The indictment of Kenneth Lay

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Former Enron CEO and Chairman Kenneth Lay pleaded not guilty on July 8 to eleven charges of fraud related to the collapse of the former energy giant. He has been accused by the Enron Task Force—a joint venture of the Justice Department, the FBI and the Internal Revenue Service—of conspiring to manipulate Enron's financial results, making false public statements regarding the health of the company, and filing false financial reports. The Securities and Exchange Commission (SEC) filed separate civil charges accusing Lay of insider trading.

The charges against Lay have been added to a previous indictment handed down against former CEO and chief operating officer Jeffrey Skilling and former chief accounting officer Richard Causey. If convicted on all counts, Lay could spend the rest of his life in prison and be subject to over $100 million in fines.

The government's indictment focuses almost entirely on the period after Lay resumed the position of CEO in August 2001, after Skilling's abrupt resignation. Enron collapsed into bankruptcy in December 2001, after it came to light that the company's financial position was much worse than it had let on.

According to the government's charges, during the intervening period Lay falsely promoted the company's stock and falsely stated that Enron was in good financial health, while he and other executives unloaded their own shares.

There are many things that can be said about the indictment of Kenneth Lay. The charges brought against him actually deal only with a small part of his ultimate culpability in the Enron scandal. He was at the head of a company that engaged in massive fraud, which included the looting of large sections of the population for private gain.

The collapse of Enron led directly to the loss of thousands of jobs and many millions of dollars in savings of ordinary workers and investors. In the process, Lay and the other top executives at Enron raked in hundreds of millions of dollars in income and stock options. Lay should certainly be punished for crimes committed in the course of his tenure at the head of Enron.

That being said, what is most critical for working people is not the punishment of one or another individual. Rather, it is necessary to extract from the Enron debacle an understanding of the underlying issues involved in the crimes committed by Lay and his cohorts.

The spectacular rise and fall of the former Enron boss is itself a product of more general processes, and Enron itself was a manifestation of a disease that extended far beyond a single company. To the extent that the government has felt compelled to go after individuals like Lay, Skilling and others, it has been for the purpose of presenting the appearance of action, while obscuring and ignoring the deeper issues.

From the words of his attorney and from a press conference that he gave last week, it appears that Lay's principal defense will be the argument that he was deceived by other executives, in particular former chief financial officer Andrew Fastow. The latter has already accepted a deal with prosecutors in which he has pleaded guilty to charges of fraud in exchange for cooperation in the trials of Skilling, Causey and now Lay.

If one takes Lay at his word—which requires a substantial "willing suspension of disbelief," to borrow a phrase from the poet Coleridge—one can only conclude that Lay failed to notice the fraudulent tactics employed by Fastow because both Fastow and Lay were involved in a culture of corporate fraud and criminality that was so pervasive, Fastow's antics did not attract any attention.

This was, after all, a company that deliberately looted the states of California and Washington to the tune of $11 billion; a company in which traders openly gloated over the manipulation of energy markets for the purpose of driving up prices and profits. [See "Enron tapes expose blatant criminality of corporate America"]

Fastow's particular contribution was to invent nominally independent off-shore entities—ghost companies constructed for the sole purpose of hiding debt and boosting stock prices. He helped disguise loans as sales in order to boost the company's revenue—on paper—and thereby deceive the public as well as government regulators.

Again, if one takes Lay at his word, what does his gross ignorance and incompetence say about the waste of resources in the form of the seven-figure salaries typical of top executives in the American corporate world? If they are so sublimely oblivious to the daily operations of their firms, why are these modern-day plutocrats paid such princely sums, while the vast majority of employees face stagnating or falling real wages?

Lay's defense, and by implication that of the corporate elite he represents, is evidently that he was a negligent fool, rather than a malevolent law-breaker. Either way, one is left with a stunning indictment of American big business.

It is not only Lay who was supposedly unaware of what was going on. The phenomenon of Enron was possible only with the help of the political, media and corporate establishment. All have in one way or another professed innocence in the matter.

Directly implicated in Enron's crimes was the Bush administration, whose connections with the company have largely been pushed aside in the coverage of Lay's indictment. While Enron was in the process of manipulating California's energy market to drive up prices to astronomical levels, the state government appealed to the Bush administration to implement price caps. On the advice of Lay, Vice President Cheney and President Bush came out against price caps. Since then, the administration and the Federal Energy Regulatory Commission (FERC) have frustrated attempts by the states to recover lost funds.

Bush's personal connections to Lay are well known. These connections are not incidental, notwithstanding the casual way in which they are treated by the media. It is not an accident that Lay was Bush's single biggest campaign contributor throughout Bush's political career in Texas and right up to Bush's installment in the White House in the hijacked election of 2000.

Bush and Lay represent the same social layer. As governor of Texas and to a large degree as president, Bush was "Lay's man" in office. Lay played a direct and central role in drafting the administration's energy policy for the closed-door task force headed by fellow oil executive Cheney. To this day Cheney and Bush refuse to divulge to Congress or the American people the names of those involved in the meetings of this oil-dominated task force.

Bush, Cheney and company are the embodiments in the political realm of the social layer of corporate crooks and predators who to a great extent occupy of the upper echelons of American big business.

As much as a corporate scandal, the rise and fall of Enron is a deeply *political* scandal. The political and corporate aspects of the story are inextricably intertwined, though the Justice Department has predictably ignored the political issues.

It is not just the Bush administration that is implicated. Enron was possible only as a result of policies pursued by both political parties. Crucial assistance also came from financial giants such as Citigroup and JPMorgan Chase. As Enron's cash flow dwindled in 2001, these banks helped the company by engineering loans disguised as purchases—a maneuver designed to boost Enron's cash reports without increasing the company's reported liabilities.

Enron's accountant Arthur Andersen aided Enron in producing bogus reports, and the Securities and Exchange Commission looked the other way. Stock market analysts touted the company's stock—in some cases up until its bankruptcy—and the media played along, presenting Enron as a prime example of the enormous potential of the "new economy."

The "Enron model" was promoted endlessly by think tanks and academic organizations such as the Harvard Business School. For seven straight years, from 1995 to 2001, *Forbes Magazine* named Enron the most innovative company.

The entire system was involved, yet supposedly unaware of what was going on. And Enron was only one of a whole number of companies engaged in fraudulent practices. WorldCom, Tyco, Adelphia—all were involved in fraudulent manipulations. These companies were aided and encouraged by a system of corporations, banks, regulators, politicians and media moguls who were quite happy with the process, so long as stock prices were rising and everyone was getting a share.

How was such a company as Enron possible? According to the government, it was all a product of the lies and manipulations of individuals like Lay, Skilling and others. The director of the Enron Task Force, Andrew Weissmann, made the entirely predictable statement that the indictment proves that "no one is above the law." According to this argument, now that the culprits and deceivers are being brought to justice, we can all rest easy, since the problem is being fixed.

In fact, the phenomenon of Enron was merely one manifestation—if one of the most egregious—of the present state of American capitalism. It was the product of tendencies stretching back to the 1970s, including the wholesale deregulation of the economy and the increasing subordination of corporate decision-making to the demands of the financial markets. The entire political establishment and ruling elite are responsible for these developments, which reached a pinnacle in the stock market speculation and wide-scale accounting fraud of the late 1990s.

The American ruling elite responded to the economic downturn of the 1970s by making a major push toward eliminating any constraints on the ability of corporations to maximize profits. This began during the years of the Democratic Carter administration, and escalated during the 1980s under Ronald Reagan.

Reagan escalated the assault on the working class and on social services, while scaling back or eliminating regulations that had been placed on key sectors of the economy.

The process of deregulation was a reversal of a decades-long policy of American capitalism. Particularly following the catastrophic effects of the Great Depression, it was considered necessary to place limited restrictions on the profit motive in certain sections of industry—including energy, communication and transportation. Such industries were acknowledged to be too critical to public and corporate life to be subordinated solely to the drive for personal enrichment. In the 1980s and 1990s, these conceptions were rejected. Nothing could be allowed to stand in the way of the raw pursuit of corporate profit and wealth accumulation.

In the face of declining profit rates—and, correspondingly, the declining relative wealth of the richest sections of the population—there was a drive to subordinate all economic decision-making to the short-term demands of "share holders," that is, of Wall Street. It was this drive that produced the leveraged buyout phenomenon of the 1980s. Corporation after corporation was taken over by outside entities and new management groups were installed who would be more directly responsive to the dictates of the financial markets.

Enron epitomized these tendencies. It was in the 1990s that the government, under Democrat Bill Clinton, made a major move to deregulate the energy markets, a development which Enron exploited. In 1992 and again in 1996, the Federal Energy Regulatory Commission (FERC) took steps to break up the vertically integrated and regionally organized electrical utilities. This opened the way for the creation—almost entirely by Enron—of a national market in wholesale energy contracts. In the memorable words of Jeffrey Skilling, Enron "was doing great things." As Skilling put it: "We are creating markets where markets didn't exist."

Starting out as a relatively small pipeline company, Enron took advantage of the environment of deregulation to transform itself into a multi-billion-dollar giant. In the chaotic environment created by deregulation, Enron emerged as a middleman between producers and consumers of energy. It was largely a parasitic entity, making money not by producing anything of value, but rather by playing the market, with all the opportunities this provided for manipulation and price gouging.

At the same time, Enron emerged in an economic environment characterized by an obsessive emphasis on stock market valuation. In the speculative boom of the late 1990s, a company that did not produce good financial numbers was doomed. Enron's executives accordingly did whatever was necessary to produce good numbers, even if these numbers were fictional. The frenzied drive for profit created a situation in which fraud became an ordinary part of business life, manifested not only in Enron, but in countless other companies as well.

In this sense, the claims that Enron was the paradigm of the "new economy" were accurate. Enron was fairly representative of the largely hollow character of the boom of the 1990s. It embodied speculation, greed, the unbridled worship of wealth, parasitism and the subordination of even the most basic public necessities to profit-making. The criminality of Enron reflected the economic circumstances that created it.

The story of Enron is the story of the American ruling class over the past several decades. It reflects the social inequality that has increased at an extraordinary pace since the 1980s. It reflects the criminalization of an economic oligarchy that will defend its own social interests by whatever means necessary—whether through price-gouging and economic fraud or the launching of predatory wars of plunder.

The argument pushed by the government and the media that the indictment of Ken Lay proves that "even the big boys are not above the law" is a fraud. It is an indication of the crisis faced by the American ruling elite that it feels compelled to put up for a public trial one of its own. But this trial should by no means be mistaken for an attack on the roots of the problem, which lie in a crisis-ridden and socially destructive economic system based on the subordination of human needs to corporate profit and the accumulation of personal wealth.

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