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Perales, Monica

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Undergraduate

The Severity of White Collar Crime during The Financial Crisis

By Monica Perales

Abstract

One of the stepping stones for the Great Recession that has been termed “The Financial Crisis” was a huge shift in the American economy that affected millions of people from 2007 to 2009. During this period of unstable and corrupted banks, the public was given information and statements that often contradicted one another and served as a defining factor of the confusion that accompanied the crisis. The Federal Reserve (also referred to as The Fed), as well as Goldman bank (later to be known as Goldman-Sachs), expressed their concern for the public by providing reassurance through public statements and brief explanations which intentionally avoided any details or insight into the “real” problem. The public’s distraction was due to The Fed’s confidence and the bank’s apology, which subsided the growing panic associated with The Financial Crisis, and in turn, downplayed the crime. The downplaying of this crime is often seen in white collar crimes, which makes it necessary to carefully examine this case; by doing so, it will be easier to understand the various layers that have been buried beneath The Financial Crisis of 2007 to 2009.

Introduction

Through the involvement of financial, ethical, and moral crimes, the resulting affects have had a lasting impact upon the economy that is still prominent. This case effectively illuminates crime because it reveals the crime’s crucial role in the resolution and justice that is sought out, both of which prove to involve questionable action and punishment for those who are responsible (especially in white collar crime). Due to the various forms of crime, white collar crimes are often considered less dangerous (than other forms of crime), though are equally significant. As a direct result, these types of crimes are handled with the focus on the victims rather than the criminals, which is a distinguishing factor in the classification of crime as well as the type of justice that is sought in response. The shift from criminal to victim changes the “danger” scale in that the meaning of danger only refers to the explicit physical harm that is afflicted upon an individual, rather than the financial harm that a corporation’s power and

authority can cause under unstable (and monetary seeking) circumstances. The measuring of serious crime on a scale of the amount of danger involved is an insufficient way to run the financial and the judicial system, as “crime” begins to lose its true meaning, and as a result, what is considered the appropriate punishment is not a direct consequence.

Dangers of the Financial Crisis

The Financial Crisis was downplayed for multiple reasons, but the largest contributing factor to its lack of attention or explanation was its classification as a white collar crime. The severity of a crime determines its classification, which can explain why white collar crime is often downplayed, and even handled differently, in comparison to more dangerous crimes. By definition, white collar crime involves “both corporate crimes and individual crimes perpetuated within and outside of corporate structures” (Jordan 487). Particular to The Financial Crisis, the banks, as well as the bank executives, are responsible for the mortgage fraud that began the near collapse of the financial system. This partly explains why “crime” is losing its meaning as a label; not only is the word applicable to various actions, its broad scope is being classified into subcategories that are processed accordingly (though this is ambiguous).

The vagueness within The Financial Crisis is reflected throughout several layers, which is measurable by its classification. The confusion and uncertainty of the crime is another characteristic of white collar crime, as these crimes are “often shrouded in some level of moral ambiguity” (Jordan 495). Ambiguity is a crucial aspect to this case, as there are so many unanswered questions, as well as both direct and indirect consequences. Because white collar crimes are resolved in a distinct and less serious way, the meaning of “crime” is beginning to have radically opposing definitions. Due to the branching of the many types of crime, the word itself is beginning to develop more specific meanings simultaneously. While the term “crime” can refer to an illegal activity that may or may not be dangerous, it is now being used to refer to both “dangerous” crimes and white collar crimes (which is often considered to be less threatening). The distinction between types of crimes is not inherently bad or wrong, as neither of those words are applicable to the labeling of a specific crime. Still, it is pertinent to have a judicial system that is capable of efficiently processing the various forms of crime equally.

The equal treatment of crimes is difficult to enforce with the unavoidable complications that come with white collar crime, some of which are caused by the lack of a legitimate criminal, especially when there are multiple corporations responsible for the crime. For this reason, white collar crimes initially had a rough start in the judicial system. Corporations were not considered to “fit” in the “common law definition of a criminal,” though this exclusion was changed over time (Jordan 487). The lack of a decided criminal during The Financial Crisis reflects the partial shift that occurred in the judicial system, as both the banks and its individuals were held accountable for the crisis, but The Fed’s emphasis remained upon the victims. In this sense, the crime was largely downplayed and an appropriate punishment was not sought out; the confusion that is still prominent in regards to this issue continues to distract the public from the fact that a crime did in fact occur.

As a result of the lack of understanding on the public’s part, there is an unknown danger that affected everyone who was associated with banks for any reason in an attempt to avoid panic and distrust of the government. The Fed encouraged this confusion by strategically using confidence to reassure the public, which the Chairman, Ben Bernanke, continued to do when he was finally interviewed in 2009. He gives a few key points of brief explanation of what

happened, how he felt, and how strong the nation was in which he states, “I just have every confidence that as we get through this crisis, that our economy will begin to grow again, and it will remain the most powerful and dynamic economy in the world” (Ben Bernanke). Through Bernanke’s continued use of (what he believes to be) reassurance, the crime is proven to be downplayed. He fails to fully acknowledge the crime, or those involved, and when he does, he avoids elaboration and discussion on the criminals’ punishment. This is not to say that The Fed blatantly decides to cover up the crime; rather, the government chooses to ensure the protection of the victims over the prosecution of the criminals. This emphasis causes the “danger” scale to change, as it is no longer about a physical threat, and the government does not want to be viewed as such. The danger of white collar crimes is significantly downplayed in an effort to acquire and maintain the public’s trust, especially when the government is involved. The Federal Reserve cannot allow the public to fully understand the potency of danger that is present in the financial system, which demonstrates why the victims (the public) are focused on and reassured. It is not to condone the criminals’ actions, or to encourage similar behavior in the future. Thus, the complications present in The Financial Crisis partly resulted from its classification as a white collar crime, and reflects the necessity of emphasizing the victims’ well-being and assurance.

Among the various forms of crime that were pursued during the crisis, one particular bank, known at the time as Goldman, accurately embodies the layers of criminal activity that were present. Many banks took part in illegal activities, but Goldman managed to allow the pursuit of increased profits to lead the escalation of corporate crime. Not only did Goldman encourage more loans to be taken out, it also began to encourage clients to invest in “shaky securities [that were] backed by residential mortgages” (Gordon). By assuring clients to pursue insecure deals, Goldman began to blur the lines between punishable crime (financial) and unpunishable crime (ethical). As the term “crime” refers to multiple branches of illegal activity, and otherwise wrongdoings, its broad scope fails to ensure appropriate punishment for some aspects of crime that the bank was involved in. Due to the lack of consistent and fair punishment, the term “crime” becomes even looser, and as a result, can no longer be used effectively in regards to classifying a crime and measuring the danger of that crime.

The absence of an accurate measure or acknowledgement of the danger involved is crucial to the public’s well-being, as the power of the corrupt banks was not brought to the public’s attention. Not only did this bank fail to maintain trustworthiness, Goldman managed to take this corruption to the next level and arranged for some clients to pay massive sums of money if the home loans that clients invested in “nose-dived in value,” which Goldman confidently believed they would (Gordon). The increased amount of illegal activity greatly affected The Fed’s confidence in the bank, though that aspect was not explored at length. By labeling each activity that Goldman participated in as a crime, it is difficult to elaborate upon how Goldman was allowed to avoid punishment without looking into the specific crimes that the bank committed. Thus, it is more than necessary to examine some of the illegal activity that took place in Goldman before The Fed took action.

Much like other banks, Goldman recognized that their financial instruments, such as “residential mortgage backed securities (RMBS), collateralized debt obligations (CDOs), and credit default swaps (CDS)” would aid them in their pursuit of more money (Wall Street 318). These financial instruments proved to be vital in Goldman’s actions, as they shifted from residential mortgage backed securities to collateralized debt obligations. During this shift, Goldman expressed its need to grow in monetary rather than in its clientele. This shift must be considered when processing the government’s focus on the victims rather than the criminals, as

the bank was able to cause so much damage by focusing on profit rather than clients. The lack of humanization contributed to Goldman's ability to pursue such risky behavior; the clients of this bank were thoroughly taken advantage of in every way possible, which contributed to The Fed's concern for the public. Regardless of the already existing layers of crime during The Financial Crisis, it continued to worsen, further spurring on The Fed's reaction for the victims. For example, Goldman began to change its role and actions as its leaders allowed their greed to overpower their need for trust and security with their customers.

Despite their claims of innocence and praise, Goldman assumed the role of a collateral provider or liquidator in a collateralized debt obligation, which were sold to their clients; this allowed Goldman to obtain additional financial benefits at their clients' misfortune (Wall Street 319). Due to its harmful actions and intentions, Goldman was soon held accountable for its illegal activity, and the individuals involved were pursued. Still, most of the energy was exerted towards the salvation of the economy and the restoration of confidence in the public. The financial crimes that now seem obvious were quite vague during the time of The Financial Crisis, and most of the public is still unaware of the bank's illegal activity. The significance of danger in this case was not only downplayed, it was also chosen to be kept private from fear of further instability and hesitance towards the government.

Because the "danger" scale is being changed, crimes become much more complicated and impacting upon the public. White collar crimes are not considered dangerous when compared to violent crimes, but they can be considered even more so holistically. Power and authority are pertinent factors that are used, and in some cases relied upon for the wrong reasons, appropriately with the public for the most efficient working system. As crime begins to overlap and create larger issues, the danger scale is no longer considered in white collar crimes, which defeats the purpose of classifying these crimes to ensure an appropriate punishment. For this reason, it is essential to examine how the financial aspect of this crime blends into the ethical aspect, as both are essential to the layers of crime prevalent in The Financial Crisis which have now been revealed.

Although the financial aspect of this crisis was not widely acknowledged despite the public's awareness of the sudden changes in the mortgage branch of the financial system, it accurately reflected the authority of The Federal Reserve as well as the role that power plays in crime. The Fed's role in this crisis is a questionable one, as many believe The Fed merely helped the criminals get what they wanted: a huge increase in their monetary supply; others believe that The Fed had no other choice but to act quickly and aggressively in order to salvage what was left of the economy. The display of The Fed's powerful role in the economy was surprising, and controversial, as it managed to stabilize the banking system while providing the "ammunition to those around the fire to defend themselves" (Acharya 99). The economy was stabilized by the government interfering and helped the corrupt banks avoid failure. The amount of criticism The Fed received, and is still receiving, in regards to this issue demonstrates the shift in appropriate consequences for the subgroups of crime. Because white collar crimes reflect the shift from criminal-based processing to victim-based processing of the crime, The Fed was almost expected to follow this pattern of resolution, which it appeared to do when it began issuing "bailouts," or "government-arranged rescue[s]" that involved the merging of banks (Gordon). The shift from criminal to victim can arguably be used to express the exact opposite (victim to criminal) due to the complexity of this case. The Fed merely reacted to the danger that the victims faced, and that reaction coincidentally, and rather ironically, resulted in the rescuing of the criminals; there was

no other way to avoid the controversial attention that was devoted to the victims and the safety net that was provided for both the victims and the criminals.

However, bias is often believed to have played a role in this case, as “many white collar and corporate criminals are often members of the same elite class as are legislators, judges, and prosecutors” (Jordan 496). This is not to say that The Fed actively allowed the banks to gain more profit at the expense of the public. The Fed was forced to react for the victims, rather than respond to the criminals. Multiple decisions were made drastically and aggressively with the only intention of maintaining the public’s trust and confidence. It may appear that fraud crime still manages to escape the scope of the government which results in insufficient punishment and even rescue (in the case of bailouts). Rather, the case itself was buried beneath the amount of trouble that it caused, and the government’s rescue was for the victims. Representing the authority of The Federal Reserve, the stabilizing of the financial system was a reflection of the direct danger, though the government managed to downplay the cause for concern through its continual display of confidence.

Current Method

The current method of approaching and measuring the danger of white collar crimes complicates the government’s role in the resolution of these crimes because both the approach and the scale are inaccurate methods of examining a case for the most efficient solution. Beginning with mortgage fraud and escalating to the encouragement of more loans, The Financial Crisis only deepened when homeowners began to struggle making their payments (Kliman 30). By itself, this portion of the overall crime may have been handled more effectively, and the courts may have been able to prosecute the banks individually as deemed fit. However, this is merely one layer of the crime that occurred during the crisis, all of which managed to contribute to The Fed’s appearance to the public. The government was forced to provide the corrupt and at-risk banks enough money to avoid failing completely. Thus, the banks became larger and richer. A crash of the financial system would have meant a greater loss of billions of dollars, and the public would not have had a safety net to rely upon: the government. The action taken, though controversial, was an immediate reaction out of concern for the public; otherwise, the crime would not have been an issue at all, and the resolution would not have been able to be pursued.

Crime requires an organized process for resolution in which multiple steps are followed for the most efficient response to the type of crime that was committed. The Financial Crisis was very complex and called upon many actions to be taken simultaneously by the government, all of which did not ensure a smooth or even logical process for the resolution. What often goes unnoticed, or even misunderstood, is the fact that “the government was brought to its knees—literally” (Kliman 34). The complexity of the crimes that resulted in the crisis brought intense confusion and a lack of stability that caused the public to make accusations and choose not (to attempt) to understand that the choices made were a last resort that managed to save the economy from a crash. Still, these choices were made based on the amount of danger that was present; the danger that was completely ignored once the crime was classified as a corporate crime and ineffectively approached with the hopes of the current justice system being sufficient in its prosecution process. Thus, the approach to white collar crimes complicates the scale that is used to determine the severity of the crime, and in turn, affects the government’s role and action when pursuing a solution for the public.

The government's approach to white collar crime contributes to the difficulty of "appropriate" punishment and the unstable shift between what is deemed dangerous enough to call attention to and what is too dangerous to publicly acknowledge. The Fed faced many complications during the crisis, and most, if not all, their decisions faced intense criticism. The controversial actions that The Fed took were partly due to the many roles and expectations they were required to fulfill. The government had strong ideas and plans in regards to the crisis, and The Fed was expected to act accordingly and efficiently regardless of the amount of roles they were assigned, which were "often conflicting ones" (Acharya 114). Because The Federal Reserve was expected to properly handle the criminals, while avoiding the public panic that would result from the revelation of how much power the financial system has, the "danger" scale was forcibly changed. Before this crisis, the "danger" scale referred to the classification of the crime. In this case, however, it refers to much more than that because the "danger" has a dual meaning; it refers to the lack of danger in white collar crimes as well as the danger of those who take advantage of the financial system's power. This (conflicting) dual meaning further complicated The Fed's role because they could not simultaneously pursue the criminals and reassure the victims. Thus, the change in the "danger" scale reflects the emphasis on the victims, as well as its significance.

Once the FBI became involved in the mortgage fraud, they also sought out the victims more so than the criminals, as they acknowledged both the legal issues (financial crimes) and the non-legal issues (ethical and moral crimes). The acknowledgement of all criminal aspects were not guaranteed legal punishment, but the Justice Department spokesman, Brian Roehrkas commented that, "the [FBI] department brings criminal prosecutions based solely on the facts and the law" and only "evidence of criminal wrongdoing" will bring prosecution (Perez). While it appears that the FBI is focusing on the criminals, the use of the term "wrongdoing" proves the opposite. The overall "wrongness" of these crimes is brought into question, but only some crimes will be able to be prosecuted, as noted.

By showing empathy and displaying universal resonance with the unfortunate circumstances, the officials involved are also providing assurance that punishment should be sought for all crimes, but that does not mean that all crimes will play a part in the prosecution. The investigators also noted the complexity of the crisis, mostly because there were many complications, by stating they would have "to dig deeper into how lenders were doing business" in order to pursue the prosecution of those responsible (Perez). The various crimes that were layered upon one another only further complicated the matter, and made it rather difficult for investigators to examine all the crimes that occurred for each corporation. To make matters worse, most of the crimes were not as obvious as the FBI and The Fed would have liked, which demanded careful examination and research into what each business was doing while unsupervised. The less serious approach towards such crimes demands only one side of the crime be given favor; in this case, the victims are repeatedly referred to and decisions are based on their well-being. As a direct result of the government's use of a "danger" scale when dealing with white collar crimes, the favoring of the public over the corporations causes an unequal shift in reassurance, and justice and appropriate punishment.

The duality of crime and danger (their conflicting uses and changing definitions) are significant because it causes a sense of vagueness and misinterpretation in regards to various crimes. It complicates, and almost makes impossible, the classification of crimes. In turn, the judicial system can only favor one side of the crime; either side causes a bias that shifts the balance between victims and criminals, assurance and justice, and security and punishment.

Among the many conflicting roles that The Fed was expected to fulfill, they had no choice but to favor the public and the financial system. The complicating factor (and most controversial) is the fact that the saving of the financial system resulted in both the stabilization of the public's monetary supply as well as the increase in the corrupted corporations' profits. This controversy and unnecessary complication can be traced back to the way the judicial system classifies white collar crimes as less dangerous.

Because the "danger" scale is inaccurate, and the real "danger" involved is much more potent than the officials wish to acknowledge, it is necessary to consider an alternative. Not only is the judicial system beginning to skew the meanings of the terms "crime" and "danger," the two words are becoming interchangeable in some cases, and polar opposites in others (such as white collar crimes). The judicial system may be able to develop a much more appropriate response, rather than reaction, and address all aspects of the crime if it begins to "recognize the crimes as real crimes" as opposed to a form of crime that is not violent, therefore not dangerous (Jordan 510). This is merely the first step, however; the concept of crime is undergoing a change that can raise further issues. For this reason, it is crucial that the various forms of crime are not placed on a scale in which they are measured in comparison to one another. This provides an inaccurate and unreliable scale that does nothing but force the government to pick a side, so to speak, and ignore the other. In either case, the ignoring of one side will be both problematic and dangerous in itself: the justice system can be much more efficient if it sought to maintain a balance between the victims and the criminals, both of which must be handled separately yet equally. By classifying crimes in relation to one another and not approaching each type of crime independently (of one another), the meaning of "crime" is beginning to shift, creating new meanings for the term, in which only some crimes are considered dangerous, while the others are not considered to be as severe or significant enough to be handled appropriately.

The use of a "danger" scale to create new meanings of "crime" is inefficient and must be acknowledged before the duality in both words serves as a defining factor for all forms of criminal activity to be placed into a pointless hierarchy of biased comparisons. The victimization of the public was both good and bad in this particular case, but can be harmful if white collar crimes are continued to be treated as less dangerous than they really are. The focus on the public was problematic in the sense that the crime as well as the punishment was downplayed; however, the issue is much larger than that. Through the victimization of the public by The Federal Reserve, emphasis was also placed upon the economy, as the two are interdependent. This emphasis is unhealthy because the public is slowly being pushed to the side, all the while being encouraged that The Fed has "every confidence that [the] economy will recover, and recover in a strong, and sustained way" (Ben Bernanke). Though the confidence supports the care for the public, the lack of acknowledgement for the people went unnoticed. The public itself is beginning to be used interchangeably with the economy, which results in the dehumanization of those who were taken advantage of during this crisis. While the dual nature of the term "crime" has created a broad scope that is no longer applicable to all illegal activities, the potential duality of "economy" being used as a reference to the public creates a further barrier between the public's safety and the government's support. The hierarchy and various branches of crime does not stop with the criminals' questionable punishment in white collar crimes. Rather, it has many dimensions; among them, that of the somehow forgotten individuals who were victimized and emphasized despite the lack of action taken to reestablish their roles in the economy.

Conclusion

The beginning steps were made with the stabilizing of the financial system, but the larger issue at hand is the continual silencing of the victims during the protection that is so aggressively focused on during corporate crimes. Perhaps if the government made it a point to cease the classification of crimes into a hierarchy and provide equal attention and action to the victims and the criminals, the justice system might be able to provide both protection and support to the public. There are multiple complications that result from the classification of crimes being put on a “danger” scale. The government’s continual failure to properly rid of the legal and public issues it faces can be traced back to its tendency to seek a small change with the same faulty system. For this reason, it is more than necessary to consider a drastic change in both the classification of crime as well as the pursuit of appropriate punishment. Without either, the government runs the risk of relying too heavily upon this “danger” scale, which has the potential to split off into more ambiguous categories. Before that happens, and to avoid an increasingly unreliable and unfair system, the idea of a scale should be reconsidered in an attempt to salvage what is left of the judicial system.

Both the government and the judicial system can benefit from this seemingly insignificant change in such a way that the weighing and assigning of an appropriate punishment can provide a level of acceptance and confidence in the government that the public no longer identifies with. In order to eliminate the unnecessary abundance of issues in regards to crime (both white collar and other forms) and the danger it embodies, it is essential that the government make drastic changes to its growing hierarchy of threats to the public in addition to its favoring one side of a crime. By pursuing such changes, the government will be capable of providing the protection and the support that the public requires, which can prove to be beneficial for both sides.

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Biography

My name is Monica Perales, and I am majoring in English and minoring in Writing at the University of California, Merced. I am originally from the Los Angeles and the Orange County area, currently residing in Anaheim, California. I have always been interested in literature and unique interpretations of classic works, both of which encouraged me to pursue English as my area of study. Writing is a passion that has been with me since I was a child, and has managed to expand from the creative to the professional genre. Although my love for writing has shifted from fiction to nonfiction and research-based pieces, I intend to use both throughout my college career. Both genres may seem to be polar opposites, but I hope to use creative and professional writing as a form of outreach in regards to personal and widely relatable experiences as well as public and societal issues.