White Collar Crime: The Black Plague of the 21st Century
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"The man who picks pockets with a railway rebate, murders with an adulterant instead of a bludgeon, burglarizes with a “rakeoff” instead of a jimmy, cheats with a company prospectus instead of a deck of cards, or scuttles his town instead of his ship, does not feel on his brow the brand of a malefactor."

- E.A. Ross, "Sin and Society: an analysis of latter-day iniquity"

History

Even though white collar crime has only been officially defined\(^1\) in 1939 by sociologist Edwin Sutherland, it is not a new phenomenon. Today, it is defined by the Professor of Sociology, David O. Friedrichs, as: "a generic term for the whole range of illegal, prohibited, and demonstrably harmful activities involving a violation of a private or public trust committed by institutions and individuals occupying a legitimate, respectable status and directed toward a financial advantage or the maintenance and extension of power and privilege."\(^2\) From this contemporary definition we could understand that embezzlement, or the abuse of trust, is not a new sociological phenomenon and could be traced back to ancient times. Cases of people selling diluted wine\(^3\) or forging coins were commonly known and documented. Without the proper tools or technology, the average person purchasing the wine or using the coins had no feasible way of knowing whether he fair-bargained or not, therefore trust was, and had to be, a key element of the market

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2. Id.
in those days.

One could look back to the ancient past and see how crimes of fraud had serious consequences in the form of harsh punishments that sometimes included death. Lying and cheating were considered an acute breach of social norms and the need to punish correlated with those social norms. During the industrial revolution, corporate giants like Rockefeller and others gained tremendous power and influence because of little to no regulation. They were involved in many types of white collar crimes such as establishing monopolies, fraud and stock manipulation. Cases of power abuse by corporations at this time were not exclusive to the United States as cases were occurring in Europe as well. Scholars such as Cesare Beccaria, Karl Marx, and Friedrich Engles claimed that “the great and rich” were committing crimes, causing immense public injury, without interference by law, due to their influential power while their crimes are defined as mere consequences.

In order to remedy the situation, Congress enacted the Sherman Antitrust Act in 1914 as a means to break up monopoly power in the United States by criminalizing anti-competitive corporate conduct and promoting free market competition.

What has changed in society that there is now such a need for the definition and study of white collar crime? The answer lies in white collar crime’s impact on society. As the American economy changed into a more globalized one, corporations became

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4 The Sherman Antitrust Act of 1890, was enacted in response to that type of criminal conduct, however antitrust offenses were not considered illegal at that time.


the leading players in the market. This allowed for new types of crimes to be born based on the very principle of misusing the trust given to agents representing those new markets.

As mentioned, lack of regulation created fertile grounds for all types of abuse "by financiers and major corporations," leading to the stock market crash that caused the Great Depression and what became known as one of the worst economic crises in modern history. What has also changed with the financial structure of the economy is the fact that reserves such as public funds like pensions and insurance are affected by the stock market. In essence, unlike the days of the past, those who commit fraud or embezzlement do not necessarily have direct contact with the victim of their illegal conduct due to lack of proximity to the victims. Furthermore, as individual nations’ markets as a whole become increasingly globalized, each nation’s economy has a drastic effect on the global economy.

In the aftermath of the Great Depression, the United States government began to act in a manner that would prevent similar economic crises from recurring. A substantial tide of legislation commenced, designed to create barriers to misconduct and enable agencies for market regulation, such as the Securities Act of 1933. Authorities were also created to enforce those laws such as the Securities and Exchange Commission, which was tasked with enforcing the Investment Company Act of 1940 and the Investment Advisors Act of 1940. Decades later, the government appeared to have managed to keep the market stable while keeping white collar crime at bay, but this appearance was misleading.

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8 Securities Act of 1933, 48 Stat. 74.
Even though there were famous cases of white collar crime before the turn of the century, none were of the same magnitude as those that followed in the 2000's. In the decades before the notorious cases of white collar crimes of the 2000's, efforts were made to stop the spread of white collar crime. Members of society such as journalists, sociologists and other professionals understanding the magnitude of the problem formed a social group that was called the social movement against white collar crime\(^{10}\). In 1992, the government also created the National White Collar Crime Center\(^{11}\) in order to foster better cooperation between law enforcement agencies.

Throughout the years there were cases of white collar crime. However, since the turn of the millennium, there were several "economical disasters," each outshining the other. First there was the infamous case of Enron in 2001, being the largest bankruptcy in history\(^{12}\). More cases followed such as the Marc Dreier case and Bernard Madoff case, being considered the largest fraud in history. Following those we've experienced the economic collapse of 2008, which included, once again, the largest bankruptcies in American history. It is important to mention that these crises are not the first to happen as a result of white collar crime. All of these incidents still have their ripple effects to this


very day, including the effects of the large settlements\textsuperscript{13}.

**Damages Caused**

Associatively, the first thing that comes to mind with corporate-financial crimes is the direct costs such as the loss of the victims' money and plunges in the stock market. However, there are also many indirect results, such as the loss of confidence in the integrity of the market\textsuperscript{14} which is felt well after the direct results are shown.

More serious issues from white collar crime follow in the form of corporate violence, which refers to indirect violence caused by corporate policies and actions. Corporate violence is defined as the result of a "group of individuals acting collectively, motivated by the desire to maximize profits or minimize losses", and has traditionally inspired a far more limited legal and justice system response\textsuperscript{15}.

For decades, the classic state of mind towards white collar crime was that the so called "suite crime" was less dangerous than street crime. This point of view has changed since then, and a new approach towards white collar crime started to be predominant after the public's outcry over scandals such as the bankruptcy of Enron. The public opinion has changed causing the government to invest resources in funding researches regarding white collar crime. These government funded researches, conducted by


concerned criminology experts had showed that "suite crime" is much more dangerous and costly to society by 10 to 50 times more\textsuperscript{16} than "conventional crime". However, it is important to mention that the public wants more resources to be allocated towards combating white collar crime\textsuperscript{17} after realizing it as a serious issue rather than just another type of crime.

**What was Done?**

Since corporate crime is claimed to be the "most consequential type of white collar crime",\textsuperscript{18} regulative authorities have taken several steps to focus on corporations through legislation as well as the judicial system in order to try and fight white collar crime. These steps include the Sarbanes-Oxley Act of 2002\textsuperscript{19}, and more recently the Stock Act of 2012.

The legislature realized that there is difficulty in preventing insider trading and embezzlement as well as finding sufficient evidence to prove in court these crimes. That need was especially important in the Enron case, where evidence was being deliberately destroyed by Enron executives. Therefore the legislature wanted to create an internal corporate procedure to help them battle white collar crime and lay strict standards for the conduct of executives. Thus the Sarbanes-Oxley act, more commonly known as the SOX, was passed in 2002 to regulate

\textsuperscript{16} Id.


white collar crime. “The SOX Act created new standards for corporate accountability as well as new penalties for acts of wrongdoing”\textsuperscript{20}. This law was meant to change the interaction between corporate boards and executives by removing a very common defense which was "I wasn't aware"\textsuperscript{21}. The CEO and other company leaders can no longer effectively claim lack of awareness effectively because it does not absolve them from being accountable for the accuracy of financial statements. The SOX Act forces corporations to implement by-laws and "internal controls and procedures"\textsuperscript{22} made to incentivize executives to ensure accuracy and prevent the fraud of financial records.

In order to try and minimize the effects of corporate power on legislators and to prevent conflict of interest, the Stock Act of 2012 was created. Cases of obvious conflicts of interests between politicians and corporations have occurred when allegations of publicly elected officials are accused of using their public office positions to participate in insider trading. Officials leaving the office with substantially more than they could have earned officially through the position has raised some eyebrows among the public as well. Prior to the passage of the Stock Act of 2012, public officials were discouraged from acting financially unscrupulously by the threat of public disclosure of information about their use of insider information for personal gain. In fact, the Stock Act\textsuperscript{23} was signed not long after an episode of the television show “60 Minutes” aired exposing the problem and the lack of sponsors for a piece of legislation that would ban politicians from

\textsuperscript{21} Id.
\textsuperscript{22} Id.
There have been improvements regarding white collar crime from a judicial point of view. Studies suggest that "there has been a steady increase in the length of prison sentences for white collar crimes." Furthermore, as of August 2014, the U.S. Sentencing Commission decided to consider changing the guidelines for fraud into more harsh punishments.

Currently the framework allows for two methods of penalizing white collar criminals. The first is through the criminal courts. Even though there has been an "increase in the length of prison sentences for white collar crimes," this did not prove to be a very useful deterrent. Even after Madoff was sentenced to more than a lifetime in prison, we could see other cases of similar white collar crimes such as the Kenneth Wayne McLeod case. Besides banning these criminals from society, the courts may decide on occupational disqualification. This penalty prohibits the

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25 Id.
26 Id.
perpetrator from working in a certain field again. For example, disbaring an attorney or banning someone from working as a physician. This method focuses on the trust factor related to white collar crime.

The second way for penalizing white collar criminals is through civil lawsuits by the Securities and Exchange Commission (hereinafter, SEC). This allows fighting white collar crime using civil procedures rather than the criminal ones. This process addresses problems in corporations and more commonly in publicly owned corporations as a principal-agent problem.\(^{30}\) With the principal-agent theory, those in charge of the corporation have an inherent conflict of interest between their own best interests and those of the stockholders. What happens is that even though executives are the primary decision makers in a corporation, fines resulting from SEC lawsuits are applied toward the company. This means that even though executives are directly compensated from corporate gains, they usually do not suffer from losses, unlike the stockholders. This is arguably counterproductive since punishing the company and causing it to lose stock-value is hurting the investors and consumers\(^ {31}\) who did not participate in the crime.

**What Else Could Be Done?**

Even with all of these steps, the question at hand remains whether or not these steps have proven to be effective. Current attempts to deter white collar criminals using tools such as longer


incarceration periods, longer than a lifetime, do not always prove to be effective. What else could be done? And what tools could regulative authorities use to prevent white collar crime and contain its increasingly detrimental damages to society?

It is argued that the pursuit of short term profit is the most common reason for breaches in ethics and principal-agent problems. Companies are constantly in the pursuit of finding a solution to solve the principal-agent problem. Apple announced they found such a way by trying to minimize the risks of directors reaping short term yields at the expense of long term gains by implementing a new rule that executive officers must hold "triple their base salary in company stock."

Difficulties

There are many reasons why white collar crime is especially difficult to prosecute and why there remains difficulty in finding effective ways of dealing with it. One of the main barriers occurs where powerful corporations try to use their wealth and influence over the political and legislative process. The corporations gain privilege and immunity de facto from prosecution by using lobbyists and political action committees to promote their own agenda. For example, just a few short months

32 Diana B. Henriques, Madoff is Sentenced to 150 Years for Ponzi Scheme (June 29, 2009), http://www.nytimes.com/2009/06/30/business/30madoff.html?_r=3&hp (last visited March 25, 2015).
35 Id.
after its enactment, the Stop Trading on Congressional Knowledge (Stock) Act of 2012 was already being revised so that the provisions became weaker.36

Another barrier to dealing with white collar crime is the way the criminal legal system is built. Generally, in order to convict an offender the prosecution is required to prove that the alleged offender actually committed the act (actus reus) and that the criminal intent (mens rea) was present and that the evidence on the crime was beyond a reasonable doubt. This is extremely difficult in financial crimes where physical evidence may be easily destroyed by offenders37.

The battle concerning white collar crime also faces the issue of what is called the "Swinging Door" phenomenon. This refers to cases where government officials retire from their positions and start working for corporations, usually for much higher salaries than when they held office. The corporations that hired these former government officials may have once been subject to regulation by the new employee’s former office. The effect that government officials exited one office door that deals with restrictions on a corporation and entered the corporate door, doing precisely the opposite, trying to avoid regulation. Because of this reality, officials may be tempted to treat these corporations with partially since these officials may see the corporations as a future employment opportunity.

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Conclusion

Like other types of crime, white collar crime cannot be uprooted or entirely prevented as criminals are becoming increasingly more sophisticated and seeking new methods of abusing trust and power. With the finance arena simultaneously becoming more complicated, the involvement of new technologies and features, such as digital currency like bit coin, the danger that society faces from white collar crime in modern times cannot be ignored. Legislation alone seems to fall behind in the battle with the black plague that is white collar crime. There is a need for a multisystemic approach combining all three branches of government, as well as society, to deal with the matter effectively. The legislative branch should remain vigilant in trying to update the legal system so that it can be more effective in dealing with white collar crimes through new platforms. The judicial branch needs to understand white collar crime and appropriately recognize and punish violations of the law. The executive branch needs to create mechanisms that enable employees to avoid the temptations stemming from association with finances which create conflicts of interest. And finally, society must denounce non-ethical behavior which enables white collar crime.