his competitors while maintaining the same rate of return as theirs (that is, offer a bargain to the buyer which is not at his own expense): by having lower net costs. And he can have lower net costs only by being the beneficiary of an instance of market failure—that is, by having received a bargain himself.

At least in theory, then, subject to the triviality of some magnitudes of competitive cost advantage, and the possibility that other competitors will have countervailing but different cost advantages of their own, in any real-world market situation there ought to be one seller who is *able* to offer a bargain. For there ought to be one who has some information that will permit him to cut his price by some amount without decreasing his revenue. But having acquired potential possession of this "monopoly surplus," what incentive does the possessor have to share any of it with any buyer? To put it explicitly (if paradoxically): only a monopolist can offer a bargain, and only a monopolist doesn't have to. For his revenues will increase even if he chooses to hog the whole surplus for himself. If the selling price of all sellers of his product was \$1,000 prior to his achievement of the monopoly that gave him, and him alone, a per-unit cost of \$800 (while his competitors retained a cost of \$900), the sale at the old \$1,000 price of the same number of units as before will give him additional revenue equal to that number of units multiplied by $100. Thus he can be better off than he was without giving any bargains at all.

But under almost any realistic conditions, he would be still better off by sharing some of his surplus—not much of it; just enough to attract to himself some or all of the demand theretofore being met by his competitors' goods. On the quite realistic assumptions that making a relatively small price cut will attract to him many of his competitors' erstwhile customers, and that he is in the range wherein the more you sell the more you net (that is, wherein marginal revenue is greater than marginal cost), he will most likely be able to make a killing by making that tiny price cut. It is therefore economically rational for the possessor of this kind of monopoly surplus to share it. Of course, all the buyer will get out of it is the small amount of the price cut. But he is nonetheless right to accept even so grudging a break. Indeed he would be a fool not to. For to him, after all, it is still a bargain.

The mechanism spelled out above, that of marginal advantage and marginal sharing which forms the basis of the Squaresville Pitch, thus deals with the buyer's two most important questions: (1) How come you *can* sell cheaper; and (2) How come you *will* sell cheaper? The seller answers (never in these words but to this effect): "(1) I have a surplus because I am more efficient; and (2) I am sharing it with you because it increases my volume and hence my overall profit. In other words, sweetie, I am not giving anything away; I am still rationally maximizing. But if you deal with me, you will be rationally maximizing too."

This pitch is exceedingly convincing because it is so economically and technologically rational. It is convincing, that is, because it is so frequently true. One way to create a surplus to be shared is in fact to have lower costs for the same goods. And not all sellers *are* equally efficient. At any given moment, one seller, or at least a subset composed of less than all sellers, may indeed have a less costly technology, or a more productive labor force, or a less costly source of capital. There *are* companies who for one reason or another are more efficient than other companies. That, after all, is what entrepreneurship (and bankruptcy) is supposed to be all about, and there is no doubt that some companies succeed while other companies fail, totally or comparatively. Some of that may be luck or accident, but I see no reason to believe that purposeful behavior specifically directed toward cutting costs as much as possible without depreciating the value of the product should never succeed. It is certainly true that lower prices are sometimes attached to worse-made mousetraps, but better ones, and cheaper ones no less effective, have on occasion been built.

Indeed, there are a wide variety of competitive advantages which any particular seller might have at any given moment. A cost advantage need not be technological at all. A seller may be blessed with more efficient workmen. He may be accidentally closer to critical raw materials when it is discovered that they are critical. Or he may just have more accurately guessed the future cost of certain commodities, and made an advantageously large, early purchase. In fact, any factor of production and distribution—land, labor, or capital—may have come to him as a bargain.

In addition, there is at least one competitive advantage which does not depend so much on a cost advantage, but is better described as a perceptual advantage with respect to prices. For under certain circumstances, it is economically rational for a seller to cut his prices even if his costs and those of his competitors remain the same. If a marginal price cut would produce an increased sales volume the net return from which would be greater than the net return from the higher competitive price applied to the earlier volume, a seller who first perceives that will wax fat on the perception.

This competitive bliss can come about in response to any systematic mispricing among all sellers of a good. But one relatively common source of such systematic mispricing is a good old-fashioned conspiracy in restraint of trade. The conspirators agree on a price for their goods higher than that which a competitive market would sustain, and restrict output to the point where the allowed output, multiplied by the rigged price, will yield to the monopoly group more than the competitive price times the normal supply. Thus the return to the conspiratorial group is maximized, and that is why one has a conspiracy in the first place. But the return to any particular member of the group will not necessarily be maximized. What he gets depends on what he can bargain out of his conspiratorial partners, and he may not have the muscle in that group to get more than a jackal's share. But what if he decides to cheat? Then he will slightly undercut the conspiracy's price and, especially if he's the only cheater, draw a large proportion of available aggregate demand to himself. At least in the short run, he will make quite a killing. Indeed, this possibility—that of underselling the conspirators—is what destroys most conspiracies. For if the insiders don't cheat, outsiders will be attracted to that line of commerce: there's no juicier market than one in which monopolists are reducing supply in order to rig price. Whoever is in that market but not pledged to the market hogs can make a great deal of money in the form of extra sales volume while the conspirators are adjusting, breaking up, or seeking to reembrace the apostate or bring the outside challenger into the family.

But erroneous pricing does not require a conspiracy, or even a quasi conspiracy like "price leadership" or "conscious parallelism." The people selling in a given industry may just be wrong about the most lucrative price–volume mix. Whichever seller guesses that first (and one can probe safely and tentatively with small price cuts) will reap substantial profits from hitting the right combination. And, what makes things even lovelier, it is frequently the case (when returns to scale are positive) that lower prices will lead to larger sales, which will in turn lead to lower per-unit costs. That is, if there are more steeply positive returns to scale than most everyone guessed, increased volume will *in fact* save money. (And the public knows it, too; hence the common pitch, "Why can we offer such a price on genuine styrene credenzas? Because we sell millions every year.") As in the Ponzi, the volume of transactions can be made to look like the source of a bargain as well as the proof that a bargain exists.

The Squaresville Pitch, then, has all the virtues of any successful selling campaign. It explains the source of the surplus to be shared. It explains the reason for the sharing. And it does both of those things consistently, without any dissonance within the explanatory story: the seller is a rational, maximizing economic man who does the buyer a "favor" only out of his own self-interest. Such a story also decreases dissonance between the seller's role and its context, for one expects to find business motives in a business setting. Moreover, it can be reduced to a short, stereotypical presentation, capable of cozy and implicit communication: to get your business I must cut prices, but getting your business at those prices makes me richer. That is, it is a pitch made to order for mass marketing, where each buyer/"beneficiary" need not be differentiated as somehow special. In this kind of deal anyone's money will do, for the benefit to the seller is merely and wholly statistical, the net result of a gross increase in sales. In short, the Squaresville is a selling gem: clear, logical, direct, and frequently true.

The Squaresville Pitch, however, basic and beautiful as it is, is not without problems in use. It is the staple of salesmanship, all right, but like all staples of anything, it fails to give satisfaction in every situation. Why and how it declines from perfection is, I think, best demonstrated by placing the Squaresville in its proper slot in our swindling/selling matrix: the Squaresville Pitch stands at one end of a spectrum the other end of which is anchored by the Spanish Prisoner. In the Prisoner the drama has it that a monopolist faces another monopolist. In the Squaresville what is acted out is a confrontation between a seller with a marginal cost advantage over his competitors and a buyer willing and able to buy at a marginally higher price than *his* competitors. In brief, the Prisoner and the Squaresville are the same in mechanism; the only difference between them lies in the magnitudes of the parties' asserted competitive advantages. And therein lies the central problem in using a Squaresville: any advantage, no matter what its size, must still be explained, and explained in such a way that it does not clash with its setting and plot. But by and large, in almost any recognizable real-world business context, every competitive advantage sufficient to permit giving a bargain to another is likely to be either very small or highly ephemeral, and is most likely to be both.

Now, there are, as I said, numberless cases of actual cost advantage which can be turned into volume-increasing price cuts. There are such things as technological breakthroughs. There are things like shrewd purchases of raw materials. People *do* find themselves closer to sources or markets than other people. Some employees (who may be yours) are more productive than others (that is, they yield more production at the same wage cost as other peoples' workers). And it is, in fact, to the handcrafting of these explanations (and to their effective expression when they happen to be true) that the skills of skillful Squaresville sellers are primarily devoted, often with huge commercial success. But no matter how hard and cleverly one works, these competitive advantages must ordinarily be, and thus must be presented as, comparatively small and fleeting. For this is business, not bunco. The deflections and inclinations from equilibrium in a system with large numbers of people making huge numbers of transactions every hour of every day—with continual attempts at cost minimization—are unlikely to be dramatic. One may outguess the market and buy raw materials cheaper, but it is unlikely that the variation will approach even a factor of two; five or ten percent is more like it, and even that is rare. Technological breakthroughs do exist, but by and large they involve marginal improvements. When one of the magnitude of, say, excellent dry copying happens along, the result is a Xerox Corporation, a striking but quite rare industrial phenomenon. It is more frequently the case that the innovation in technology is something no more dramatic than finding a slightly cheaper component to do the job of a more costly one, or discovering an assembly-line step which can be avoided.

Naturally, in such a context, where "normal" advantages are slight, the larger the alleged cost saving, the more difficult is the credibility problem. If you are to convince a buyer that your product is very much cheaper but still is "the same" as your competitors', you had better be able to describe, convincingly, just how come that is the case. But the larger the alleged cost saving you can render credible, the greater the pay-off in increased sales. This is not only because the lower the absolute price the more buyers able to buy, but also because large numbers of people also respond to *relative* price. As we shall soon see, with respect to a large part of every potential market, that a piece of goods is offered at half the "usual" price is more important than what that half adds up to. In any event, it hardly needs crashing analytical artillery to pound home the point that the bigger the purported bargain the greater the response of buyers. It is not enough, of course, to set the stage for a dramatically lower price by establishing a massively lower cost; the seller will still have to explain why he's giving so much of it away. But the size of the potential cost advantage determines the outer limit of any bargain, and thus the first job is to expand that horizon as far as credibly feasible. Thus, in the Squaresville as in any other version of the Prisoner, the seller's first step is to create a fund out of which discounts can be carved.

In the context of this pressing, indeed unavoidable, salesmanship imperative to explain the source of the boodle, one can see and begin to understand the various *kinds* of explanation that appear over and over again as part of the rhetoric of selling. As usual, the greater and more durable the advantage that one can assert, the larger the apparent bargain one can offer. But that is true, as usual, only if all other things remain equal, and the most important other thing is the credibility of the claim. There are very few dramatic competitive advantages easily acceptable when the context is presented to the customer as business and not bunco. There are not many things compatible with ordinary selling which are at all like the Prisoner's little Swiss box or the Ponzi operator's little gray one. No ordinary salesman talking to the public can very well claim the magnitudes of cost advantage that inhere in the illicit. He cannot, at least as an ordinary and regular business practice, sell his widgets with a "Psst buddy, wanna buy 82,000 units of fabricated widget metal lifted from C. G. Krumpmyer & Co.?"

Nonetheless, there are a few ways even in a business context to claim or at least indicate possession of that signal source of extraordinary competitive advantage, durable monopoly over a factor of production. Now, as we shall shortly see, the purpose of all product-differentiation advertising is to communicate that one has a monopoly over a *product* which the buyer wants in preference to any substitute. But that is a different selling move. That says, "I got something you can't get from anyone else." *This* says, "I got something that helps me to make what everyone else also makes, but in a way no one else can match. So my product is cheaper." To believably assert that one has that kind of production-factor monopoly with a more than momentary life, one would have to claim, somehow, to be sheltered behind a durable market failure, with respect to either access to information or freedom to act. That is, one would have to claim either a secret, or the power to keep others from using what one has, for in the absence of one or the other, one would have no way to prevent one's competitors from taking advantage of one's own advantage. In a business context, monopolies of that sort are pretty rare, but one can make an occasional stab at claiming one.

For example, I think that references to patents, so ancient and pervasive in sales literature, are just such a move. It may be in part that the word "patent" is used to stand in for "clever" or "cunning," and it certainly is true that "patented" is often central to that classic and powerful product-differentiation technique, "Kill-All's Patented Rat Trap." But it is also the case that having a patent means that one has a *governmentally approved* right coercively (through legal action) to exclude competitors from particular cost-cutting processes for a very long time (specifically, seventeen years). The power of "our patented process" may inhere in this triple reference power, but the most important of the three may be to indicate this commercial rara avis, sole licit durability of a competitive advantage.

Similarly, if one cannot (or does not wish to) claim a patent, a secret process can do quite nicely, and therefore "our secret formula" frequently poisons, if nothing else, the airwaves. A patented process is made known to all, but its use by any but the patentee is forbidden. That is, the "freedom" perfection of the market is by law interrupted. But one needn't force another to keep his hands off something about which he knows nothing. Moreover, the advantage conferred by a secret will last as long as the secret does (which may be even longer than a patent's seventeen years), and that longevity is but a function of vigilance, which itself is at least a partial function of the secret's value. A big secret (like the formula for Coca Cola) can have a long life.

And occasionally one comes across other claims of longlasting cost advantages not easily open to appropriation. These characteristically involve cost or quality advantages that can be accreted only over time, such as "our loyal handcraftsmen, who have learned the secrets of widget making over generations." Their loyalty is asserted (i.e., they can't be hired away), and their skill, the product of long practice, cannot be emulated instantly: it is a form of frozen and personified "secret." Not very different are geographical claims, if not of absolute uniqueness for certain natural advantages ("our pure bubbling spring water combines with fine malt to produce . . ."), at least implying the need for a competitor's costly and slow geographic upheaval ("here in Kentucky where the pure springs bubble").

And so on. In each instance, the seller tries to imply that the favorable wiggle in his cost or quality curve is a relatively stable shift, one not amenable to speedy reproduction. Thus the buyer, if he has a current hankering for the product, ought to buy it from this seller now, for waiting around will not get him any better deal in any reasonably near future. There is, however, an alternative selling strategy which, rather than trying to imply some stable cost disequilibrium possessed by the seller, states and seeks to exploit the evanescence of the asserted cost advantage. The very ephemerality of the claimed advantage can be exploited as a selling device. If the more stable advantage may be sold "If you want it now, you oughta buy it, because no one's gonna have it cheaper," that for the ephemeral advantage is "If you want it now *or expect to want it soon*, you better buy now, because it's not gonna be this cheap forever."

Thus it is that one finds again and again in garden-variety salesmanship, references to the small, believable incidents of any normal business. One finds references to clever or lucky raw materials purchasing ("our stockpiling of widget metal during last winter's market doldrums"), to the elimination of unnecessary distribution costs ("plain pipe racks"), or to moderate technological advantages ("our new modern plant"). Sometimes somewhat more dramatic themes are introduced. The misfortunes of others are (literally) capitalized upon ("We have bought up the entire stock of a famous-make manufacturer in a terrible cash bind"), or mysterious innovations are asserted ("Our new process, which will revolutionize the children's underpants industry"). Very frequently, in both merchant-to-merchant and merchant-to-consumer sales, scale economies of impressive magnitude are alleged ("The unprecedented response to our new line allows us now to offer . . ."). Often, since several of these explanations are simultaneously compatible with the merchant's chosen "image," one sees them stacked, so to speak, so that the pile of them may together imply the possibility of a larger bargain: "We buy manufacturer's closeouts. We sell them to you direct from our roach-infested loft. We allow returns only upon direct command of a court of competent jurisdiction. That way, you benefit from our low, low prices."

One should not knock the genre. Admittedly the absolute magnitudes of savings that can be promised out of the internal fruits of such cost advantages are relatively small, certainly when compared to things like the estate of Sir Francis Drake. But sufficient unto the sale, at least much of the time, are the little explanations thereof, especially if the salesman learns to use the ephemerality of the bargain. In normal business, any particular competitive advantage, even the advantage of optimum scale, is a sometime thing. Any innovation you make, one or more of your competitors ought to be able, shortly, also to make; there is, after all, no stable law of disequilibrium. Are you closer than anyone else to a newly discovered raw material, or a pool of cheaper labor? They can move. Do you have a better process of manufacture? They have engineers too. Have you found a cheaper supplier? They, too, can find him, or *his* competitors will have to find a way to do as well as he to hold your competitors' business. In brief, the longevity of a true competitive cost advantage is a direct (though not sole) function of some imperfection in the market, and any such imperfection, in any reasonably competitive line of commerce, is always well short of eternal.

But an advantage is still an advantage while it lasts, though *only* while it lasts. There is money to be made, and bargains to be passed on, on the basis of the small deflections from competitive costs that flicker across the "normal" cost curve while the market is seeking equilibrium. That, after all, is the Squaresville pitch used most explicitly and quite successfully by many discount houses. "Better buy now," the tale goes. "We've got a closeout, a few hot items damaged (not in a way that'll bother a guy like you, of course). But these things don't grow on trees, and they don't *last* like Redwoods either. It's not much, but it's a bargain all right. You want it? Get it now, baby, because pretty soon, this bargain is going to be long gone!"

To summarize, both approaches—stable cost advantage and fleeting deflection—have the same logical form: I have a reason why I *can* give you a bargain and a reason why I *will* (or must) give you one. This latter element, however, is relatively subtle in most ordinary-business plays, but it is still recognizable as a strongly attenuated version of that reason-for-sharing which is blown to parody proportions in the Prisoner/Psst Buddy/Ponzi line of bunco.

The Sale: Seller Misfortunes

To SHOW Squaresville selling at its clearest, let me present for your delectation the most widely used and effective of all the varieties, "The Sale," which is a Squaresville based not on happy business incidents but on sad ones. In the Squaresvilles we have thus far been considering, the seller emphasizes some alleged event

—a piece of bare luck, perhaps, or some efficient development of technology—which has given him a cost advantage, some small part of which he must share with the buyers in order to increase his gross sales and thus his profits. In the Sale, however, the seller alleges *bad* luck or *in*efficiency, which forces him to lower prices to buyers, even if it means the ultimate commercial horror, that he take an actual loss.

In a sense, then, the Sale, like its genus the Squaresville, is still cognate to the Prisoner. It is just a Prisoner in which the script emphasizes less the Prisoner's trunk full of negotiable securities, and more the little miscalculation which got him into jail. Or, more accurately (since no Sale ever tries to imitate a bilateral monopoly), it's like a Psst Buddy which is brought off by putting weight on the conman's *burden* in having to unload hot goods, rather than on his cleverness in having lifted them in the first place.

Thus the essence of most sales—as they are most widely defined—is the possession, or the creation of the appearance of possession, of the fruits of misfortune, advantage of which may be taken by the buyer. Moving from that general criterion, there can be as many types of sales as there are types of misfortunes besetting businessmen. But just as is the case when one is claiming luck or efficiency as the source of the bargain, that potential richness is limited by the business setting in which the pitch, if it is to stay credible, must operate. After all, what does happen to merchants *qua* merchants? They have fires and floods, they lose their leases, banks decline to lend them more money, and they miscalculate what and how much of what to buy for resale. When these things happen to them they must cut their losses. That process ordinarily involves giving bargains, and that is the heart of the ordinary "sale." But the *kinds* of things that can happen are comparatively few.

There is, for example, one sort of business disaster which necessitates alleging that which most selling art seeks to deny, viz., that the goods are cheaper because they're worse. If your store catches on fire your goods are likely to suffer a sudden value diminution. Hence you have a "Fire Sale." If your knitting machine goes berserk (or your floor foreman does) the stitchery of your sweaters is likely under careful inspection to seem peculiar. So you advertise them as "Seconds." Now in each case your message is simplicity itself: a sound unit of this merchandise is worth (has a going market price of) x dollars. A smokesmelling, water-stained, snaggle-stitched unit is obviously worth less than x; that is, the demand for marred items priced at x is less than the demand for unmarred ones at that price. "If," says the seller to the potential buyer, "you are not bothered by the particular damage involved (you wear the sweater when you feed the hogs, and only warmth, not looks, concerns you), then at x — y dollars, *for you*, this is a real bargain."

It is, of course, quite possible to sell seconds or have a Fire Sale without having flaws or fires. Just as the Psst Buddy becomes a swindle when the goods are not stolen, and their low cost is attributable not to superefficient acquisition but to shoddy manufacture, so, too, one can sell ten-dollar sweaters for twenty dollars by making the buyer think that they're thirty-dollar sweaters with one eccentric thread. Indeed, storekeepers have been known to run a pinky ring over the top of a dozen hundred-dollar television sets so as to be able to sell them for a hundred and a quarter as scratched hundred-and-fifty-dollar items.

But a Fire Sale or Damage Sale need not be bunco at all. Assuming that the goods have been in or around a fire, there will be a decreased demand for them. They indeed cannot be sold at the normal market price. The seller's misfortune—this exogenous disaster which lowered the value of his inventory—is a boon to anyone for whose purposes the damage is relatively unimportant. He gets a bargain. And the seller need not pretend to be anything but a maximizer. He must take a loss; but to the extent he finds any buyers at all to give him something for the goods, in making the bargain sales he is improving his own economic lot.

Most of the bargain-justifying binds businessmen find themselves in are not, however, exogenous to their own operations, nor do they require any admission that the goods involved have suffered any *physical* change. Instead, the bargain-generating event is ordinarily presented as a misjudgment on the part of the seller which has altered his perception of the time span over which the value of the goods must be maximized. The strategy is to continue to portray oneself as a maximizing businessman moving goods in a normal, recognizable commercial context, but to emphasize that, because of a little error, it is necessary to sell for "less" to prevent further damage. Once again no gifts, just mutual advantage.

Seen this way, the most widely used "Sale" technique, the "Clearance Sale," has a pitch which, if explicit statement were still necessary in a world of buyers who have already internalized its meaning, would sound something like this:

See these TVs? Beauties. Three-hundred-dollar jobbies. You don't think so? C'mon, you've been around the store. That's what I've been selling 'em for. Eighty I sold at three hundred. So why these twenty at two-seventy-five? Nah, they're not damaged. Not even scratches. No, not floor models; the floor model is over there at two and a quarter. Nah, it's just I couldn't move all of them at three hundred. The first fifty went fast, very fast. The next thirty went slower. This twenty is hardly going at all. I may sell some more at three hundred, but it's gonna take a long time. Too long.

Look. Having them hanging around on the floor, in the storeroom, that's not free. First of all, I got money tied up in those sets. I paid one fifty each. That's three grand in sets. You put your money in inventory, it doesn't pay anything until someone buys it. It sits there, using up the money I could use to buy inventory people are buying.

More than that, I got storage space used up. You think storage space is free? I pay rent; whatever space is all filled up with stuff I can't put other stuff into. I don't have other stuff, I can't sell other stuff, even though customers want it more than this stuff. And I gotta have the help keep an eye on it (and keep their hands off it) and watch out it don't break and all that.

And what if, tomorrow, a week from now, next month, they come out with something new—more dots to the inch, prettier color, feelies, who the hell knows—then these sets are gonna be even worse dogs than they are now. Who the hell wants the old stuff? I'll be lucky to get a hundred for them if they do something fancy before next season. Sure, this isn't like ladies' dresses, but goods like this, they don't stand still either.

So I'll tell you what I'm gonna do. I made a mistake. I thought I could clear all hundred, quick, at three hundred per. So I was wrong. You didn't want one at three hundred. OK, your privilege. But how about two seventy-five? You been patient, you like bargains, so here's a bargain. Oh sure, it may go down to two fifty. Who knows? But it may not; there may be twenty guys who like it at two seventy-five. Those guys get here before you come back, *there's not gonna be any bargain. None. Kaput. They're all gone. C'mon, you waited, and I made a mistake, and now you got a bargain. Take it, buddy, take it, and we'll both be better off.*

Now there is a shorter form of this pitch, which is more to the point for economists and businessmen. It goes:

Having overestimated the optimum price at which to clear a given amount of merchandise over an optimum time span, and taking account of additional costs requisite for longer-term selling (including out-of-pocket, risk, and opportunity costs), *it is efficient to materially decrease the price of the inventory remainder in order to approach an optimal liquidation of inventory.*

The Sale: Buyer Virtues

ALL OF THE FOREGOING, I think, is and can be conveyed to almost any consumer by the simple sign "Clearance Sale." But it is very important to recognize that that same simple sign can convey a congruent but by no means identical alternative message, which spoken aloud would sound something like this:

Yeah, it's that time again. You want a TV now, right. Yeah, all the idiots who can't wait, they got most of them already at three hundred. Now you can get yours at two seventy-five. Are they going lower? Who knows, they could. Depends on how many guys like you are around who can wait still longer. You wanna wait around, be my guest. Of course, if there's twenty guys who show up who want one now at two seventy-five, you're out of luck, you know. It's up to you. This way, you waited, you got a bargain. You wait some more, you get maybe a bigger bargain. You wait too long, you're gonna have to wait a lot longer again.

Or, once again in short form:

Since your demand schedule is such that it crosses my supply line below the demand schedule of the majority of other potential buyers, and since you have proved that you can postpone consump-

tion, I am quite willing, after having sold to less discriminating and more hasty customers at a higher margin, to sell to you at a lower markup.

Now, this seller-misfortune version of the "Sale" avatar of the Squaresville Pitch (the one described in the previous section of this essay), is as widespread and powerful as it is for several reasons. Most important, its premises are very often true. Merchants do run short of cash all the time, and find that they can raise it more cheaply by discounting their goods for quicker turnover than by borrowing from factors or other expensive lenders. They also do lose leases and find that it is more economical to sell their goods at dramatically lower markups than to move those goods to a new location. And most commonly of all, businessmen do continually make pricing miscalculations and find that the maximizing solution is to unload the unsold at bargain prices rather than hold on and hold out for the originally projected return.

It is arguable, however, that a good part of the time, the alleged basis for the bargain at a Sale is not, at least to anyone with a nice sense of language, strictly speaking true. Nor am I thinking primarily of flameless fire sales or four-year-long going-out-of-business sales. I suspect that a far more frequent and important phenomenon is that Clearance Sale merchandise has been acquired in such a way as to assure that some of it will be cleared only in a Clearance. Or to put it another way, it is more likely than not that the second message, the one set out immediately above—"Yeah, it's that time again," and so on—is the only accurate statement.

The reason for this is that there are conditions under which a seller can earn more return on his investment if he can sell goods at one price to one group of buyers and at another price to another group. That is, it will optimize his return if he can successfully price discriminate. The conditions under which that is possible cannot always be met (for instance, the situation must be one in which the lower-price takers cannot resell), but sometimes the conditions can be met, and many of those times involve consumer transactions. If one can convey to a large group of people that they are being offered a bargain because sales at higher prices to other people will not be compromised by that offer or by their acceptance of it, then one has once again presented an economically rational and dramatically convincing story. Once again, both seller and buyer are to gain; and for each the deal will be a bargain.

But in addition, when the clearance message is received in this second, price-discrimination mode the classic tripartite core of the normal short con is credibly reproduced in this ordinary-store context. Conveying the meaning of "Clearance Sale" this way has the additional power of altercasting any potential buyer as part of a privileged and rather attractive subclass of all customers, those who shop well and carefully and who do not, by and large, give in to costly, inconsidered impulses. And the creation of that subclass has the effect of creating—and outcasting—another subclass to which the Clearance Sale buyer does not belong, the one made up of those who paid higher prices for the same goods—that is, the dopes.

If "Clearance Sale" succeeds in conveying that message, then its persuasiveness is significantly augmented, for the "victim" off of whom the seller and the customer are to score is brought explicitly into the story, and the seller need not present himself as a victim. Instead he presents what is in effect the following economic argument:

Let's say I've got these 100 television sets. I sell 80 of them at \$300 each, and 20 at \$275. The average price, therefore, is \$295 each. But I don't think I could have cleared them all at \$295 each. And here's why: there are some people not terribly sensitive to price once they want something. You can't go wild, of course, no \$400 a set or even \$375, but within a pretty good range they'll stand still for quite a bit once they get hungry.

But there's another group of possible spenders who get some of their kicks out of the goods, but more out of the buying of them. There is independent value to them in getting a bargain, not solely because the money they save can be spent on other things, but also because for them buying is a craft like any other and people get joy out of craftsmanship, too.

In other words, I am not just selling bargain goods, but also the opportunity to get bargains. I have, therefore, two markets to be separately serviced at separate prices. I will do better overall selling at these two prices than I would selling at one slightly lower uniform price. I admit it. I will do better. But so will you. It doesn't concern you what I—what we—do to the non-bargain hunters.

That's their lookout. As a team, we are both enriching ourselves at their expense.

Thus there is an "other" created by the tale of the Clearance Sale when it is designed to emphasize the buyer's special virtue, and in a sense that other is the source of both the seller's and the buyer's good fortune; had the others not been willing to pay so much, the seller could not have afforded to charge this shopper so little. True, the gesture is not wholly cost-free to the seller; obviously he would make more if he could charge this buyer more, just as the prisoner could make more if the mark would take less. But he can't get away with it. Nonetheless, it is still the seller and the bargain hunter against and at the expense of the others, those who were not shrewd enough to see through to the seller's willingness eventually to cut margin to make sales.

The Logic of Quasi Gifts

THIS TEPID ALLIANCE, the one between the seller and the knowing buyer at a Clearance Sale, obviously does nothing to impair the fundamental ground rule of all effective selling and swindling: no gifts. The seller running a clearance sale does not present himself as an economically irrational man, one who, without being forced by circumstances to do so, decreases his own wealth for the benefit of another. But there is a selling tactic which closely approximates that forbidden presentation. It is possible to dramatize, even in a "straight" selling context, the "cost-free gift" strain which appears as a minor theme in all the Big Cons, and as the central melody of the Godcons.

The problem is this: how can one design a scenario in which it is at least plausible that the person taking the role of seller would be able and willing to increase the buyer's wealth (that is, enlarge the magnitude of the bargain) in a way that is not only not to his own simultaneous benefit but is, in fact, derived from funds which would otherwise lodge in the seller's own pocket? More briefly, how can one plot a play in which the seller appears not to be a profit-maximizing economic man and still get the audience of buyers to suspend their natural disbelief?

For various reasons it turns out to be significantly easier to solve that initially intractable dramaturgical problem in a selling script than in a swindling tale. One must be cautious; even in selling such a move is exceedingly rare, and much of what looks like irrational, nonmaximizing casting in ordinary selling is not, and is not perceived as, any such thing. Let us then, before moving on to consider quasi gifts in a sales context, first consider things that look like gifts, but only on first glance. Consider for example "bait."

"Bait" selling involves a very common move. The seller communicates that he is pricing item X cheaply so as to sell, either during the same shopping trip or thereafter, other items at competitive prices. The message is not necessarily, or even frequently, any assertion of gift-giving friendliness at all. There is no reason (and, more important, none is necessarily perceived) why the Squaresville Pitch must focus solely on volume-increasing, scale-optimizing, price cuts as being tied solely to one particular item involved in one particular sale. The primary content of the bait message, including so-called "loss leaders" (sales below seller's cost), seems to be this:

I am offering you a bargain on X on the assumption that once having entered my store you will also buy Y, Z, etc., at prices no worse (but not necessarily any better) than those offered by my competitors, and that my price–volume mix for X, Y, Z, etc., will therefore yield greater profit to me. This is just a more dramatic way of making a smaller marginal price cut on each of X, Y, Z, etc., so as to increase my volume within the range of positive returns to scale. The price I pay (i.e., the economic danger to me) is that you may buy X and only X. That would cost me profits overall, since I have aggregated all my price cuts on X. But I will gamble that most people won't do that. Thus while I am, I suppose, offering to give something away, I am doing it only because I think that, by and large, most people will buy more than X, and thus I am more likely to gain overall than to lose.

Indeed, "bait" may best be understood as just one variety of investment in the creation of buyer inertia. The idea is to get potential buyers moving toward one's products, either by pushing them in that direction in the first place or by holding them in the goods' vicinity once they are there. One can create that inertia with highly visible discounts, or with smaller discounts applied to everything in the store (the "Discount House" route), or merely by mass-medium advertising. When one sponsors a television show, for example, it is clear that there is no obligation on everyone who watches the show—or on *anyone*—to buy the product. Nonetheless there is the expectation that enough people will, so as to justify the "free" entertainment. But in none of these instances is there any deception to the effect that the seller or the salesman is doing anything but maximizing off customers as a *class*. The difference between "bait" and "bait-and-switch" lies, in fact, in just that: the customer in the former is not deterred from taking the bargain and only the bargain if he wishes; in the latter he is at best dissuaded, and at worst prevented, from seizing upon the discount alone. It is still the same old move: the gross class of "customers" is broken into two subclasses, one cast as "in on it" and in tacit alliance with the seller to jointly maximize off the outcast "others" too dumb or lazy to take advantage of the bargain.

In addition, there is a strong sense in which certain benefits to buyers need not be or even appear to be at the cost of *anyone* else, either the seller or other customers. Recall that there is an inherent ambiguity in the stance of sellers and buyers vis-à-vis each other; they are simultaneously partners and competitors. This economic ambiguity can be manipulated in personal and psychological terms so as to maximize the emotional "receipts" to the interacting participants. Since in a real *economic* sense seller and buyer are "friends" (only together can they maximize their utilities), there is no barrier to their behaving like friends if that behavior has no cost. And, indeed, there are kinds of "friendliness" which, in economic terms, are *actually* cost-free. For example, the oft-heard statement "it doesn't cost anything to be nice" is sometimes true because there are ways of being nice other than giving something away. Thus "your friendly salesman" can be perceived as such without any argument that he is incurring costs thereby, even psychic ones; indeed friendliness, if it produces counter-friendliness, may be productive of psychic income to the salesmen.

More important perhaps, this suggestion, a central one in most of the many works on salesmanship, namely that the salesman establish himself not as an adversary to the customer, one from whom good deals must be wrested by force and pertinacity, but as the customer's friend, eager to do him good, has no necessary economic cost to the salesman's employer either. From the latter's point of view, assuming the returns to friendliness equal those to aggression as alternative sales techniques, it is a matter of total indifference whether the aura of his store is one or the other. For the boss seller, it is like painting the store in equally priced white or blue paint; if they cost the same he doesn't care, because he needs some paint in any event.

Once again, therefore, it is not a necessary part of the friendliness pitch to convince the consumer that the seller (boss or salesman) is acting with economic irrationality. But I do think there *is* a way to sell using that otherwise unlikely message. It seems to me to depend on certain factors applicable to modern mass merchandising.

First of all, the absolute magnitudes of bargains in normal selling contexts are almost always much smaller than the promised returns in the usual bunco tales. The buyer (as contrasted with the mark) is rarely promised a shot at the moon, but only a somewhat lower price on a piece of goods. Thus if a gift were indeed being offered, it wouldn't be a very big one, from either the giver's or the getter's point of view. In theory that should make no difference, for no seller should ever voluntarily give *anything* away.

But the comparatively small absolute size of the normal "bargain" becomes much more significant once one sees it in a context in which "seller" and "salesman" are not necessarily, and indeed only occasionally, the same person. For the correct analytical statement is not really "No seller will ever give anything away." To be accurate one would have to add, "Well, not anything he knows about and can economically capture for himself." Once "salesman" comes to interpose himself between the abstract seller and the living customer, this area of the not known and not capturable vastly inflates. In modern mass selling, of course, this bureaucratic interposition of living agents is the general rule.

Indeed, the potential for deals to benefit the salesman and the buyer—the actual interacting parties in the transaction—at the expense of the "seller" is actualized even in some swindling scenarios. There, too, the move is credible so long as the amount "given" away is so small that it is unlikely to be discovered or metered by the victim. The most obvious example is the "tip" that the insideman in the Pay-Off purports to give the roper and mark in recompense for returning his wallet. The bet he places for them, by affecting the odds, decreases the return to his employer, the Syndicate, but by so little that it is credible that the latter will never notice. And since the insideman is presented as on salary, the slight decrease in Syndicate gain does not immediately affect him either.

Nor does the believability of a gift of this sort depend solely upon keeping the "victim" in ignorance. Sometimes one can assume that the "betrayed" boss must know what's happening, but the cost of getting for himself what his employee is getting for himself is just too high. One assumes that some (though small) amount of kickback extorting is allowed to one's purchasing agents, it being easier to adjust his salary to take account of his other income than to police his performance more closely.

Or, to pick a much less distasteful example, consider the very common (in some sets) "Hello, Mrs. Schwartz? This is Sally at Fleischfarb's. Come in on your lunch. I got in the back a black sleeveless—a bargain—you'll love it" sale. This is essentially a species of "bait" with the time polarity reversed; the bargain is offered to a customer as a reward for *past* loyalty and is used to keep the forward momentum going. Thus it is a bargain, the fruits of which ought to belong to the seller out of whose pocket the discount comes. Much of the time, however, the value of this advance word on the existence of bargains is split between salesperson and consumer. Sally watches out for Mrs. Schwartz each new season and Mrs. Schwartz takes care of Sally at Christmas. It is likely that Fleischfarb knows it, too. But it would be so costly for him to have his own list of favorites that he lets the inside-information surplus go to employee and customer. At least it does keep Mrs. Schwartz at Fleischfarb's, and most of the profit is his.

In any event, it seems to me that there is a great deal of opportunity to effect, *and credibly present*, a "salesman and customer versus seller" play in a universe of small-magnitude "gift," bureaucratized organization, and zero-cost emotional rapport. Consider, for example, these simplified vignettes.

A QUID AND QUO AMONG PROS

[The scene is the inner office of the purchasing agent for a moderate-sized corporation. Behind the desk, the Director of Purchasing himself, clothed in his ceremonial dress: shirtsleeves, dead cigar butt, and cold stare. Facing him, the Salesman, sample case out.]

DP: OK, what've you got?

S: Just look at these. You ever see such widgets?

DP: Every day.

S: Like these?

DP: Like those.

S: How's your charming wife, by the way?

DP: Still dead.

S: Oh, Gee. I'm sorry to hear. . . .

DP: How much?

S: Oh, we got a great deal on these. We made a sweetheart of a widget-metal buy, and. . . .

DP: How much?

S: Seven fifty a thousand.

DP: Nope.

S: Maybe I could shave it to seven forty.

DP: Seven.

S: Not a chance.

DP: So, that's that.

S: Well, you can't win 'em all. Maybe next time. Hey, you buy woggers from us too, don't you?

DP: I buy woggers.

S: Gee, I really feel sorry for old George. You know old George, our wogger salesman? Poor old guy. Christ, do we have a glut of woggers lying around the shop. We're already up to our eyeballs in woggers. Unless we unload some soon, we're gonna *drown* in woggers. Old George would like to keep it quiet, of course.

DP: Ten at seven thirty.

S: Done.

In this version, emphasis is placed upon the way in which bureaucratization makes a relatively small gift from this salesman plausible. The information about the woggers is of value to the purchasing agent. Moreover, it is value that is out of the pocket of "the seller." But it is not of any cost to the particular salesman who does not sell woggers. It may even be that the cost of the woggers information to the salesman's employer (not to mention George) is much more than the value of the widget sale to the "betraying" salesman. But since it's not his own cost, it is a plausible (most likely true, in fact) gift from the buyer's point of view.

What has been effected is a redefinition of the relationship involved from seller versus buyer, each seeking to maximize off of the other, to salesman and buyer versus seller/corporation. As with its pathological correlate in the Pay-Off, this boss-betrayal redefinition cannot convincingly be done in any massive way unless a final break between employer and employee (Syndicate and inside-man in that instance) is contemplated. But small betrayals are possible (as with the small-bet reward in the Pay-Off) even at the expense of the boss, because his metering of his employee's conduct cannot be so precise as to pick up every betrayal. Thus it is essentially "free" for the employee to "give away" some things of value to his employer. Indeed, this particular role manipulation whereby a natural competitor becomes an *ad hoc* small-scale ally is even easier in retail settings, wherein the magnitudes of the individual gifts are likely to be too fine to be caught in the large-mesh net of boss and foreman espionage. Indeed, so likely is it that in a retailing context the interacting salesman will not seek totally to maximize for "the seller," because neither the gains nor the losses are his, that there is a very common in-store swindle that depends on the credibility of the salesman's greater affinity with the customer than with his employer. That's how the Bait-and-Switch Sale, for example, really works. Consider:

MASQUING TREASON

[An ordinary appliance store. Salesmen cruising the lanes of piled television sets, stereo units, radios, and so on. Customer enters, searches about for a while, and approaches salesman.]

S: Yes sir, what can I do for you?

C: (Brandishing segment of newspaper) I read where you got 21-inch Zeniths for a hundred dollars.

S: (Looking evasive) Well, yes, I guess we do.

C: Well, that's what I want.

S: Look, I got some beautiful Magnavoxes. Come on over here.

C: How about the Zeniths?

S: (Very uncomfortable) Or RCAs. You oughta see the new lot we just got in.

C: What's wrong with the Zeniths?

S: (Grimacing and even more disturbed) Nothing's wrong with the Zeniths.

C: OK, then. C'mon.

S: (Looking around furtively, and then whispering) Look, buddy, I don't want to sell you one of those Zeniths. You know why they're on sale? (Bending closer and whispering more softly but more intensely) *They been in the Scranton flood.* God only knows what the insides are like. The boss has some nerve even selling them like new. I hate that kind of stuff. C'mon, let me show you some good sets; we got some others on sale too, and they haven't spent a few days under water.

C: Well gee, OK. What have you got that's good?

It is, of course, ordinarily necessary for there to be more than this to pull off Bait-and-Switch plays with any regularity. For if the salesman's petty boss betrayals come at minimal cost to him, there is always some cost (risk of detection, decreased sales totals in comparison with other salesmen), and it is necessary to find something in it for him. Thus one needs some explanation for the loyalty flip, some equivalent of the wallet in the Pay-Off.

The most normal solution of this problem in bait-and-switch selling is to assert and exploit some natural (that is, noncommercial) affinity between salesman and customer which is made to seem to cut across their business roles. It can be done on social class lines: "You don't want that junk. That's the stuff the boss has for these neighborhood boobs." It can be done on fellow-aficionado lines: "Look, buddy, you obviously know audio. In a couple of weeks these are going to develop a tweet in their woofers." It can be (and increasingly is) done on racial lines: "This isn't for you: my boss seems to think Black people like us will buy any old junk." (This tracks, by the way, with only subtle differences, one of the very oldest of New York varieties: "You go to schul with my cousin Julius? If Julius sends you, I'll make you a bargain.") But whatever its precise embodiment, the essence of the move is the same, to increase the role distance between the salesman and his employer and decrease the role distance between the customer and the salesman, and thus render thoroughly convincing the latter's gift of his boss's profits. For small amounts, it will, and does, suffice. Indeed, so small are the required magnitudes of *real* salesman–customer affinity that bosses must often counter them economically, for instance by giving the salesman some economic motive to cooperate, like a larger commission on the junk the boss is trying to push.

It seems to me, therefore, that in selling as in swindling there is never a pitch at the heart of which lies any assertion that something is being given away, that "the seller" is intentionally acting as anything but a rational economic man. As close as it ever comes to that, the message is that the buyer is getting something at the expense of the "seller's" maximization but which costs the salesman with whom he directly interacts nothing, or actually amounts to a small net utility gain for him too. That is, in selling, almost everything is a true Squaresville, involving marginal *mutual* advantage. Indeed, so strong, I think, is this anti-gift theme in selling, this horror of attempting to sell by implying that the seller is anything but a maximizing economic man, that there are selling techniques which actually use assertions of economic irrationality as volume-increasing *jokes*. Happy Harry and Sunshine Sam, the Mad Russian and the Addled Armenian—all of these attempts to portray the seller as some form of crazy, are, I think, parodic and therefore ironic in the strict sense of the term; that is, these pitches are in fact asserting their opposites. They are designed not to be seen, but to be seen *through*. I may be pushing too much content onto these presentations, but it seems to me that they actually operate to create a community between the propagator of the message, the seller, and a very large group who see themselves as *not taken in*. In effect, the Addled Armenian pitch "outcasts" a shadowy group of indeterminate size off of whom the seller and the cognoscenti who see the joke are together maximizing. The crudity of the characterization (fright wigs, gibbering salesmen, sledge-hammered cars) is designed, as with easy-to-win telephone "contests," to make the "unfooled" class as large as possible. For it is this class that comes into the store to haggle out a true Squaresville, believing that some of the surplus to be divided in this bargaining is coming from the "others" too dumb to see through the phony friendliness and unreason. This group of buyers, having seen through one thing, may not be as much on guard as they should be against other things that they ought to see through later.

Chapter 7

BARGAINS: THE DISTANTER DRUMMER

THUS FAR I have concentrated upon illustrating the ordinary-selling use of those most central bunco techniques—casting, altercasting, and outcasting rational economic roles in a rational economic play—in comparatively non-mass interactions, between salesman and consumer in a store. But if business practice does indeed mimic the congame world, one would expect to find mass-market developments. For if reaching a very large number of small-take marks is frequently the most desirable course for a conman, it ought to appeal equally, perhaps even more, to a legitimate seller. If the "public spectacle" of a Ponzi, say, economizes on operator input by permitting him to perform his role just once for a cast/audience of thousands, it should be even more important to be able to play simultaneously for and with millions when one is selling, not even a share in the Drake Estate, but little bars of soap.

I think that one can speak about modern mass-media advertising as, among other things, performing just such a function, carrying the salesmanship cognates of the basic bunco techniques, heretofore described in face-to-face-interaction contexts, into a more widely dispersed genre, one in which one "seller" can tell the tale to many marks. Moreover, I think that one can better understand (and stop misunderstanding) modern advertising from such an analytical starting point. For it seems to me that in a very strong sense, modem mass advertising amounts to an attempt to create limited complementarity between the seller (and his product) and the consumer (and his desires). The techniques may vary over details, but whether the advertising and mass salesmanship uses product differentiation (and its special form, product identicalization), quasi-scientized causation (like "the Sufficiency Switch"), "Calvinist Causation," brand-name momentum, or any of the other common advertising-writing staples (all of which will get more detailed treatment anon), they all have the same basic aim. They are, as usual in swindling and selling, all designed to convince the buyer that that which he buys he needs more than any other thing, and that the seller, needing him more than any other buyer, will give him a bargain in getting it.

I think that it is worthwhile, therefore, to talk about modem advertising using the analytical vocabulary developed thus far in this essay. But this is also a good place once again and very explicitly to tack up a waming against conceptual megalomania. Advertising does, I think, fit into my framework, but it also, simultaneously and without dissonance, fits into a large number of other frameworks too. Mine will not be the "whole story." There is no "whole story" that can be told about anything, especially anything as socially, economically, literarily, anthropologically, philosophically, legally, historically, and politically complex as advertising. Thus I do not intend, by telling my tale, to reject other stories about advertising told by others with their own *idées fixes*. I am willing to bet that a Marxist interpretation would be great fun. Freudians (orthodox, neo-, and anti-) have said all kinds of fascinating things on the subject. I can imagine (and have seen glimmerings of) structuralist analyses of advertising which would, if properly developed, explode with blazes of clarifying light. All I am trying to say is that my particular tunnel vision is constrained by what I think is a relevant tunnel; you can get through part of the mountain this way too.

Advertising as Information

AS WE SHALL SHORTLY SEE, advertising writers have developed and use several very important and exceedingly cute techniques in their effort to sell goods in general, and their clients' goods over anyone else's in particular. But before I get to that realm of analysis, the proper response to which is some combination of admiration and horror, it is well to recognize in advance that the major function of advertising—and that includes television commercials, four-color pages in major magazines, labels on cans of peas, guys parading the streets between sandwich boards, the New York Stock Exchange ticker, and every other way of conveying messages about goods—is to let people know that certain things exist, what they do, where you can get them, and what they cost. Thus, anyone who thinks that the market is rendered less fair and efficient by advertising should, for just a moment, stop to consider the market's probable level of efficiency without any of it. The excesses of people selling pain killers, for example, may be deplorable; the total absence of communication about them would be ridiculous. For the market cannot work at all unless buyers learn of things for sale. If you do have a headache, and aspirin exists, and if aspirin will in fact end your headache, it would be grotesque if you never found out about it. The reason you find out about it is that the makers and sellers of aspirin have quite a stake in making sure you find out about it; that, after all, is how they make a living. If they could not get their message to you, they would not make the aspirin at all (or search for other nice things to make), for without a transfer of information there can be no transfer of product, and there's only so much aspirin a manufacturer can consume for his own headaches, even the massive ones such a communications void would cause.

Most of what is called advertising consisting, therefore, of extraordinarily useful information about the existence, function, availability, and price of goods—and very little else—it is anything but a scandal when a seller advertises. If (to take another example) he in fact has a car impervious to cement-truck collisions and if he doesn't tell that tale, how else will any potential buyers learn? And if they never learn, they might settle for a squashable Pussycat 6 rather than the seller's Behemoth 8, despite their deep (and unmanipulated) desire for added safety. And (one final comment) why would anyone ever cut prices if there were no way to let buyers know about it?

That little spate of truism out of the way, we can approach the more interesting questions. Given that the purpose of advertising, indeed its defining criterion, is the transfer of information, what information would a seller most prefer to have exist in the minds of buyers at the end of the communication process? The answer, at the margin, is obvious: every seller would most prefer it if every buyer believed he wanted that seller's product, at or above that seller's price, more than anything else in the universe. Thus, working at a distance, without much in the way of face-to-face work, the job of every seller/advertiser is thus to cast his product, altercast his potential customers, and outcast his competitors' products (which comprise, after all, "everything else").

In addition, however, this job must be done within the central constraint of all credible selling: one can never seem to be making a gift; the closest one can come is to appear to offer a benefit to the customer at no gain or loss to oneself. And even that is a comparative rarity. Most selling (including advertising) must be scripted as some form of Squaresville, that is, some pitch the burden of which is that moderate marginal benefits are to be divided between the parties to the transaction.

Product Definition

THUS FAR, in describing and discussing the Squaresville Pitch, I have acted as if the identity of that which was to be sold was not problematic. I have always spoken of the pitch as involving a communication in the form: "I have a cost position with respect to item X some small portion of which I will reflect in a lowered price for X to you in order to attract your trade." That is, "X" has thus far been treated as a constant in this presentation of the Squaresville, the variables to be dramatized being the alleged cost position and the alleged price cut.

But as I mentioned earlier, the identity of the goods is *potentially* of central importance to the success of any Squaresville. There is, after all, one natural reason why one's own goods might be cheaper than competing goods: they are not as good. If that is the case, then the proffered bargain is no such thing. It is fatal to any Squaresville for it to be seen as an attempt to pass off, with a two-fifty price tag, a two-dollar Y as a three-dollar X. Thus once the question of the identity or quality of one's goods comes into question, there are two choices: one can either try to convince the buyer that one's goods are identical with others (only cheaper); or one can try to convince him that one's goods are different (whether cheaper or not), but better.

These two choices, of course, amount to essentially the same thing: portraying the product. The only difference is that in the first one attempts to show one's product as identical with some specific other products, while in the second one seeks to differentiate it from any other. But both moves are essentially differentiations, for to identicalize a product is actually to differentiate it from anything else except its particular "competitor." As Lévi-Strauss recently put it, resemblance is just "a special case of difference. . . ."

Now both efforts, product differentiation and its special case, product identicalization, are complicated by the fact that, strictly speaking, there is no such thing as two identical things. (Definition: "An identical thing is a thing which would be another thing except that it isn't." Or, as G. E. Moore once put it, attributing the definition to Bishop Berkeley, "Everything is what it is and not another thing.") That is, when trying to sell through identicalization, to predicate "twoness" is instantly to assert that some difference is necessary (no matter how much one is enjoined to ignore that difference for the particular purpose at hand). This builds an unavoidable ambiguity into any selling attempt. For when a seller attempts to sell his good he cannot, strictly speaking, be saying, "Buy my good; it's the same as his," for the very admission that there is a "my" and a "his" necessarily implies that they are not "the same." The seller's plea, therefore, is really more complex; it asserts instead, "Buy my (cheaper) product rather than his (more expensive one) because the two items do not differ in any way disadvantageous to your use of my product." More particularly, the assertion often is: "My thing and his differ only in the fact that mine is 'mine' and his is 'his,' and that will make no practical difference to you in your use of it."

Similarly, when differentiating a product it is hardly enough to make the obvious point that it is different. One must instead convey the particular ways in which it is different. Thus the general form for both differentiation and identicalization selling is the same. If "A" is one's own product, and "A_1" is another's, the message is "$A=A_1$, but for (properties) X_1, X_2, X_3, . . . X_n." The only difference is that in differentiation selling the critical X's are good things about A, or bad things about A_1; in identicalization selling all of the X's (except price) must be made to appear totally irrelevant to the target buyer.

What makes this communications job of differentiating and identicalizing products very much easier is that, in reality, products and producers *do* differ *and* are the same, frequently and in important ways. When these similarities and differences exist, their existence is obviously a legitimate subject for selling talk. One can then make one's points and one's profits by telling the truth. It is hardly the act of a scoundrel or a swindler actually to produce half-size dresses for dumpy ladies, or elastic waistbands for hipless little boys. Nor, for that matter, is it somehow illicit to point out that my cheaper car is "the same as" his car except that his looks better (in case you're a traveler rather than an automotive aesthete). And it is sometimes the case that the only significant difference, besides price, between two competing products is a universally irrelevant one, the name of the maker; substantially all liquid bleaches, for instance, are not only functionally equivalent but chemically indistinguishable, even though their prices vary vastly.

There are, however, serious limitations upon any form of salesmanship that depends upon communicating to the market the actual characteristics of one's product. As we have seen in the classic bunco framework, the theoretical form of perfect salesmanship is to successfully portray one's product as uniquely and infinitely desirable to everyone. The recipient of the message should be made to believe that he can get from that particular product, and from nothing else, something without which life is, if not impossible, at least not worth living. In default of achieving that boundary-case perfection, what you want to do is establish that even if your particular product is not, strictly speaking, unique, it still has no very close substitutes as far as producing a state of being which, while not, strictly speaking, infinitely valuable, is at least very desirable—and if not to everyone, at least to a very large group of potential buyers.

There are very few products which are in fact uniquely and infinitely valuable to everyone. Offhand, air is the only one I can think of. Almost any other product can be done without if the price gets too high, especially since almost everything has at least a possible substitute. But more than that, to the extent that one emphasizes one's product's unique and valuable characteristics, one also tends to decrease the universality of its desirability. It is not just that you cannot, once you describe either product with even minimal particularity, sell bananas as transportation or automobiles as fast food. Even with products much more alike to start with, by strongly identifying your product as being one thing, you simultaneously identify it as not being many other things, things which people might also want. To the exact extent that you differentiate your product by reference to a characteristic or feature over which you assert monopoly power (i.e., its uniqueness), you simultaneously establish for yourself a sort of anti-monopoly over people who desire the absence of that particular feature, or the presence of some other feature incompatible with it. For instance, highlighting the aerodynamic sleekness of your little two-seater sports car will endear you to jolly bachelors but not to large-family camping enthusiasts. Nor, to flip the coin over, do many single swingers lust after the portly power of a Checker Marathon. And there is, in addition, one pervasive trade-off that is unavoidable in almost every product identification effort; to the extent that certain less than necessary features cost money, some buyers will always prefer to keep the money and forego the features.

The prime danger (which means cost) of physically differentiating products, then, is that each inclusion must also be an exclusion, and each such inclusion, once made, has all the nasty, permanent, pictorial explicitness of any reification. This has several untoward effects. First (as just noted), it rather sharply cuts up the grand "everybody" market into subgroups made up of those clearly and strongly attracted and those equally powerfully repulsed. If the description is clear enough to enchant X and his fellows, it is likely also to be explicit enough to turn off Y and his confrères.

In addition, since the context of these pitches is commerce and not con there is a severe constraint upon the magnitude of product differences one can credibly assert with respect to products offered at roughly the same price. Differences between and among goods of roughly equal cost are not likely to be particularly extreme. In a perfect market, there would be complete identity of price and good. In an ideal milieu of perfectly accessible, cost-free information, there might be no item-by-item competition at all, no competitor or "close substitute" at a different price–value ratio. But even in any reasonably competitive market, one well short of perfection, prices for the "same" goods will tend to converge, as does the quality of goods available for the same price. It is, after all, a matter of circular truth that if it is unlikely that one can make an X for twenty percent less, it is equally unlikely that one can make a twenty-percent-better X for the same price. Whatever the real product differences, then, it is hard successfully to create over it any wild ecstasy in the soul of any customer.

Moreover, if a thing is actually what you say it is, has what you say it has, and does what you say it does, you are locked into a very physical, hence not infinitely flexible, reality. If sporty lines are achieved by the elimination of back seats, there is no way to modify the thing so as to make room for carrying children. But if the thing is, along these express functional and structural lines, not what you say it is, has, or does, the buyer is very likely going to find out almost instantly. If you lie about those kinds of things you are lying transparently, which, from the liar's point of view, is the very worst kind of lying.

Explicit and palpable product definition, then, has at least these difficulties. First, casting your goods in a particular way altercasts some potential customers as compatible with those goods, but simultaneously outcasts many, many others. Second, the more precise the definition, the more clearly described the asserted difference, the less credible it is that if material, it can exist at the quoted price. Third, the more palpable the assertions about the goods, the harder it is to "cool out" customers who find, after purchase, that the assertions are not borne out by the product. None of this means, of course, that the selling of products never involves scripts in which the goods are strongly identified or sharply differentiated with reference to allegedly unique and unchangeable characteristics. But these problems suggest that there will be a search for alternative selling techniques, a continual probing to discover pitches that manage to do one or more of the following three things: (1) identify products in such a way that they can be simultaneously attractive to the largest possible number of heterogeneous subgroups; (2) credibly assert large pay-offs to buyers in an "ordinary business" context; and (3) make large promises in such a way that when they fail to hold up, the customers will not notice the failure, or at least will not blame the product for it. While that is certainly not all there is to modern advertising, I think those things are pretty central to whatever else there is.

Recurring to conman cant, another way to put all this is to say that a good advertisement will succeed in pulling a large-magnitude Gypsy Switch with no need for a (or an integrally built in) cool-out. I have saved the Gypsy Switch for this point in our story because it is not so much a separate congame as a parodic dramatization of an element present in all congames and almost all selling. It is like a piece of DNA living independent extracellular life as a rather raffish virus. In all swindles, without exception, there must come a point at which the mark fails to get the deal he expected, when what has been offered fails to be tendered and is replaced instead by something far less valuable, like nothing at all. I can state that with such absoluteness because all I am doing is working out the necessary implications of the definition of a swindle; if the mark gets the deal he expected he has not been swindled.

In crude varieties of classic bunco like the Gypsy, the switch is physical. Something of great value to anyone, money or bullion for example, is held out, but when the mark finally closes his palm around the tendered delight he finds it to be something of no value to anyone, cut up newspaper, say, or a block of gold-plated lead. Take the eponymous Gypsy Switch itself, for instance. In it, the gypsy (it needn't be one)/conman falls in with a potential mark, ideally a credulous old lady possessed of sufficient cash savings to make stealing them worth the effort, no close advisors, and a deep attachment to the more magical aspects of revealed religion. Some fixation on the more theatrical aspects of Moses' performances before Pharaoh, along with an appreciation of stories about loaves and fishes, is particularly helpful. The gypsy conveys to the mark that she has the power to "make money breed" (Augustine and Aquinas to the outraged contrary notwithstanding). She demonstrates: taking a ten-dollar bill, she places it wrapped in brown paper in or under a bandana, chants an incantation or two, and makes a few passes over the bundle. When, after a suitable wait (perhaps several hours, to allow parturition to be completed), it is opened, there are two ten-dollar bills. (In these plays, money always seems to go in for binary fission as its mode of reproduction. I have always thought that two extra ones and some change would be a more aesthetically satisfactory product of monetary sexuality, but the gypsy players ordinarily seem to rely on the lure of geometric growth, metaphorical consistency be damned.)

In this first demonstration is the first switch. At some point, of course, either a second ten has been insinuated into the package, or the bandanas themselves have been switched. There then sometimes ensue several further demonstrations, ordinarily with increasing amounts of money, until the mark is convinced. Then the mark begs: won't you please take my money and make it breed for me, lightening the burdens of age and the cold at night, etc.? Indeed the gypsy will, eventually. And so the mark withdraws her life savings in cash from her bank. (That sum has been known to reach five figures.) She delivers it into the gypsy's bandana. At the close of this final ceremony the mark is given the doubled bundle, still wrapped, and told to wait the requisite time before disturbing the newboms. When this opaque caul is finally breached, the money is gone. So is the gypsy. The polarity of the switch has been switched, and nothing (except cut-up newspaper) has been bom out of something.

The Gypsy Switch itself, at least in this form, is a very weak con; it needs an exceedingly credulous mark in order to succeed. For in form it is a one-on-one Godcon, one which lacks the validation given to mass-market bunco by the public presence of other participating marks. Its mechanism—magic—is not attractive to many modem Americans. (Indeed it is most often played today as "The Greengoods Game," a version in which a renegade professor of chemistry with a fluid that duplicates United States currency on contact is substituted for the gypsy and her bandana.) Not only that, but it also lacks the Prisoner's central move, an explanation of why the conman has to share so much wealth with the mark. At no point in the Gypsy Switch does the conman create something of extraordinary value for the mark to trade back in order to make the conman's trading at such a lovely exchange rate credible. And, of course, the mechanism of the switch is itself coarse—mere sleight of hand.

If in normal selling and advertising, however, one is successfully to promise more than one can deliver (in order to appear to be giving more than one's competitors), one will—by definition—have to somehow pull a switch. But with the sale of goods it is not always, in fact it is rarely, necessary to be as crude as the fabled gypsy. The "thing" involved in plays like the Gypsy is, as items of value go, sort of an ultimate in thingishness: a palpable reification of abstract value, money. Similarly with gold bars, diamonds, salted mines, and trunks of bearer bonds. But goods at a remove—advertised goods—are not self-defining. Like most things seen from an economic viewpoint, what might appear to be defined by structure is really defined by function: a thing is what it is, but what it is is what it does.

But more important than that, the functional identity of a thing is a function not only of what it does, but of the person for or to whom it does what it does. Thus the very identity of a thing is a function of its relationship to a particular person. The way one knows that a thing is a thing of value is by noting that someone wants it. Similarly, one cannot know what that value is unless one knows its value to someone. Indeed, you cannot even know what a thing is unless you know what a particular person is doing with it; as most impecunious graduate students know, a door is "really" a desk top.

What all that means is that you can differentiate (or identicalize) a good, and change its value, not only by modifying its physical or dynamic characteristics, but by changing the people into whose hands it is to come. Hence, ascribing multiple functional characteristics to things for sale, and simultaneously transforming the people at whom those things are aimed so as vastly to increase their desire to make use of one or more of these protean functions, is one of the principal jobs that advertising takes on.

Advertising Causation: The Sufficiency Switch and Calvinist Causation

One way to talk about how advertisers define goods and people so as to create very large and interested acquisitive classes is to examine the modes of causation employed and implied in advertising copy. It appears to me that the basic advertising techniques involve manipulating these modes. That this should be the case should not be particularly surprising. After all, the job is lucratively to define the product. To describe what a thing is you must tell what it does, and what a thing does is what it causes. Let us therefore examine advertising causation.

Often it is and stays simple: "Using Ivory Soap with your wash water makes it considerably easier to get dirty things clean." Such a pitch, of an admittedly rare directness, exists, and consists of a straightforward statement of the product's central purpose. It appeals to a very wide class indeed (everybody with dirt) by promising a rather valuable result (especially given the culture), the elimination of that dirt. This kind of pitch involves, in fact, good old hard-science causation, something on the order of (1) if water, then dirt; (2) if water and Ivory, then no dirt [or: (1) if p, then X; (2) if p, q, then $\overline{X}$].

This direct use of scientific causation may, of course, be considerably more complex. Notably, the product (our "q" above) can be portrayed as having more striking effects on the other side of the "then." Thus: "Ivory Soap will clean you and make you smell less rotten" (If p, q, then $\overline{X}_1$, $\overline{X}_2$). Or: "Ivory Soap will clean you and deodorize you and it floats in the tub besides, so you don't have to grope for it when washing"(If p, q, then $\overline{X}_1$, $\overline{X}_2$, Y). The greater the number of nasty-condition eliminations ($\overline{X}$'s) and desirable additions (Y's) you can credibly assert of any particular product, the wider your market. (Not that it's important for present purposes, but for advertising copywriters it is valuable that all $\overline{X}$'s can be stated as Y's, and vice versa, by solely syntactical manipulations: e.g., "stop smelling lousy" equals "start smelling good.") Indeed, the greater the number of $\overline{X}$'s and Y's there actually are, the *justly* greater your market, especially if the price of the item is not thereby materially inflated; for what you have is a better product. Moreover, the more delectable each new $\overline{X}$ and Y, the more you can charge vis-à-vis other q's which would otherwise seem "the same"—that is, your competitors' q's. It is, after all, thoroughly justifiable to charge more for better things.

Obviously, one way to create $\overline{X}$'s and Y's with no manufacturing expense is to lie. Conmen do it all the time. They sell rabbit as stolen mink, or sell a share in a nonexistent trunk of bearer bonds, or acquire funds for the salvation of the heathen and spend them instead on wholly personal pleasures. Similar lies are certainly available to businessmen. They too will prosper if they can sell useless or lesser goods as valuable or better ones. They can say that their inert chemicals help in cleansing, that their cold cream cures Acne, that their automobiles zip when they do not move at all. But businessman and conman both will flourish only until found out. Once the customer/mark discovers that he has been taken, once he learns from others that they have been taken, the pitch is dead. The scarred mark will always, if possible, take his revenge.

And oddly enough, it is easier to take revenge against a businessman than against a more flashy kind of crook. No need to call cops, see prosecutors, hang around courts, give depositions, face cross-examination, or any of that. No need even to sue civilly, for restitution or damages. In any reasonably competitive market (and that is where most advertising is concentrated), if you have been victimized by a lie, if you have found lead switched for the promised gold, you need do nothing actively at all to punish the liar. All you have to do is not deal with him again.

A businessman, you see, is in a far more exposed position with respect to not delivering on his promises than a bunco artist. First and most important, his deals are by and large little ones; rarely is a $200,000 Pay-Off or even a $10,000 Prisoner available to him. If he's crookedly selling soap, it's a quarter-of-a-cent-a-bar con; he's got to sell a lot of soap to make a living that way. Like the manager of a Ponzi he's got to keep the game going, because if he is in a congame, it is one gone very retail. If, through falsely representing his product, he sells as much as one bar to every family in the country, he has still made only $125,000, and his selling expense is more than that. In order to really prosper he has to make people buy second and third bars, and preferably buy his soap continuously into the future. Thus he is in an interesting box; he can increase his sales by promising one thing and delivering another, but if those buyers discover the switch, his game is over. What he needs (in congame parlance) is a way to pull a Gypsy Switch without losing repeat business.

Or, in economic terms, the opportunity cost of foregoing any future sales from one's pool of potential customers usually exceeds the short-run gain to be derived from palpable-lie salesmanship. That is not true, of course, of all selling. With respect to selling big-ticket items (that is, items with large profit margins to make up for relatively infrequent sales), a context in which the seller cannot expect much repeat business from the client anyway, there is a good deal of direct lying. That is the source of the low popular opinion of real-estate brokers, door-to-door Bible salesmen, and used car dealers. They can behave like classic conmen.

But that is not the situation in the case of most goods, especially mass-marketed goods. If huge dollops of a soap would in fact leave all forms of dirt totally unmoved, if in contact with the buyer's armpits the allegedly sweetening bar would end up creating a particularly loathesome odor, if the bar in the tub sinks swiftly to the bottom like a plumb, most of the time not only would the mark know, but when he came to know he would cool out the conman, not the other way around. The lie direct in the commercial world is thus a badly designed con: it forces you, in effect, to try to run a mass-retail bunco game (like the Ponzi, say, or the Ancient Estate), which depends on a continuous play of new and used marks, as if it were a one-shot big-take con like the Prisoner or the Pay-Off. Such a strategy has to be doomed. Or rather, it must be doomed unless the seller can pull off the switch in such a way that the mark never actually becomes aware that he did not get what he was promised—that is, unless one can cool out the mark so well that he never realizes that he has been taken in the first place.

Admittedly, almost all congames, no matter how crude, have to delay the mark's awareness of his victimization for some period after the switch. It would never do if the old lady opened up the ultimate bandana in the gypsy's presence, when there was still time to scream bloody swindle to a passing patrolman. Similarly, the whole complex mechanism that closed our reconstructed Pay-Off —making the loss appear to be the result of the roper's stupidity, the final altercation, the gun shot and the cackle-bladder—is designed for no purpose other than to put time and distance between the mark and the conmen before the fact of the swindle sinks in. But *eventually* the mark has to wake up. Or at least this is true: the likelihood of his eventual return to sanity (bringing with it hatred and despair) is so great that no conman would ever dare approach that particular mark for a repeat play.

The job to be done by the advertiser/seller, then, is a more difficult one. He must not merely delay disillusionment as long as possible. What he would prefer to do, were it possible, would be to deliver something less than promised to the buyer and have him never find out. That, of course, is not always possible. Sometimes it is. There are ways.

One of those ways is to shape many of those promises so that they are fulfillable, if at all, only in an essentially nonverifiable realm. The Western world's central causal fallacy, *post hoc, ergo propter hoc*—the apparently ineradicable belief that temporal precedence is the same as cause—is meet and comely for such a purpose. For example, it is relatively common for sellers to sell products to do things that don't need any doing, and then take credit for those happenings when they seem to come to pass. In effect, the purpose of that kind of advertisement is to create an imaginary sickness which the product is to cure. That way the product can't fail to make one well, because one always was well; the malaise and its cure become simultaneous products of the same ad. Consider that great advertising classic, Lifebuoy's "B.O." (for "body odor"), for instance, or the smelly mouth about which even one's best friend would stay mute. Assume one buys and uses the product and finds oneself socially unshunned. Of course, one was socially all right before that, but how can one know that, prior to using the product, one was not just taken on grace by one's friends, one's stink detected but, as much as possible, ignored. And how can one calculate the opportunity cost; how many new and delightful acquaintances, how many additional lucrative business deals would one have had had one not in the past polluted one's ambience. In these terms, the product cannot fail. If one does smell bad and the product works, then fine, it works. If one smelled just fine from the beginning, then the product didn't in fact "work," but it worked nonetheless; for what was cured was the anxiety that one stank. That anxiety, once created, could be allayed no other way, for the central point of the pitch is that one can never learn one's real odor. Thus one *must* "take something" to deal with this invisible threat, whether it exists or not. (In a similar way, cigarettes do "work." They, too, decrease an anxiety. The problem is that the anxiety they quiet is the one that cigarette smoking causes.)

A considerably more common advertising move is used in a very closely allied situation, one in which the idea is to alert the buyer to a "disease" he does have, but one which is going to "get better" in any event; one just sells him something to bring about that inevitability. As usual, one can see the dynamics of a play more clearly when it has a pathological embodiment as a standard congame. In this case, there is that well-known piece of predation (I call it "The Phantom Bagman") the principal habitat of which is a criminal court. It is neither clever nor elegant, its only interest lying in the purity with which it sets up this kind of no-risk win. The way it works is this: a lawyer indicates to his client, a guilty criminal defendant, that the latter is legally kaput; if things get to court he will be convicted and given some terrifying sentence. But, says the lawyer, he can "reach" the district attorney (or the judge, if things have gone that far) with a suitable bribe. So the defendant comes up with, say, $3,000 and gives it to the second crook, his lawyer, for transmittal to the third crook, the prosecutor or judge. But there are in fact only two crooks, the defendant and his lawyer, for the latter puts the $3,000 in his pocket and awaits events. If, as the result of some normal piece of administrative or judicial discretion (which may even be brought about by the lawyer's clever but lawful exertions), the defendant gets much less than he had every reason to expect (especially with his fears having been inflamed by his lawyer), then the lawyer keeps the money and everyone is happy. If, however, the defendant does get some really awful sentence, and the lawyer fears exposure by his client or even eventual death at his hands, all he need do is say, sighing piteously, "The son of a bitch double-crossed me; here, I'll give you the three grand back out of my own pocket." And the loveliest variation comes when the defendant gets somewhat less of a sentence than he expected, but not as little as was promised. In that case the lawyer can say, "His boss got suspicious and he had to pull in his horns. But he's a good guy; he gave some of the money back. Here."

The beauty of this play is that it allows the conman/bagman/lawyer to take credit for all of the happy accidents of fate without being responsible for the more gouging of fickle fingers. The logical mechanism is simple: (1) create the expectation of a nasty (happy) future; (2) get paid to avert (produce) that future; (3) take credit for any random aversions from (achievements of) that future; (4) shift blame for any fulfillment (avoidance) of that future. Indeed, the whole play is nothing more than a dramatization of the old cynical-folk-wisdom piece, "The Thief and the Vizier," in which a vizier, hearing conclusive evidence, sentences a thief to instant death. The thief says, "Oh Vizier, spare me but one year and I will teach your horse to fly." The Vizier accedes: "Teach my horse to fly? OK, you've got a deal." When the Vizier leaves, one of the courtiers goes over to the thief. "Idiot," he says. "You can't teach his horse to fly." "Look," says the thief, "in a year either I may die, or he may die, or the horse may learn how to fly by itself."

In any event, many widely sold products treat "conditions" that will cure themselves. If they cure themselves after the product has been spread on, rubbed in, ingested—whatever—it will look as if the product caused the change and not merely preceded it. Mild acne *will* go away. The pain of sunburn *will* fade. If one agitates clothes in water with plain old soap they will clean themselves pretty well, unmindful of, but undeterred by, additional expensive additives. The same is true of cars and oil: the car will continue to run pretty well even if you do no more than keep some oil in the crankcase; whatever else you put in (MGB SUPER OIL ADDITIVE) is most likely irrelevant as far as the engine is concerned, but it will, after all, still run pretty well. It's a very old move. (It is said that Galen used to prescribe for early Attic tuberculosis several charms and incantations and a number of peculiar draughts, all of which would work, however, only if the patient did his chanting and drinking for a year while living cleanly and quietly in the mountains.)

That is not to say that no products work, or that none are successfully sold because they most palpably *do* work. Things work grossly (you do need oil for the crankcase) and they work more subtly (almost all headaches will go away; aspirin makes many of them abate more quickly). But what that means is that even if the "disease" is the sort that would eventually cure itself, the consumer will frequently be able to tell when the product, for him at least, fails to work. After all, three years to a blemish-free complexion is not the promise of most anti-acne preparations. For a seller/advertiser, then, it would be preferable to sell goods which might be perceived to "work" on conditions that are never going to get better. And that brings us to a central pillar of the modern advertising edifice, what I shall call "The Sufficiency Switch."

Consider, for example, the storyboard of the relatively recent, almost ironically crude, ad campaign sponsored by the Dairy Institute to increase the consumption of milk. The scene opens with a cartoon figure, one Harriet, skinny and frumpy, shoulders bent and wizened belly distended. She is shown in some dramatic situation fraught with desire and impending defeat—on a beach, say, sloughing past a lifeguard caricatured as lifeguard desirable. He ostentatiously ignores her, and her voice-over—"Ooo, isn't he handsome; but he'll never notice me"—is nasally but effectively plaintive. At this point (I am not making this up), a voice from on high—a voice like that of a network-news anchorman ascended to heaven in a flaming chariot—says (more or less): "Harriet. You needn't always be like that. Your body is making billions of new cells every minute. There can be a NEW YOU." A glass of milk (roughly sixteen stories high) comes down from heaven; there is some more deific talk about milk, protein and new cells; the glass shrinks to fit her hand; a chorus (the same one which accompanies Marguerite, *sauvé*, into Paradise) sings "There's a new you coming every day, every day"; and she drinks. And she changes, hand painted frame by frame, from frumpy Harriet to animated (in both senses) goddess. All is joyous, the chorus swells, and she marches off with the lifeguard toward what one assumes will be a somewhat coy but basically gentle and satisfactory deflowering.

Now this form of advertisement is as parodic of its general form, and in the same way, as the Spanish Prisoner is parodic of the Squaresville Pitch. There is a present state, a future state, and a causative bridge between them, viz., the product being sold. The gross logical form is: (1) X (the present state of Harriet); (2) if p (milk), then $\overline{X}$ (the future state of Harriet), with p being the necessary and sufficient cause of that change. The embedded scientific causation statement, spelled out, would be: assuming that all conditions necessary to $\overline{X}$ other than p are met, then if and only if p, then $\overline{X}$. In other words, under the right conditions (all other contributory conditions being met), this product-embodied "cause" (precondition) will "work." And indeed, if Harriet, but for the fact that she is suffering from some medically obscure calcium and protein deficiency which saps her of energy and grace, would be a sexual paragon, then milk is necessary. If one were basically lovable but had loathsome breath, toothpaste or mouthwash or Sen Sen or something *would* be required for social success. If all that stood between an adolescent and dates were "blemishes," then blemishes would indeed have to go, covered by makeup, cleared off by Clearface, rubbed off by "Teen Paper." If, that is, the buyer's state is a misery which, but for X and only X, would be bliss, then he is sensible to buy, at almost any price, any available anti-X, that is, in this case, p.

With respect to any particular customer, however, there are several alternative states of affairs which are more likely to represent reality. The most obvious is that our product p, whatever it is, is totally irrelevant to the prospective purchaser's predicament. Harriet's protein and calcium complement may be totally sufficient, her sexual loneliness a product of essential ugliness of body and spirit. One's breath may be as myrrh and frankincense, invitations to parties lacking in response to one's unconquerable tendency to generate boredom. Our adolescent may lack not a clear skin, but an available automobile. In acquiring the product, therefore, the buyer will effect no change in his state, for he will, as we discussed above, have but cured a disease he never had.

Or (as I also mentioned above) it is also possible that the problem exists but the product is not only not sufficient but not even necessary to its solution. That is, it may not "work." Not so long ago, for example, the Federal Trade Commission, in an outburst of pretty justified administrative rage, forced a hair-restorer firm to stop advertising its product's effectiveness against "the second most common cause of baldness." It turns out that the first most common cause, accounting for over 98% of the nation's baldness, is a hereditary factor not curable short of ancestral castration. Nor need the unlikelihood of actual need be as statistically precise and extreme as that, to cause considerable queasiness about the honesty of an advertised claim. Assuming poor nutrition is the cause of some unattractiveness, what percentage of the Harriets of the world are so afflicted? How many people have bad breath so ineradicable that normal precautions must be supplemented by gargling with nitric acid?

There is, however, still another existential possibility, perhaps the most likely of the lot: namely that the customer *has* the failing, and the product *will* cure it, but after the cure his state will still not appreciably change. Assume, for example, that Harriet has a protein deficiency *and* independently grounded essential ugliness, that an aspiring social butterfly has bad breath *and* bad character, that our adolescent has bad skin *and* no car. Curing what is curable with the product will leave all three still social outcasts. To put it formally, if a particular state of being is the result of two or more causes, each of which is independently sufficient, eliminating one will have no perceptible effect; that is, not all necessary cures are sufficient cures. And, as it happens, in the realm of relatively amorphous social relations wherein most advertising causation functions, sufficient causes are as rare as eternal bliss.

Nonetheless, it seems to me that a vast number of advertisements successfully function by casting the buyer as one who needs the product and only the product to cure the only existing defect in his relationship with the social world. Take almost any deodorant, toothpaste, or mouthwash ad. Let us assume that not stinking is a necessary precondition of successful sexual activity. That may well be true; even the Earl of Rochester, hardly known for his nicety in such matters, indicated as much in one of the nastiest poems in the English language. But advertisements for all the above stink suppressors argue, by word and picture, that removing the reek is sufficient to win in love. The normal format is

(1) boy meets girl; (2) boy stinks (and girl smells—to use Dr. Johnson's distinction); (3) boy loses girl; (4) boy loses stink; (5) boy gets girl. The trouble is that there's a lot more to getting loved than not stinking, just as there's a lot more to being popular than having clear skin. The point is this: the product will produce the fantasy transformation promised if and only if it and only it stands between the before and the after.

But that does not mean it will not produce any transformation at all. Assuming there is a modicum of honesty in the claims made for the product, it *will* remove one hindrance to the achievement of the pictured apotheosis; a necessary precondition does not cease to be one just because it is not, after all, a sufficient one. And that, I think, accounts for much of the power of this kind of advertising. In a way it is grounded in truth. It frequently points to a move in the right direction, even though not to the only (or the most important) right move. It is the aim of the Sufficiency Switch to portray a thing of some real, though marginal, value as the probable source of joy forever.

As such, one can see the Sufficiency Switch as just another instance of the possibility which one has seen so splendidly exploited in classic congames, that of using a bare mechanism—mere feasibility—to supply both actuality and magnitude. As you recall, for example, in the Referral Sale swindle, the "good will" bought by the swindler does have value; it just doesn't have as much value as would justify the hugely inflated "trade" proposed. In the Pay-Off, to take another case, it is of some value to the insideman to have the mark and the roper run down to the Big Store to place a bet for him—but not *that* much. And the Ponzi operator can use investment capital; the real question is whether it is worth 400% interest. In each case, since there is a function which has some value, it is difficult for the mark to raise the next question: how much? Similarly, whiter teeth, better breath, clearer skin—they all have some value, too. Moreover, the mechanisms proposed for achieving them—toothpaste, mouthwash, facial cream—are real and effective. It is apparently hard for most people to see the shoal; they are effective, yes, but usually not more than trivially so in attaining the glorious consummation promised.

Thus it is that the manipulations of supposedly "scientific" cause—that is, all the variations on the Sufficiency Switch—are central to modern advertising. These variations are methods of promising all kinds of lovely fringe "cures" and "extras" to go along with the basic purpose of the product in such a way that any failure of the product to deliver as promised will be hard to perceive, let alone to appreciate. To the extent, however, that the Sufficiency-Switch kind of causation pitch does get perceived as imparting a promise, it not only can, but in the vast majority of cases must, fail to deliver on it. When that failure is perceived, it is the product and the producer who will be blamed for it. We shall shortly see why that is not nearly as fatal to the success of these pitches as it might seem. But before getting to that, let me introduce another mode of advertising "causation" (actually, I consider it to be the other mode), which does not depend on promises at all, let alone promises of extraordinary sufficiency from bare necessity.

This other kind of "causation," because it makes no promises (and thus cannot fail to carry them out) is, I think, even more pervasive and important than the Sufficiency Switch. It can be found in advertisements for almost any product, and it dominates the advertising for products like cigarettes, cigars, liquor, and automobiles. In form and format it is simple and direct: the product is merely associated with attractive people in attractive situations.

Take, not quite at random, a typical beer ad. A group of smiling athletic men is shown engaged, euphorically, in some demanding joint athletic event—skin diving, say, or yawl sailing. The event ends in a glorious dusk, as all hands repair to some charming boite appointed with lovely girls and, ostentatiously showing labels, they work off the thirst of the day. Now, contrary to what most people think, the message of this ad is not that drinking Schrecklichkeit Beer will turn you into a beautiful person. After all, everyone knows that beer drinking, carried far enough, will turn you at best into the perfect member of a bobsled team. The message is rather this, that drinking the beer will identify you (to others, yes, but more important, to yourself) as already one of that set of beautiful people. *The polarity of causation is reversed: drinking the beer doesn't make you lovely; being lovely makes you drink the beer.*

The grand original draftsman of this kind of pitch, the brilliant, innovative author of this breakthrough in the logic of causation, was John Calvin (and we shall refer to the mechanism as "Calvinist Causation"). The beauty of such a causation hypothesis in any ad (or in any religion, for that matter) is that nothing is promised, for the product's only function is emblematic; it merely confirms a state of being long ago and irrevocably decided. If you fail to be saved after a life of virtue, it proves nothing about the virtuous life because that was never proposed as a producer of salvation. If you fail to be beautiful after drinking the beer it proves nothing about the beer, because no one ever said that drinking beer made you beautiful. All failure proves, in either context, is that even sinners can pretend to virtues which are not rightly theirs. An ugly person who uses the product remains ugly despite his attempts to use the goods of the beautiful, and one of the damned only counterfeits himself virtuous by arrogating the symbols of virtue. Indeed, it is the Devil's and the phoney's chief trick to try to do just that.

The logical form of a Calvinist Causation ad, then, is that all beautiful people drink Schrecklichkeit Beer, not that all who drink it are beautiful. That (at least logically) implies this: if you drink the beer you are not securely lovely, but if you don't drink it, you haven't got a chance. (If you are saved you will be virtuous, but being virtuous is not proof of salvation.) Thus there is no cure for the anxiety of non-election. You can never be sure. You must always remain guilty.

Whatever the theological implications of such a state of affairs, its salesmanship effects are dramatically positive. For it introduces into the selling and advertising context the no-risk-promise element exemplified by the Phantom Bagman. Since purchase and use of the product are not presented as "scientifically" causative at all, but merely exemplary of something which has already happened, if at all, well before the transaction takes place, the seller cannot be blamed if the product "fails." One cannot, after all, blame a thermometer if it's too cold outside. All one can do is credit it if it accurately reflects the actual temperature, over which it neither has nor claims any control. Its function is the function of any symbol—effectively to communicate reality—and it is to be valued not for that reality, but for the power with which it communicates its message.

In effect, then, in the Calvinist there inheres an important source of synergy. If the product is not so much a reification of function as the channel for a message, it gains additional value insofar as it attracts the attention of additional audiences. Now the consumer is, of course, one of the audiences for any Calvinist pitch. It is he who seeks to allay his own anxiety about election, mundane or spiritual. But he is not the only audience. If others also believe that practicing thrift and virtue, or drinking Schrecklichkeit, are evidence of election or beauty, then saving or drinking may be worth their cost even if you yourself are not, initially or eventually, convinced. That is, a Cadillac or a Lincoln may be worth its price even if it doesn't transform you into a "success," if it successfully conveys to others that you are one. This kind of advertising, then (and this is a lovely point), is still another instance of the added power of any con or selling play that involves licensing the mark to use the script. When one sells a consumer a Cadillac or a Lincoln or a large Mercedes one is selling not only a car, but a self-advertising campaign script, complete with principal prop. The seller's message, then, is in part "Buy this symbol with which you can advertise, powerfully and convincingly, that you are what you, and those about whose opinions you care, devoutly wish to be."

Moreover, while it is too obvious to dwell upon, it should be at least mentioned that there is nothing in the logic of the various causal modes which prevents their combination. Indeed, it is usual to combine them. For example, the simple assertion that "Seventy-Five Percent of All Readers of the *Broad Street Bugle* Earn in Excess of Thirty Thousand Dollars Per Year" may combine the following messages: (1) if you want to make money in the market it's nice to have some information about business ("straight" causation); (2) what stands between you and wealth is ignorance of the day-to-day gyrations of the Street (a Sufficiency Switch); and (3) all successful people are to be found reading the *Bugle* (a Calvinist). These messages are not dissonant, though each of them has its own prime audience, which is only peripherally affected by the other two. But it seems to be the case that each has some effect on everyone.

Little Lies and Small Margins

Even if I am right about the denotations, implications, and connotations of these advertising strategies, it might still seem unlikely that they could be all that successful, justifying advertising expenditures of several billions of dollars a year beyond that which would seem to be sufficient to convey to the market, and the customers in it, information about the existence, availability, function, and price of products. I think, however, that the strategies are exceedingly successful, and one can understand why, or at least how, once one correctly appreciates their aim.

Mass-market advertising is obviously in the form of a swindle-at-retail, like the Ponzi or Ancient Estate, rather than a secrecy-based bunco game like the Prisoner. It depends for its success on aggregating a very large number of small takes, rather than prying loose one big one. Therefore, what one seeks to acquire through the unfulfilled promises implicit in advertising manipulations like the Sufficiency Switch and Calvinist Cause is a tiny marginal advantage over one's competitors with respect to the buying patterns of consumers. If you can convince a large number of people that your q can bring about an extra $\overline{X}$ or an additional Y that their q doesn't offer, and yours costs no more, then you ought to attract a vastly increased volume of sales. Or if you can convince the market of the delight inherent in your extra Y's, then you can make your q marginally more expensive than your competitors' q's without thereby decreasing your share of the market. Since there tend, by and large, to be few real differences between competing products, especially in markets in which the most advertising money is spent, a credible extra $\overline{X}$ or Y will attract a substantial amount of extra profit.

For the obverse of the coin is this: as with any public and retail bunco game, no single mark is being asked to part with very much. If, at the same price, he buys your goods rather than your competitor's, his total loss is not even out-of-pocket and palpable; all he loses is the opportunity cost of not having gotten the other guy's slightly better q for the same expenditure. And even if he pays more for your product to acquire a promised $\overline{X}$ or Y that isn't there, he usually pays very little more: a few pennies per bar of soap to escape B.O., a nickle a tube more to keep his best friend from having something not to tell him, a dime a bottle to identify himself to himself and others as a Schrecklichkeit Man.

Indeed, even if it is quite clear that a large percentage of modern mass-media advertisements imply a promise of spectacular bliss, and that such promises are seldom if ever fulfilled, it is not totally clear that, in terms of the customer/mark's own perceptions, he is getting anything less than full value. A lottery is not a swindle if, for a dollar ticket, it pays off nothing to 99,999 wagerers, so long as one gets the promised $100,000. It may be that the public perceives these cunningly contrived advertising messages as offering nothing more than a chance of a big pay-off. Even adolescents may strongly suspect that acne is not the only thing between them and social or sexual bliss, but the pennies a week involved in buying Clearaface may still seem to them a worthwhile investment. Schrecklichkeit may cost a bit more, but it doesn't, after all, taste egregiously worse than other beers, and who knows?

In fact, it seems to me that the Harriets of the world frequently perceive pretty clearly that it is bloody unlikely that all that stands between them and a life of lifeguards is the substitution of milk for soda pop. That accounts, I think, for the tone of the actual Harriet milk ad, a tone so extreme as to amount to a genre shift, from hortatory exposition to parody. Insofar as that particular ad (and the many like it) can be seen to promise so dramatic a change in the life status of the consumer, it is, I believe, not meant to be taken seriously. Just as Happy Harry and Sunshine Sam, the Mad Russian and the Addled Armenian, were intended not to be seen but to be seen through, so here the frump-to-goddess progression is meant to be discounted as a realistic promise. Not disbelieved; discounted. Behind Sunshine Sam one is to see a slightly friendlier maximizing businessman whose pose is so transparent as to engender trust. Behind Harriet's magical mutation at the touch of the milk-fairy's wand one is to see some strong likelihood of improved health and muscle tone—and a wild, unlikely chance at sexual nirvana.

If I am right that most people perceive most mass-media advertisements as promising not epic social and personal pay-offs, but lottery tickets giving but a long-odds shot at such bliss, then given the small marginal extra cost paid by consumers for those chances, it is possible that there is nothing amiss: tied to the product is nothing more nefarious than an honest gamble. I think, however, that that is not the case. Even conceding that the ads are usually interpreted as proposing a wager rather than a certainty, because there are subtle factors which increase the real over the apparent price and decrease the likelihood of success below the surface likelihood, I think that what is proposed is a dishonest lottery—one, like the Pyramid Sale, in which there is a careful, knowing, systematic misstatement of the odds on getting what you want.

What is overlooked in calculating the cost to the consumer of buying the product and its attendant message (whether of the Sufficiency Switch or Calvinist Cause variety) is the opportunity cost of the buy—the cost of the foregone alternative uses of money, energy, and commitment. Recall the way the modern Pyramid swindle works. In any really elegant Pyramid operation, the major cost to the mark is opportunity cost. In Bee Bee Wigs, for example, all the marks lost was the differential marginal utility of their labor when applied to a more lucrative job. In the kind of advertising that I have been discussing, there is also, of course, opportunity cost. There is not, however, only an obvious kind; there is a kind much more pervasive, and personally and culturally much more costly.

The obvious kind is easy to talk about. One got a more expensive something rather than a less expensive, essentially identical, something else. Even here, it bears repeating that there are psychological mechanisms at work which multiply this obvious cost. In modern product advertising, as in the Ponzi, the Ancient Estate, the Godcons, the Referral, and the Pyramid Sale, there is a reliance upon the momentum generated by the sunk-cost cognitive-dissonance syndrome. Only here, operating with respect to less exotic "goods" than the estate of Sir Francis Drake or arbitrage in International Postal Reply Coupons, it is known under its own special name—"brand loyalty." It is with respect to goods, after all, that the cognitive-dissonance theory enjoyed most of its early development. Since, once having been lured into a product (a process much like being lured into a store by bait for a switch), people will suppress not only a feeling of product disappointment but the very data which give rise to such a feeling, there will be a strong tendency to continue to "enter," to buy the same brand over and over in order to validate the correctness of the initial decision.

But there seems to me to be still another cost to consumers who accept the causation hypotheses of much modern advertising. It is at least arguable that the continual, almost continuous, propagation of messages the point of which is that a given product will bring about some complex and lasting life joy, or cancel some central despair, has what one might call a cognitive opportunity cost. It may eventually block, for many people, the very perception of alternative possibilities, such as that many kinds of salvation don't come from outside, or if they do, don't come from things, or if they do come from things, don't come from marketable or marketed things. The antidote to loneliness may be a change in oneself, not in one's toothpaste. The things outside whence joy comes may be other people, especially if one does not regard or treat them the same way one treats products. And if there are things outside of one that will make one happy, they may be public goods, like "nature," and not vendable things like trailers and minibikes in or on which to explore nature. But since those non-things are nonvendable, they will not, or at least not to the same extent, be the subject of mass-media advertising; there is no reason to invest in messages touting the salvation potential of free or at least nonsalable sources of joy. Thus there may be in this country (and increasingly in the world) a systematic misattribution of power among the various alternative modes of cause and vocabularies of effect. It may begin to appear to many people that happiness comes, and comes only, from things you can buy.

Or it may be that the most significant hidden cost of much modern advertising is its potential for a subtle and pervasive shift in our society's perception of itself, and hence in its members' behavior. The designers of much of modern advertising have perhaps learned, to some substantial extent, how to get something of the same salesmanship effect by modifying people to fit goods, rather than the other way around. By "casting" the goods as having a certain causative relationship to highly desirable self-identities of people, to the extent that people accept the alleged causation they themselves are altercast as people who are indeed causally manipulated by goods in just such a way. They are caused to see themselves and present themselves as either (1) lovely, if they only had a given product, or goods in general (the Sufficiency Switch); or (2) attesting to their loveliness by the use of a particular product, or of goods in general (Calvinist Cause). And this has, as always, a third important effect: all those who are not so altercast are, in the eyes of the players, outcast into another role, that of audience at best and failed actors at worst. Assuming that there is a systematic disequilibrium in favor of the message that joy lies in goods (because there is no way to sell joy unless it is tied to something salable, like goods), it is not beyond belief that the whole culture has been and is being swindled with what is in effect a rigged lottery.

Even here, however, one has to be cautious. For one thing, anyone who says happiness doesn't at all come from things is a fool. Perhaps possessions are not a sufficient ground of "the good life," but some of them are certainly a necessary ground. Penicillin is a material thing, and an earache without it is hideous enough to foreclose any more spiritual fulfillments. The same is true of food every day, warm clothing in winter, and a television set (yes, a television set) if you're a lousy reader, a bored whittler, and a North Dakota farmer. Moreover, even a mountaintop, a deer at dusk, or the deep green sea are material possessions in the sense that you need very costly leisure to enjoy them, and must forego other products to preserve them. Materialism is not a product of modem American advertising; hard-pressed peasants discovered it millennia ago and still make up some of its most ardent supporters.

Nor, in fact, is product definition which depends upon modifying the buyer rather than the bought necessarily deplorable. All communication is designed to modify the listener. Preachers exhort to virtue, teachers to intellectual diligence, and storekeepers to goods-consumption hedonism. All culture, in fact, pushes acculturation. Indeed, that's not what culture does; that's what it is. Whatever the nature–nurture index of any human characteristic, the nurture always seeks to modify the nature; children do eventually leam continence in company, and do so only in response to a strikingly thorough and persistent advertising campaign carried on at a substantial investment in time by almost everyone around them. What one can complain about (and what everyone does) is the direction of change sought to be worked in people. But that's a different story altogether. For present purposes the point is simply this: everyone is trying to change everyone else. Thus, whatever one wants to say about the particular changes being attempted, it is absurd to criticize the process itself. That's life—in a particularly literal way.

Maybe the thing to do is to distinguish materialism from what one might call symbolic materialism. The latter is the tendency to communicate a status of joy to others and to oneself without taking joy in anything but the communication. It is as if one were publicly to wolf down pounds of beluga caviar though one was indifferent to or even hated the taste, solely for the sake of communicating a message of wealth. If one does thoroughly and exclusively internalize the mechanisms of the Sufficiency Switch and Calvinist Causation, one rejects a universe (which I think corresponds to ours) in which pleasures often come from things in favor of one in which pleasure never comes from anything else. Or worse, one may reject reality in favor of a world in which the sensuous content of things—whether products or not—is totally overwhelmed by the role of objects as sources of reified messages in and to the world. That is, even if there is real pleasure in merely giving witness to a state of being; even if some pleasures consist precisely in successfully communicating something that is not, in fact, true; even if unmerited envy and respect are, at least to some people (I suspect to all), moderately sweet; even if some states of affairs become true once successfully mimed (the girl who thinks toothpaste has ended all her social failings may behave as if it has, and having a Cadillac has a confidence enhancing effect on some personalities wholly unconnected with automotive performance or other people's thoughts); even if, to sum up, people who do not become what they seem may still change, for the better, from what they were, *that cannot be all there is*. Can it?

Part IV

COOLING OUT

Chapter 8

ON BEING OF TWO MINDS

WHAT I HAVE SOUGHT to do in all of the foregoing is to bring about, in the service of legal thought and practice, a marriage between the approaches and vocabularies of two different disciplines, economics and sociology. Economics, specifically the microeconomics operative in my analysis of swindling and selling, has always seemed to me extremely valuable for the way in which it provides a structure into which certain human activities can be placed and in terms of which they can be understood. It has seemed particularly useful in evaluating "snapshots" of the world, temporary or hypothetical equilibrium states. This form of economics, however, has seemed to me less useful when it came to thinking about the dynamics of the transactions that might result in those equilibria. That hardly means that there are no dynamic economic models, but only that when one wanted to consider what it was that particular people did in order to get to where they got, one found some of the rather shadowy terminology of economics ("they attempt to maximize their utility") considerably less helpful as a guide to the perplexed.

Sociological literature (in which I include some social psychology) has seemed to me to reverse things. It uses and describes rather cumbersome structural matrices, but, at least in some of the sociological literature, it presents useful and convincing "moving pictures" of the dynamics of important transactions. That is, some sociological scholars appeared better able to sketch the dynamics of those processes of human choice, the state of which at any particular moment the economists seemed better at describing.

Now the problem of describing what is happening and what has happened at the same time is one well known to all scholars in all disciplines, and doing only one of two useful things is not without value. It is, after all, frequently of the utmost importance to have good snapshots, even if in order to avoid blurred images one must scant the attention given to the movement between them. Similarly, it is immensely valuable to be shown a moving picture of a process, even if, in order to get it, one must give up high resolution in any single frame of the film. But for still other purposes, it would be useful to be able to talk about a "there" and a "getting there" more or less simultaneously, even if one lost thereby both some motion and some sharpness.

For a lawyer—that is, for me—such a combined approach has a particular attraction. For what lawyers do much of the time is try to consider alternative future social snapshots and then attempt to encourage or prevent their actualization by facilitating or retarding particular human acts. Thus both structure and process are of interest to lawyers in a pressingly practical way: our activities are informed by the former, but a good part of our time is necessarily directed toward the latter, and very frequently on a highly individualized basis, too.

More specifically, the economic analysis of phenomena of interest to lawyers has often, for all its usefulness, lost the power to interest us very much because, in order to present a clean picture of a state of the world, the economist has found it necessary to ignore the microreality of transactions. When, for example, an economist puts forth a proposition in the form "if A transacts with B, then, *in the absence of transaction costs*, X will result no matter what the state of the applicable legal rules," that has been often superbly helpful. But in time it becomes exceedingly frustrating. For the "transaction costs" excised out of the formulation, including as they do the actual parties' knowledge and freedom, has removed from the lawyers' ken much in the way of useful information on what to do about actual people at actual (and unavoidable) levels of ignorance and bondage. For it does not necessarily follow that if X would result in the absence of defective information and defective freedom, it or anything like it would result in the presence of those market imperfections. It does not even necessarily follow that $\overline{X}$ would result if the strong assumption of zero transaction cost were relaxed. Thus, for lawyers, it is the actual behavior of actual people in actual transactions that is of particular interest.

Our position in other words is like that of engineers who are about to build a bridge. We know that in the absence of wind, friction, and rust a structure will have a certain tolerance for stress. That is a very useful thing to know. But we also know that where we live and work there is no absence of wind, friction, or rust. Thus it is essential for us to know about those imperfections. It may turn out that imperfections have their own rules, such that over time we can discover them and thereafter dispense with a hovering consideration of every breeze and rub. But we still have to discover most of those rules, and in order to do so, or in default of having done so, we must continue to pay attention to those actual phenomena taking place in the world that our bridge is in fact inhabiting. The microdata of actual existence is important to engineers, as it is to lawyers.

Thus I have tried, in the foregoing chapters, to examine, with attention to the actuality of transactions between human beings, the ways in which people are stripped, strip themselves, and strip others of the knowledge and freedom that would bring them to an end state predictable under particular economic models. To approach that sociological job, I chose to use some of the vocabulary and theory of that subgenre of sociology most closely associated with the work of Erving Goffman. That is, I sought to illustrate transactions between persons as if they involved the creation and use of "roles," as that word is understood in dramatic contexts. I would not pretend for a moment, nor I suppose would Goffman and those in his "school," that that "role theory" vocabulary is in any way *uniquely* illuminating. It just seemed to me, even when used in an unsubtle and nonthorough way, to facilitate making and illustrating certain propositions about my subject matter.

In any event, in combining these economic and sociological viewpoints I found that certain puzzling things became clearer to me. For instance, it is a truism in the law that it is, as a practical matter, very hard to control fraud. Various loose explanations of that have been put forward, involving problems of proof, especially proving knowledge and intent; the small scale of ordinary fraud, which makes recompense too expensive to pursue through the usual legal institutions; and the lack of genuine moral disapprobation of nonviolent peculations. But it now seems that one could say something more, or at least say those same things more powerfully.

For example, one reason many swindles may be hard to control is that they work by getting a victim to recast himself as the partner of some other party who is—though it is obvious only to an outsider—plundering him. That is, all swindles are at least for some period of time consensual crimes. The victims are not forced (as they are in, say, armed robbery), but rather put into a cooperative relationship with the other. Thus, until late in the play they are not natural allies of the regulators, but are made to see themselves as in league *against* the protective agents of the state. But as everyone knows, it is almost impossible to control a pattern of behavior unless a participant objects to it. As a matter of meta-administrative law, the legal energy that must go into interdicting things like marijuana sale and prostitution is inconceivably high because the law's natural allies—the "victims"—are on the "wrong" side. Even in total institutions like prisons mere coercion is almost hopeless as a method of procuring human compliance; unless there is a core of voluntary cooperation the mechanisms of coercive control can stop little short of death. Thus, during the play the victim sees himself as anything but a victim. But when, after the drama run by the conman has run its course, and the mark "breaks the frame" and brings himself to see and acknowledge his victimization, even if his shame would not keep him from helping the state, it is frequently too late. During the most effective period for successful regulation of an activity—while it was going on—the victim was a happy member of the cast.

In addition, it is hard successfully to control through law an activity that closely resembles another activity which is not only thoroughly licit, but favored in the society. Bunco and business are not the same thing, but they do, necessarily, have many things in common. It is not only "swindlers" who seek to have other people redefine themselves, to change their roles. That, I have argued, is one of the fundamental thrusts of *all* salesmanship—it is not only by characterizing goods that goods are sold, but by bringing about the customer's recharacterization of himself. *Every* selling situation, "lawful" or not, involves the creation of a drama and of roles in that drama designed to move toward the same denouement, a completed sale. But the process of "altercasting" itself is not widely seen as improper in our society; it is wrong only to persuade others into certain roles. And that is true even though, as we have seen, the playwriting, casting, and altercasting process also involves outcasting other people, sometimes very large groups of other people. How, then, do you go after only the improper forms of an accepted process?

The problem is that for purposes of social and legal control, swindling and selling are frequently not sharply differentiated from each other in either structure or process. For purposes of both definition and treatment, the objective criteria fail at critical junctures. The legal response to ambiguity in this area of its concern has therefore tended, as it has in so many other areas where objective states of the world are morally equivocal, to make subjective mental states legally determinative. Bringing about the death of another becomes first-degree murder (rather than something not criminal at all, or something less culpable like manslaughter) if and only if the accused can be shown to have had at the time of his act a certain mental state, a certain level of knowledge and deliberate intent. A collision of two automobiles may turn out at law to be an uncompensatable vicissitude of life, or the tort of negligence, or the nastier tort of willful and wanton misconduct, or a still nastier tort of intentional infliction of bodily harm, all depending on the mind states of the participants. Similarly, the casting, altercasting, and outcasting of swindling and selling is made a right or a wrong depending on what the scriptwriter and actors knew, intended, and believed. Thus the strong similarities among the objective structures and processes of all forms of selling, normal and crooked, have driven the law to a particularly difficult technique of response. It has been thought necessary to make the use of state coercive power dependent upon some finding as to the minds of individual men—which, as a medieval English judge once suggested, by and large the devil himself knoweth not.

I have set out the preceding discussion of the law's problems with controlling fraud merely as an example of the kind of explanation of a particular slice of life that a simultaneous consideration of microeconomic structure and microtransactional process might generate. I suspect that there are a great many other issues and problems, both legal and having nothing to do with law, which might thus be profitably reconsidered. The emotional simultaneity of cooperation and conflict in any trading transaction, for example, helps to illuminate for me other puzzling things about behavior in competitive markets. The way in which casting and altercasting necessarily generates social and economic outcasting might, I think, have substantial explanatory power in areas as disparate as racial discrimination, modern advertising, and educational "tracking." Even the idea that one way to present a contingent and complex state of the world as the real state is to present the listener with a parody of some paradigmatic perfection state for him to see *through*, seems to me to clarify a few things about literary technique.

But I do not propose here to pursue these or many other conceivable discussions. I suggest them only to suggest this: that marrying the insights of those who consider the overall structure of transactions generally with the perceptions of those who focus attention on the dynamics of particular transactions may increase the amount of truth available to the world at large—which world exists, after all, in the midst of the individual and the mass all at once.

BIBLIOGRAPHIC NOTE

FOR INFORMATION on swindles and swindlers I relied on various sources. There is a reasonably large literature of popular books on swindles, but they tend to tell the same stories and are very light on analysis. I found particularly useful, however, David Maurer's fascinating book on congames, *The Big Con* (Indianapolis, Indiana: The Bobbs-Merrill Company, 1940), especially since it contains quite a complete glossary of conman cant and argot. Also valuable were "Yellow Kid" Weil: *An Autobiography of America's Master Swindler* ("as told to" W. Brannon) (Chicago: Ziff-Davis Publishing Co., 1948); K. Baarslag, *Robbery By Mail* (New York: Farrar & Rinehart, 1938); R. Hancock, *The Compleat Swindler* (New York: The Macmillan Company, 1968); "Iceberg Slim," *Trick Baby* (Los Angeles: Holloway House Publishing Co., 1969); C. Klockars, *The Professional Fence* (New York: The Free Press, 1974); S. McKelway, *True Tales From the Annals of Crime and Rascality* (New York: Random House, 1951); H. Mehling, *The Scandalous Scamps* (New York: Henry Holt and Company, 1959); and J. Norfleet, *Norfleet* (Fort Worth, Tex.: White Publishing Co., 1924).

An insight into the age of some common congames can be gotten from an anonymous eighteenth-century book, *Memoirs of a Social Monster* (London: G. Kearsley, 1786), and some idea of their geographic dispersion from Daly, *Swindles of India*, 4 Police J. [London] 250 (1931).

In addition, as I noted in my acknowledgments, I was helped to tell the story of the man I call "Marvin Sonnenlieb" by Myra J. Green, who examined and reported to me on the voluminous records of his trials; while Klari Neuwelt, who examined and summarized for me contemporary newspaper reports of Charles Ponzi's famous 1920 Boston swindle, made that tale easier to tell. My description of the "Bee Bee Wigs" version of the Pyramid is based on my own involvement, as a consultant to the Federal Trade Commission, in that agency's successful effort to restrain a similar operation.

With respect to all of the material on conmen and congames, however, a caveat is necessary: most of the material necessarily comes directly or indirectly from the conmen themselves—that is, from people who tell lies for a living.

As for the "ordinary selling" vignettes, I have for the most part relied on personal observation, buttressed by "floor manuals" distributed to their salesmen by various retail merchandisers. These found their way into my hands when various students of mine discovered my rather recherché taste for this kind of literature. At least one published piece repays reading, however; Conant, *The Borax House*, 17 American Mercury 169 (1929).

The economics involved in the book is so primitive as to render citation silly. It can be found in any elementary college economics textbook. A particularly clear and concise summary of the "bilateral monopoly" concept so important to my discussion of the Prisoner may be found on pages 207–08 in G. Stigler, *The Theory of Price* (New York: The Macmillan Company, 3d ed., 1966).

As for the sociology, I was started off by reading Erving Goffman's *The Presentation of Self in Everyday Life* (Garden City, N.Y.: Doubleday Anchor, 1959) and have profited by almost everything he has since written. A large part of the relevant literature by others is cited in Goffman's most recent publication, *Frame Analysis* (New York: Harper & Row, 1974). I would add only, as particularly illuminating for me, two pieces by Weinstein and Deutschberger developing the idea of "altercasting": *Some Dimensions of Altercasting*, 26 Sociometry 454 (1963), and *Tasks, Bargains, and Identities in Social Interaction*, 42 Social Forces 451 (1964).

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