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Victims of Economic Crime – On a Grand Scale

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Abstract

This paper unfolds along a very basic premise, namely, that victims of white collar crimes (as compared with victims of more traditional crimes) are also experiencing extremely serious and far reaching harms. Moreover, we note that victims of white collar crimes have been relatively ignored within the field of victimology. Here, in this article, we focus on multiple forms of victimization that have been generated by the economic crisis of 2008 and the subsequent financial meltdown--both of unprecedented magnitude. The importance of understanding the many causes of this particular type of victimization and especially the need to respond as effectively as possible, are the key anchor points of our argument.

Key words: white collar crime victims; economic crime; financial and economic crisis of 2008; corporate-state malfeasance; financial fraud

Résumé

Cet article se déploie suivant une prémisse des plus fondamentales, à savoir que les victimes de crimes en col blanc expérimentent aussi [par comparaison avec les victimes de crimes plus traditionnels] des conséquences désastreuses et fort dommageables pour elles, notamment parce que les effets se font parfois sentir dans le long terme. Par ailleurs, nous notons que les victimes de crimes en col blanc ont été relativement ignorées dans le champ de la victimologie. En l'occurrence, dans cet article, nous nous intéressons aux multiples formes de victimisation qui ont été générées par la crise économique et le désastre financier des derniers mois, tous deux d'une ampleur sans précédent. L'importance de bien comprendre ce type particulier de victimisation, et surtout la nécessité d'y répondre de la manière la plus efficace possible, constituent précisément les points d'ancrage de notre argumentation.

Introduction

Both victimology and white collar crime, as significant dimensions of criminology, trace their historical origins to the 1940s. In 1941, Hans von Hentig published an article on victims and criminals

that is taken to be a pioneering contribution to the field, and during the same decade Benjamin Mendelsohn coined the term victimology (Karmen 2010: 17). In 1939, Edwin H. Sutherland gave his famous address introducing the concept of white collar crime. This address was published in the *American Sociological Review* in 1940.

At the end of the decade, in 1949 (one year prior to his death), Sutherland published his seminal scholarly contribution to the field, *White Collar Crime*.

Over the next couple of decades only a small number of criminologists attended to either victimology or white collar crime. In 1968, Stephen Schafer produced the first textbook on crime victims, and in the same year Gilbert Geis published the first edition of an influential reader on white collar crime. It was not until the 1970s, however, that both victimology and white collar crime scholarship began to proliferate and gain some real visibility. Both victimology and white collar crime criminology were inspired by a perception of parochial dimensions of criminology: that it focused on offenders (and the criminal justice system), but not on victims; that it focused on conventional or street crime committed principally by the economically disadvantaged, but not on white collar, occupational, or corporate crime committed principally by middle class and economically privileged segments of society. But if victimology arose in part from the recognition of a parochial neglect of crime victims by the field of criminology, it also largely replicated another parochial dimension of the field, with its historical privileging of conventional crime victims (i.e., homicide, assault, rape, burglary, and robbery) to the near exclusion of white collar crime victims (Croall 2007; Hall 2009; Karmen 2010). Any survey of the victimological literature should provide further documentation for this thesis.

The recognition of this bias in the field of victimology is hardly new. Indeed, one of the authors of the present article called attention to this omission in an article entitled "Victimology: A Consideration of the Radical Critique," published in *Crime & Delinquency* in 1983. Rob Elias, in his 1986 *Victims of the System*, quite thoroughly documented an alternative way of thinking about crime victimization. Despite these early calls to expand the scope and data

sources of victimology, at the end of the first decade of the twenty-first century victimology continues to sustain a predominantly conventional crime focus.

The conventional crime victim focus has persisted paradoxically alongside a decline over the past two decades in conventional crime rates. There is a considerable literature that has attempted to identify the causes of this decline (e.g., Karmen 2000; Zimring 2007). The massive build-up of the prison population in the United States during this era is believed by some observers to be one factor that has contributed to this decline, but other observers raise serious questions about any such connection. And various criminologists have demonstrated persuasively that the phenomenon of "mass incarceration" itself promotes various forms of victimization, including in significant ways to the communities that produce a high percentage of the incarcerated (e.g., Clear 2007; Thompson 2008). None of the preceding observations are intended to deny that conventional crime victimization remains significant, and that the forms of harm inflicted on such victims are profound and enduring. But it is a core premise of this article that the victims of white collar crime also experience severe and enduring harmful consequences, and have been relatively neglected by victimology. More specifically, this article directs attention to the many forms of victimization associated with the major recent economic crisis and financial meltdown, and the need to both acknowledge and respond more effectively to this type of victimization.

An Overview of White Collar Crime Victimization

It seems useful to preface a consideration of victims of the financial meltdown with an overview of victims of white collar crime generally and their comparison with conventional crime victims specifically. We include, as well, the more readily measurable physical and direct costs

of white collar crime victimization, and the frequency, scope, and severity with which white collar crimes harm victims in a variety of everyday settings.

As with the measurement of conventional crime victimization, white collar crime can be measured through direct costs: i.e., the economic costs of the offense which include the victims' losses as well as the offenders' gains (Czabanski 2008; Friedrichs 2010). While more challenging methodologically due to the fact that no nationwide, systemic governmental data collection exists for the many forms of white collar crime, there is ample evidence that victims incur much greater economic losses from white collar crime than they do from all street crimes combined (Coleman 2006; Lynch et al. 2004; Moore and Mills 1990). For example, the FBI and the Association of Certified Fraud Examiners estimate that white collar crimes cost the United States between \$300 billion and \$660 billion each year, respectively (ACFE 2005). In comparison with white collar crime costs, the Sourcebook for Criminal Justice Statistics (which uses an average loss figure per incident) estimates that annual total losses from all property crimes are about \$15 billion (Pastore and Maguire 2003); the FBI, (which excludes arson from its count), estimates these losses at approximately \$17.2 billion (United States Department of Justice 2009).

In a parallel vein, white collar crimes also cause greater loss of life, illness, and injury to victims than do conventional crimes. For 2008, the FBI reported an estimated 16,272 homicides (U.S. Department of Justice 2009). In comparison, the Hearst Corporation (2009) in a national investigative report found that nearly 200,000 Americans die each year due to preventable medical errors and preventable hospital-acquired infections. Despite the fact that the National Academy of Sciences listed medical errors as the fifth leading cause of death in America over a decade ago (Weiss 1999), the Hearst report found

that 20 states still have no medical error reporting requirements at all, and those that do record only a fraction of all errors. Notably, both the American Medical Association and the American Hospital Association have lobbied strenuously against medical error reporting requirements. The relevance of including physical costs in an economic crime context is that while the intent of criminal economic actions may be to decrease operating, insurance, labor, or other business costs, the effect of such malfeasance can often lead to violent consequences.

In the workplace, the Occupational Safety and Health Administration (OSHA) reports that 5,200 American workers are killed by occupational injuries each year; 50,000 die from occupational diseases contracted from their work; and 4.3 million are injured on the job (U.S. Department of Labor 2006). In the home, the Consumer Product Safety Commission estimates that 27,100 deaths and 33.1 million injuries each year are caused by consumer products (Consumer Federation of America 2007). And, outside the home, the Earth Policy Institute (2002) reports that air pollution alone kills 70,000 people in the U.S. each year, though more liberal counts of annual deaths from exposure to air, land, and water pollution place the estimate at closer to 200,000.

As the preceding examples have illustrated, the many forms of harm that result from criminal and/or deviant organizational decision-making often have fatal or extremely serious consequences for their victims, and often by multiple measures. Despite the widespread harms caused by these repeated (and respective) law, rule, and policy violations, we continue to see differential labeling, criminal justice enforcement, and sanctioning of these criminal behaviors. The next section addresses the recent, on-going economic crisis as a source of crime victimization on a grand scale.

A Brief Overview of the Economic Crisis and Financial Meltdown of 2008

The economic crisis of 2008 is widely described as a massive and widespread liquidity deficit (or credit crunch) in the U.S. banking system triggered by the burst of the housing market bubble the previous year—also called the real estate and sub-prime mortgage crisis of 2007 (Public Radio International 2009). The scarcity of loanable funds created by these crises forced many financial institutions into bankruptcy with buyouts from a handful of financial conglomerates (Chossudovsky 2008), and governmental bailouts that attempted to stem an outright collapse of the largest sector of the U.S. domestic economy (and further global devastation).

Who or what is to blame for this economic and financial crisis? The list is very long, and includes: Main Street; Wall Street; and Washington (Kowitz, 2008; Morris 2008; Ritholtz 2009). More specifically, Main Street is blamed for living beyond its means, for greedy homeowners, and for overly favorable loans to homebuilders. Wall Street is blamed for “innovative,” overly complex, and exceptionally risky financial products or instruments devoid of any transparency; excessive executive compensation and bonus structures that rewarded poor performances and financial recklessness; and excessive leveraging and risk-taking in relation to its investments. Washington (i.e., the political establishment) is blamed for passing deregulatory acts such as the Gramm-Leach-Bliley Act, the promotion of bad policies such as the Community Reinvestment Act that forced lending to people with little or no credit and assets, and the “bubble”-promoting policy failures of central players such as Alan Greenspan of the Federal Reserve. More specific and inter-related criminogenic conditions shared by the financial industry and government include the “too big to fail” businesses. The fact that the government has felt obliged to bail out financial institutions and

corporations deemed too big to fail, and has furthermore imposed no significant negative consequences in relation to the other criminogenic conditions just mentioned, has created a situation of “moral hazard”: i.e., incentives for financial institutions and executives to continue taking huge risks and paying massive bonuses – with potentially catastrophic consequences for the economy – because the risk (i.e. costs of failure) are externalized to third parties. Other corporate-state criminogenic conditions contributing to the financial meltdown include “gatekeeper” conflicts of interest (e.g., the conflicts of interest of credit rating agencies paid by those whose investments they rate), a weak or ineffective regulatory system (i.e. the Securities and Exchange Commission; Treasury Department, and Federal Reserve Board’s failure to perform their oversight functions), and criminal justice responses (as evidenced by the dramatic decline in cases targeting financial institution fraud and failure matters handled by the U.S. Department of Justice leading up to financial meltdown of 2008. (For a stunning example of this inattention, see <http://www.albany.edu/sourcebook/pdf/t31482007.pdf>). Finally, an inherently corrupt political system where wealthy financial institutions and industrial lobbying have granted corporations far too much influence over our economy, and more broadly the “free market” fundamentalism that sustains these practices, all share grave responsibility for creating the criminogenic environment that led to these spectacular economic and financial failures.

The recent economic crisis and financial meltdown inevitably has generated much commentary, but relatively little of this has come from criminologists. Certainly this crisis can be framed in many different ways – historical, political and economic, among others – but a premise for the present article is that it can be and should be framed in criminological terms as well. The economic crisis is ultimately an immensely complex phenomenon, involving many different dimensions, and the formidable task of

identifying cause and effect is an important part of this challenge. Much of what drives such a crisis is often independent of criminal law violations per se, and certainly of criminal intent. By comparison, a conventional crime wave is a much more straightforward and comprehensible phenomenon.

The specific task here is to disentangle criminal dimensions of the economic crisis from other dimensions. White collar crime offenders differ in a fundamental way from conventional criminal offenders insofar as they are typically engaged in legal, legitimate and productive activities in conjunction with illegal, illegitimate and destructive activities. Conversely, those carrying out conventional offenses – at least in the context within which they are committed – are engaging in purely illegal, illegitimate and destructive activities. Corporations produce useful products, employ large numbers of people, and support communities in a range of ways, at the same time that they may be producing at least some products with harmful dimensions, exposing workers to unsafe conditions, and polluting the environment. In a parallel sense, small businesses, professionals, employees, and others who commit white collar crimes do so in conjunction with providing many beneficial services: e.g., a physician typically services many needs of patients, although the physician may also be defrauding Medicare or performing some unnecessary surgery. And a grey zone may often exist between beneficial and harmful activities in the white collar crime realm. In broad terms, there is nothing positive about the activities of those who murder, rape, rob, commit burglary, auto theft, and the like.

Identifying the Victims of Fraud and Misrepresentation in the Economic Crisis

The economic crisis, in which the activities of investment banks and other major financial institutions played a central role, has many victims. If we look at the

category of citizens and consumers, millions of families have experienced foreclosure on their homes or face the prospect of such foreclosure; in extreme cases some of these families have found themselves literally homeless. In examining the category of investors and savers, we see that the stock market lost some \$7 trillion in value in 2008, a staggering amount of money (Surowiecki 2009). Hundreds of millions of Americans have experienced devastating declines in their retirement (401k), college savings or other such accounts. Such catastrophic losses have forced people to go back to work or continue working long past their planned retirement age; reduced their retirement standard of living drastically; created the necessity of public aid or family assistance; devastated plans to pursue college or higher education; or any number of other plans for the future.

In terms of the victimization of workers, millions of Americans have lost their jobs, fear losing their jobs, or don't have jobs – e.g., recent college graduates, among others – and cannot find them. There is a large body of evidence supporting the proposition that losses of jobs contributes significantly to stress and depression, domestic violence and divorce, and physical health problems, including fatal heart attacks (Peck 2010). For ordinary citizens, drastic reductions in tax revenues on local, state and federal levels have led to all manner of budget cuts, including cuts from vital public services from education, health and human services, to transportation. The trillion dollar investment American taxpayers are making in the series of “bailout” plans do not include any form of guarantees about what proportion – if any – of this investment will be returned, and the monumental deficit has the obvious potential of having a wide range of devastating consequences for American taxpayers and citizens in the future.

Were subprime mortgage loan borrowers primarily victims in the recent economic crisis, or victimizers? It is well-

established that many such borrowers blatantly misrepresented their income and assets to obtain loans, but they were typically encouraged to do so by mortgage loan originators (Bar-Gill, 2009; Bitner 2008). It was primarily the responsibility of the lenders to ensure that the borrowers were good prospects for the mortgage loans that they were awarded. There is much evidence that many of the mortgage lenders were only too well aware that they were seducing vulnerable, unsophisticated people into taking out mortgage loans they had little if any chance of paying off, because those who got out the loans were rewarded up-front for making the loans, not for the long-term performance of the loans.

Victimology has from the outset addressed the role of the victim in crime, although attention to “victim precipitation” and “victim provocation” has sometimes been regarded as controversial when it is interpreted as “victim blaming.” The most accurate characterization of crime victims is one that views them as existing on a continuum from “completely innocent” victims to “most guilty” victims (Schafer 1968: 42-43). The issues of victim culpability is especially complex in the realm of white collar crime.

The character of crime and victimization in conventional terms, and in relation to the economic crisis, can be usefully framed by comparing conventional bank robbery and “bank robbery” by the commercial and investment banks themselves.

Victims of Bank Robbery – and of “Robbery” by Banks

Bank robbery is a classic form of conventional crime that comes readily to mind when people think of such crime. And such robbery is hardly “victimless.” In the United States, conventional bank robbers stole some \$60 million in 2008, up from about \$25 million in 2007 (McCluskey 2009). When the stolen money is not recovered –

and a significant percentage of it is in fact recovered – the losses to the bank are reimbursed through some form of insurance, with the losses widely diffused. Needless to say, individuals and businesses that have accounts in the robbed banks do not sustain direct losses. The vast majority of conventional bank robberies are carried out by one or more individuals making a demand for cash, often by passing a note, with some form of a threat if this demand is not met. Violence only occurs in a very small percentage of bank robberies – perhaps 3% - and homicides in connection with bank robberies are very rare . Of course the cases in which there are victims of violence are the bank robbery cases most likely to result in significant media attention. One should not disparage the trauma experienced by bank tellers and customers who are caught up in a bank robbery drama. But for the most part, crime victimization associated with conventional bank robberies is quite limited, whether one focuses upon economic or physical consequences. Bank robbers themselves, often hapless, desperate individuals, some plagued by substance abuse or gambling addictions, are more often than not caught, and typically are sent to prison for a significant period of time.

If everyone – even small children – understands that banks are sometimes victimized by bank robbers, the notion that banks “rob” their customers of huge sums of money through a range of deceptive and manipulative practices, is less familiar. One premise for this article is that banks effectively “steal” far more from their customers – in the billions, by some estimations – than bank robbers steal from banks. Banks may accomplish these “thefts” legally (made possible through their lobbyists) via misleading policies and practices relating to checking and mortgage escrow accounts; through increasingly excessive overdraft fees and late payment fees that double or even triple the interest rate; by omitting special fees and full disclosures in credit solicitations; and by

aggressively targeting vulnerable or less-informed/experienced groups for credit (Friedrichs 2010). Of course not all questionable bank practices are legal. Banks have engaged in a variety of specifically illegal activities, corporate criminal conduct including bribery, money laundering, tax evasion, and investment related fraud.

There are different types of banks, with commercial banks being the most familiar and the type of bank with which most members of society have direct experience. However, investment banks have long played a central role in our economy and financial system, and it is a further premise of this article that some of the practices of these financial institutions in recent years especially have victimized huge numbers of people – once again--on a grand scale. This form of “bank robbery” as economic crime on a grand scale can be addressed in relation to recent developments in the economy.

Wall Street Investment Banks and the Subprime Mortgage Fraud Crisis

The fraudulent misrepresentations of both mortgage loan originators as well borrowers themselves could never have occurred on the scale that they did in the first place, and could certainly never have precipitated a global financial crisis, if the Wall Street investment banks had not been prepared to buy up billions of dollars worth of these mortgages, securitize them, and sell them to investors. The banks reaped billions of dollars of profits, with top executives receiving tens of millions of dollars – or even hundreds of millions of dollars – in compensation and bonuses, in relation to these securitization activities. This is a huge topic, with many important players, so we will here restrict ourselves to only one of the players. Goldman Sachs is among the most prestigious and successful of the major Wall Street investment banks, but has also been described as a vast “investment pyramid” and “pump-and-dump”

scheme at the center of massive market manipulations over the past century or so (Tabbaj, 2009). In relation to the subprime mortgage crisis specifically, among other activities, Goldman Sachs sold billions of dollars of subprime mortgage loan securities to investors, then bet against these investments doing well, and reaped a further fortune from these bets (Morgenson and Story 2009). Although Goldman Sachs was among the firms that received billions of dollars of taxpayer funds in the midst of the financial crisis, and one hundred cents on the dollar on its investments, it was reporting record profits and rewarding huge compensation and bonuses in 2009 and early in 2010.

Conclusion: An Expanded Conception of Crime Victims, and Future Victimization

The challenges embedded in an expanded conceptualization of crime victimization to include white collar crime victims are certainly real. The broader issues of the application of the term “victim” to an ever-wider class of people have been addressed (e.g., Cole, 2007). But a core argument of the present article is that the fraudulent activities of investment banks and other major financial institutions played a key role in bringing about the recent financial meltdown, and many classes of people were victims of these crimes in a very real sense. Although conceptualizing and measuring white collar crime victimization presents special challenges, there is much at stake in fully identifying and directing attention to such victims.

Rising conventional crime rates – from the late 1960s on – led to the adoption of exceptionally harsh crime control policies, which in turn resulted in the massive increase of the prison population, among other effects. Especially heinous conventional crimes led to the adoption of policies such as Three-Strikes-and-You’re-Out and Megan’s Law (i.e. sex offender reporting). Whether or not these policies and crime control practices contributed to a

decrease in conventional crime rates has been debated.

In the case of the wide range of fraudulent misrepresentations and excessive risk-taking practices that contributed in fundamental ways to the economic crisis and financial meltdown, the public policy response has been far more limited. The reasons for this more limited response are well-established: Murderers, rapists, and robbers – among others – are not in a position to “lobby” against crime control measures directed toward them; indeed, the idea of such lobbying is almost comical. The situation with regard to white collar crime offenders has always been dramatically different. They have been well-positioned to lobby very effectively against measures that attempt to address the “criminogenic” conditions that have led to corporate or white collar crime “waves.” Although the Sarbanes-Oxley Act was passed in the wake of the huge level of public attention directed at Enron, WorldCom, Tyco and other corporations engaged in massive fraud, there has been on-going lobbying to curtail or eliminate some of the provisions of the Act. In the wake of the financial meltdown of 2008, and widespread, justifiable public anger about Wall Street practices that contributed centrally to this meltdown, as of early 2010 very little in the way of truly effective new laws and regulation to address these practices have been adopted. Once again, the immense lobbying clout of the financial industry and its formidable source of campaign funding has been a key factor in this. Although there is always some legitimacy to the core argument that new laws and regulation directed at Wall Street practices can have (possibly unanticipated) harmful consequences in terms of the competitiveness of these institutions in an increasingly global financial system, profitability and employment, and so forth, the key theme here – reiterated by countless commentators – is that the interests of the Wall Street investment banks and other elite financial interests get

privileged over the interests of ordinary investors, taxpayers, homeowners, consumers, and other such parties.

We will here venture a prediction: If the whole architecture of the present structure of Wall Street and investment banking is not transformed in the most fundamental ways – and such transformation hardly seems in the offing – then it can be predicted with a high degree of confidence that some years down the road we will experience another major “bubble” and financial meltdown, that this time may be truly catastrophic, and that huge numbers of ordinary taxpayers, investors, homeowners, consumers and other such parties will be victimized on an epic scale. Among other things, a fundamental transformation in our collective understanding of “crime victimization” is one necessary condition if we are to have any hope of averting such a catastrophe. This article has aspired to contribute, however modestly, to the immense challenge of effecting such a transformation of consciousness about the true nature of crime victimization. The objective here is not to disparage the significance of conventional crime victimization, and the extraordinary forms of pain and harm associated with such victimization. The work of victimology collectively in addressing these forms of crime victimization is highly commendable and worthwhile. But what is urgently needed is a sense of proportionality about the different forms of crime victimization, and far more attention to those forms of harm that are caused by the most privileged segments of society.

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