Economic Crime – The Challenges of Regulation and Control

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Economic Crime – The Challenges of Regulation and Control*

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Abstract

The problem of crime in the United States is a perennial problem. Since 1980 the size of the prison population in the United States has increased more than 400 percent. The United States has a larger proportion of its citizen in prisons and jails and under state supervision (probation and parole) than any other country in the world. However, the vast majority of criminals who have committed the most serious crimes as measured by material loss and numbers of deaths and injuries, have never been charged, convicted or incarcerated for their crimes. There is little centralized collection and disbursement of data by the United States Government that monitors this portion of the crime problem. Most citizens are unaware of those crimes which they are more likely to be victimized and experience the greatest losses. These are the crimes of those in white collars, occupational and corporate crime, that occur as a result of a culture that promotes and rationalizes the behavior and a government that lacks the political will to regulate and prosecute the criminal behavior. This essay describes the major types of economic crimes, estimates of cost, and challenges of control and regulation by the United States government. It concludes with a discussion of lessons to be learned by other countries who are embarking on their own economic system dominated by the forces of the market and those who own, control, and manage the economic enterprises within their system.

Introduction

Considering all areas of criminal activity that cause harm to property and to human life, there is no area greater in terms of cost than the area of crime committed by those in trusted occupations and by the corporations that they are employed. Since there is no systematic centralized collection and reporting of this crime data in the United States it is very difficult to measure the true level of costs. However, individual cases of corporate crime indicate that the costs are far greater than conventional as listed in the Department of Justice’s annual report of crime as Part I offenses or those crimes they define as most threatening to the nation (murder and non-negligent manslaughter, aggravated assault, rape, robbery, larceny theft, burglary, arson, and auto theft). Estimates of the cost differences are 50 to 100 times greater in dollars lost and in numbers of people killed and injured. One estimate by the FBI and the Association of Certified Fraud Examiners put the annual cost of white collar crime in the range of 300 billion to 1 trillion dollars while the government’s estimate of the cost of conventional theft at 4 billion (Friedrichs, 2010).
Estimates are that each year in the United States up to 200,000 Americans die from exposure to toxic pollution (Burns & Lynch, 2004), approximately 85 percent of the US population is exposed to dangerous air pollution annually (Burns, Lynch, & Stretesky, 2008), more than 50,000 Americans die from work-related diseases and accidents, and nearly 3 million workers experience significant physical harm in the workplace (Reiman, 2007). The most recent and comprehensive victimization survey on white collar crime indicate that more than 46 percent of U.S. households and 36 percent of individuals reported experiencing some form of white collar crime during the previous year, and more than 66 percent reported being a victim during their lifetime (Kane & Wall, 2006). While there is a high victimization rate, there are low reportage rates. According to the victimization survey, less than one fifth or 20% of respondents reported their victimization to the police, 1 in 7 of them notified the Better Business Bureau, 1 in 14 notified the district attorney, and about 1 in 20 notified a personal lawyer or the consumer protection agency. This is only of those victims who are aware of their victimization. In most cases of white collar crime, the victims are unaware of their victimization.

**Defining Economic Crime**

**White Collar Crime as Occupational Crime**

All white collar crime is generally referred to as economic crime. However there are some important distinctions between the types of crimes that are committed by those in trusted positions within business organizations. The area of white collar crime that criminal justice agencies are more likely to respond to is occupational crime. Occupational crime is crime that is committed by those in positions of trust within profit or non-profit oriented organizations, but they are committing the crime principally in their interest, and not in the interest and in most cases counter to the interests of their employer (Pinto, 2001).
Embezzlement

Embezzlement is a classic example of occupational crime. Michael Monus, the former president of Phar-Mor, was convicted in 1995 on 109 counts for masterminding a $1.1 BB embezzlement scheme. He was fined one million dollars and sentenced to nineteen years in prison. In the year 2009, the average loss for embezzlement per incident was $1,000,000 (Marquet International, Ltd., 2010).

Collective Embezzlement

Another example of occupational crime that blurs the line with our next type of economic crime, corporate crime, is the case of “collective embezzlement” (Calavita & Pontell, 1990.) The term was developed to describe the case whereby the criminal acts are committed for the personal gain of the employee, at the expense to the organization, but with the approval of the management of the organization. It has been described as a crime by a corporation, against the corporation. Seventy to eighty percent of the Savings and Loan failures in the United States at the end of President Reagan era of bank deregulation were a result of collective embezzlement. As the Commissioner of the California Department of Savings and Loan stated in the midst of the rapid failure of banks in the late 1980s in testimony to a U.S. Congressional Committee, “The Best way to rob a bank is to own one” (United States Congress, 1988). The estimated costs to United States citizens bailing out banks which defaulted was $300 to $500 billion dollars (Rosoff, Pontell, & Tillman, 2007). Former Attorney General Dick Thornburgh called it "the biggest white collar swindle in history” (Mokhiber, 2007). This was of course before the most recent banking crisis that led to what is referred to in the United States as the “Great Recession” from 2007 to 2009 in the United States, and is still going on in some parts of the world.
White Collar Crime as Corporate Crime

A second category of economic crime in which the losses are even greater than occupational crime is what is referred to as corporate crime. Most of what is defined as corporate crime in the United States is a violation of government regulations. These regulations are enforced by hundreds of government agencies at both the federal and state levels that cover most aspects of business operations from regulations governing labor relations and work conditions, business transactions with consumers, regulations to protect the environment, and regulations that govern the competitive nature of the market. Criminologists and government officials recognize that the vast majority of the violations never reach criminal prosecution. Unlike occupational crime, in the case of corporate crime, the offender is not acting directly in their interests, but in the direct interest of their employer, the organizational entity, in most cases a business organization that is incorporated to shield owners from direct liability for the actions of the organization. There may be indirect benefits to the offender by means of promotions, salary bonuses or increases, and benefits that may be derived from the increased value of the company stock and assets. In most cases of corporate crime the organization’s structure and culture play a larger central role in the criminal activity.

Corporate Crime as Theft

Consumer Fraud

Fraud of consumers is one example of corporation crime. Legally fraud is defined as stealing by deception. A Federal Trade Commission (FTC) survey of 2,500 adults in the United States found that consumer fraud was rampant (Anderson, 2004). Based on the survey findings, “nearly 25 million adults in the United States or 11.2% of the adult population were victims of one or more of the consumer frauds covered in the survey during the previous year” (Anderson, 2004, p. 2). It is estimated that 35 million
cases of consumer fraud occur each year in the United States. Mokhiber, a long term investigator of corporate criminal activities, estimates that health care fraud alone costs Americans $100 billion to $400 billion a year, auto repair fraud, $40 billion a year, and securities fraud was estimated to be $15 billion a year (Mokhiber, 2007). In regard to the estimate of securities fraud, given the Madoff case and the fraudulent activity in the mortgage and security industries including many of the largest mortgage securities firms in the United States that was responsible for what is referred to as “the great recession of 2009,” this estimate is quite low. Madoff’s investment Ponzi scheme alone resulted in a 50 billion dollar securities fraud that cost approximately tens of thousands of investors, including many charitable foundations, approximately $18 billion U.S. dollars (Barak, 2012).

False and Misleading Advertisement

There are other important areas of corporate criminal activity that are impossible to assess the loss because of low enforcement levels and the indirect nature of the losses that are experienced. In most cases of false and misleading advertising, the criminal activity has been normalized or institutionalized, and the rare prosecution is more symbolic than effective in controlling the criminal activity. False advertising and product misrepresentation has been defined as criminal activity in the United States since the passage of the Pure Food and Drug Law in 1906 and the establishment of the Federal Trade Commission (FTC) in 1914. The Federal Trade Commission regulates business practices and outlaws "unfair and deceptive acts or practices in commerce." According to Friedrichs, “U.S. consumers have been misled over the years into spending billions of dollars for products and services that fail to live up to advertisers claims in some instances actively harm consumers” (Friedrichs, Trusted Criminals: White Collar Crime in Contemporary Society, 2010, p. 83).
In general, the U.S. Federal Trade Commission historically has defined false advertising very narrowly, allowing for what is referred to as “product puffery,” making claims that any reasonable person would recognize as false (Mosher, 2007; Fox, 1984).

The goal of the FTC is prevention through educating the advertisers and producers of the product, rather than punishment.

In egregious cases, the agency will request that the advertiser stop its illegal acts, or to include disclosure information that serves to avoid the chance of deception. Fines may be levied as well, although overall relatively infrequently given the rate of occurrence. Criminal prosecution is rare in cases of false or misleading advertising.

More recent false advertising cases include Reebok which paid $25 million dollar fine for false advertising of their “EasyTone” and “RunTone” athletic shoes claiming that wearing the shoes increased muscle tone in the wearer’s legs (Federal Trade Commission, 2011).

Another form of false advertising that proliferates the United States is “bait and switch.” This refers to the retailing practice whereby a seller advertises a product with the intention of persuading customers to purchase a more expensive product. A large number of U.S. retailers have been charged with this practice. In one particular case, Sears and Roebuck was charged and settled with the State of California for gross and deliberate fraud in many of its auto centers (Mayer, Warner, Siedel, & Lieberman, 2013) The State of California forced Sears to settle a large number of lawsuits against it by threatening to revoke Sears’ auto repair license. The cost of the settlement was $30 million.

Price Fixing
Price fixing is another very costly economic crime that is also defined as a type of corporate crime. Price Fixing was prohibited in the United States with the passage of the Sherman Anti-Trust Act in 1890. In 1991, the United States Congress recognizing the widespread violation of the price fixing law reformed the law to make it easier to prosecute, especially in cases of vertical price fixing arrangements where the manufacturer attempts to dictate the price of the product at the retail level.

In 2011 Samsung Electronics Co, Sharp Corp and five other makers of liquid crystal displays agreed to pay more than $1 billion to settle consumer and state regulatory claims that they conspiring to fix prices for LCD panels in televisions, notebook computers and monitors.

Another case involves the airline industry whereby British Airways, Korean Air, and Air France-KLM artificially inflated passenger and cargo fuel surcharges between 2000 and 2006 on flights to and from the United States from abroad to make up for lost profits. Nineteen executives have been charged with wrongdoing, four have been sentenced to prison terms, and 21 airlines have coughed up more than $1.7 billion in fines in one of the largest criminal antitrust investigations in U.S. history (Caldwell, 2011).

Corporate Crime as Violence

Corporate crime does not only involve acts of theft, but also corporate actions can have violent consequences to victims. Friedrichs (2010)\(^1\) notes that corporate violence differs from interpersonal violence in five important ways. First of all the violence is more likely to be indirect, not directly from person to person. This is because corporate violence is more likely to result from policies and actions, undertaken on behalf of the corporation that result in the victims being exposed to harmful

conditions, products, or substances. The second distinguishing characteristic is that the effects of the violence are removed in time from the implementation of the policy or action that caused the harm. In many cases of economic violence, the effect may be 20 to 30 years later after the exposure. This is the case with exposure to asbestos fibers that people come in contact with because of their work, products they purchase, or the asbestos polluted environment that they come in contact. Third, in corporate violence we are typically describing action in which a large number of individuals are acting collectively. This is violence that is a result of organizational action, groups of individuals acting within the context of positions within organization, more so than the action of single individuals. Fourth, corporate violence is motivated by a desire to maximize corporate profits. These forms of violence are instrumental forms of violence in that they are calculated to create a gain, usually monetary, for the organizational and individual actors. Lastly, corporate violence receives a much more limited legal and justice system response than interpersonal violence. The offenders of the violence usually have taken steps to neutralize or minimize the social control system that would prevent the violence. In many cases through their political influence, corporations act to prevent or lessen control for the forms of violence that they are most likely to commit.

Product Violence

One example of crime in this area is product violence resulting from defects in design or manufacturer that are known to the producer, but the information is withheld from the consumer of the product. Once again there is no centralized collection of information indicating the scope of the problem, but case studies indicate that there are large numbers of people who are victimized. The CPSC has noted that as many as 33.1 million Americans are injured and more than 27,000 die because of incidents connected with consumer products each year (Weintraub, 2007).
The pharmaceutical industry in the United States is one area where this type of corporate violence occurs. In some cases data to show drug safety or effectiveness is falsified leading to injury and in some cases the death of consumers. One such example of this is the case of Merck and the drug Vioxx (Michaels, 2008). Merck misrepresented its data so that the FDA allowed the deadly drug Vioxx onto the market. The FDA later estimated that Vioxx caused 88,000-139,000 heart attacks before it was recalled. Approximately, twenty-five million Americans had used the drug. Merck agreed to pay $950 million and has pleaded guilty to a criminal charge over the marketing and sales of the painkiller.

The largest manufacturers in the automobile industry have been in the news worldwide for known and unreported defects in the cars they produce leading to death and injury of consumers. In March, 2014 Toyota Motor Company was fined $1.2 billion dollars for misleading consumers and U.S. The U.S. Justice Department is currently investigating General Motors in regard to a defect in the design of ignition switches that can result in the car engine turning off while running, locking the steering wheel and lessening the effectiveness of the power brakes. General Motors was aware of the defect as early as 2001 when the defect was detecting during pre-production testing of the Saturn Ion (Basu, 2014). General Motors as a result of a civil suit by the National Highway Transportation Safety Administration (NHTSA) has already paid $35 million in damages. It is likely that the total payout will surpass the Toyota case once the Justice Department completes its investigation.

Ford Motor Corporation with the design of the Fort Pinto (Dowie, 1977), transmission jumping into reverse from park (Branan, 1980), and together with tire manufacturer Firestone with the tires on SUVs and rollover crashes are all examples of corporate violence committed by this automobile company (Mokhiber & Weissman, 2000). Chrysler also have a record of violence in this area as well. The auto industry is not an isolated case in the transportation industry as a whole. The airline industry


has also created a record of violations regarding airline safety (Friedrichs, 2010). In general, there is product violence across the marketplace involving a very large range of product areas (Iadicola & Shupe, 2013).

**Production Violence**

A second area of corporate violence that is believed to have a large number of victims is production or workplace violence. The International Labour Organization (ILO) estimates that for the year 2008, every day, 6,300 people die as a result of occupational accidents or work-related diseases that is more than 2.3 million deaths per year. They also claim that there over 337 million accidents that occur on the job each year (International Labour Organization, 2011). This report also notes that the rates are highest in the less developed areas like Africa and the rates in low and middle income counties in Latin American, Eastern European, and Southeast Asia and Western Pacific regions are at least twice the rate in higher income countries.

Some production areas that have had egregious record of violation are in the mining, textile, and chemical industries. In the United States, death and injury from mining has been on the decline for most of the 20th century. According to the CDC, the prevalence of black lung disease had decreased by about 90% from 1969 to 1995 as a result of the enactment of the Coal Mine Health and Safety Act. However, they note that the downward trend of this disease has leveled off and that many current underground miners are developing severe and advanced cases as a result of a change in the mining methods to include thin seam mining to extract the coal. The problem lies not in the lack of technical competence but in the lack of will to invest in health and safety” (U.S. House of Representatives Committee on Education and Labor, 1979, p. 1230).

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Black Lung is not the only hazard for mineworkers. Mining “accidents” from unsafe working conditions is also a problem in the United States and even more so in less developed countries. Between 2005 and 2006 in the United States, there has been an 84% increase in the rate of fatal injuries from coal mining (Bureau of Labor Statistics, 2007). On April 5, 2010 a powerful explosion ripped through the Upper Big Branch in West Virginia, an underground mine owned by Massey Energy and operated by Performance Mine Company killing 29 miners.

Another area of production violence that has a long history in the United States but fast reaching other parts of the world, is the mining and use of asbestos and the resultant violence of asbestosis or white lung disease. People working with the materials, as well as those who purchased products made from asbestos, were not told of its hazards until the 1970s.

About 125 million people in the world are exposed to asbestos at the workplace. According to the most recent WHO estimates, more than 107,000 people die each year from asbestos-related lung cancer, mesothelioma and asbestosis resulting from exposure at work. One in every three deaths from occupational cancer is estimated to be caused by asbestos. In addition, it is estimated that several thousand deaths annually can be attributed to exposure to asbestos in the home (World Health Organization, 2010). Despite the dangers, a recent report indicates that the production and use of asbestos products have increased dramatically in Asia. According to 2007 data, ninety percent of the countries with the increased consumption of Asbestos are in Asia. Only one Asian country, Japan, has banned the sale and distribution of Asbestos products. In China 100,000 people are exposed to asbestos at work including 24,000 mine workers, and 46,000 in more than 1,200 asbestos factories (Kazan-Allen, 2007).
The last area of production violence I will mention to illustrate the problem of this area of corporate crime is in the area of agriculture and in particular the violence that results from the use of pesticides. One study estimated that 75 percent of the pesticides applied in Central American are either banned, restricted, or unregistered in the United States (Alson & Brown, 1993). Much of this is a result of lax control on US manufacturers on the dumping of their product overseas after it has been banned in the United States (Iadicola & Shupe, 2013).

Environmental Violence

The last area of corporate violence that I will briefly discuss is environmental violence (Iadicola & Shupe, 2013). According to a recent study, pollution levels around the world today are estimated to cause forty percent of the deaths of humans worldwide (Pimentel, Cooperstein, Randell, Filiberto, & Sorrentino, 2007). Most of these deaths are caused by poor sanitation and the water pollution that results. However, a recent estimate by the WHO is that for 2012, there were seven million premature deaths as a result of air pollution (World Health Organization, 2014).

Iadicola and Shupe (2013) identify four areas of environmental violence that relates to business activities. The first is knowingly disposing of wastes from production in an unsafe manner so that it kills or injures community residents. Another is knowingly emitting toxic gases into the air that result in the death or injury of residents. A third category refers to knowingly emitting toxic liquids or solids into water systems so that they result in the death or injury of residents. The last category of environmental violence discussed is knowingly removing a resource in such a way and extent that it leads to further environmental damage and to the death or injury of residents.

In general, the laws and regulations to control this area of crime are very recent in the United States. Most statutes creating the regulations and the agencies to enforce them were created during
the last 40 years. In most cases of environmental violence, there is little enforcement of regulations, and when there is enforcement rarely do they become a criminal matter. Like in the previous case of production violence, only when the level of environmental damage reaches catastrophic proportions, do agencies act.

A good example of this is the recent case of British Petroleum and the environmental catastrophe in the Gulf of Mexico. In November 2012, BP settled the Justice Department’s criminal case against it for the 2010 Deepwater Horizon oil disaster, agreeing to pay $4.5 billion in fines and admit it was guilty of 11 counts of manslaughter (Polefka, Conathan, & Kroh, 2013). BP has one of the worst safety track records of any major oil company operating in the United States.

The problem of environmental pollution as a result of economic activities is widespread in the U.S (Duhigg, 2009). According to an investigative report by the NY Times, an estimated 19.5 million Americans become ill each year from drinking water contaminated with parasites, bacteria or viruses. The NY Times investigative report found that the Clean Water Act has been violated more than 506,000 times since 2004, by more than 23,000 companies and other facilities, according to reports submitted by polluters themselves. The number is likely to be much higher since companies are reporting themselves in violation and only test what they are dumping only once a quarter, so the actual number of days when they broke the law is suspect to be far higher. Duhigg found that the number of facilities violating the Clean Water Act grew more than 16 percent from 2004 to 2007, the most recent year with complete data.

Sixty percent of the polluters were deemed in “significant noncompliance” — meaning their violations were the most serious kind, like dumping cancer-causing chemicals or failing to measure or report when they pollute. The NY Times investigative research also uncovered that fewer than 3 percent
of Clean Water Act violations resulted in fines or other significant punishments by state officials. The E.P.A. often declined to prosecute polluters or pressure states to strengthen their enforcement levels.

State Corporate Crime

The last area of economic crime to be discussed is state corporate crime. State corporate crime occurs when there is collusion between business enterprises and government officials in the violation of laws and regulations. Michalowski and Kramer define state-corporate crime as “illegal or social injurious actions that result from a mutually reinforcing interaction between (1) policies and/or practices in pursuit of goals or one or more institutions of political governance and (2) policies and/or practices in pursuit of the goals of one or more institutions of economic production and distribution (Michalowski & Kramer, 2006, p. 20).” They identify two forms of this criminal relationship: state-initiated corporate crime and state-facilitated corporate crime. In the former case, corporations employed by a government engage in organizational deviance at the direction of, or with the tacit approval of government. In the latter case, this occurs when government social control or regulatory agencies are guilty of a failure to create the necessary regulations or failed to enforce the regulations that would prevent the harm. They observe that this occurs because of direct collusion between business and government or because they adhere to shared goals whose attainment would be hampered by regulation.

One example of state corporate crime is the case of the deaths of 25 plant workers and 46 injured as a result of an explosion at the Imperial Food Products chicken-processing plant in Hamlet, North Carolina (Aulette & Michalowski, 2001)

In response to the lack of enforcement by the State authorizes of worker safety regulations, U.S. Federal Labor Secretary, Lynn Martin, gave the State of North Carolina 90 days to beef up its enforcement of job safety and health regulations or the Federal Government would take it over (Kilborn, 1992). The State of North Carolina five of the six preceding years had returned money to the federal
government because the federal law required matching state funds to pay for the enforcement of OSHA regulations (Aulette & Michalowski, 2001).

The federal government took over the investigation of the case and on September 15, 1992, owner Emmett Roe pleaded guilty to 25 counts of involuntary manslaughter. He was sentenced to nineteen years, but was released on parole before he completed four years. This criminal sentence together with the fines was the greatest penalty assigned in North Carolina for worker safety violations. According to Aulette and Michalowski (2001, pp. 171-172), the case of Imperial Foods illustrated “a clear instance of state-corporate crime precisely because it was the absence of this political will and the omissions on the part of politically constituted agencies that enabled management of Imperial to continue violating basic safety requirements at the plan in its pursuit of private profit.”

Unfortunately, this particular case of state corporate crime was similar to one that occurred in China recently when at least 119 people were killed and dozens injured in a fire at a chicken slaughterhouse near the provincial capital Changchun. “Chinese state media quoted workers saying that all but one of the doors to the plant were typically locked from the outside (Areddy, 2013).” According to official Chinese government reports, industrial accidents have led to the death of 70,000 people in each of the last two years (Areddy, 2013).

**Challenges to Controlling Economic Crime**

There are many challenges to controlling economic crime in the United States. Below are some of the major challenges that criminologists have identified for this area of criminal activity.

**The Politics of Social Control**

Social control within any society is a product of political processes. Political processes are centrally involved in the creation of laws and regulations and in determining the level and manner of
execution of these laws and regulations. This is the case in all areas of crime, whether we are talking about areas of conventional crime; i.e. drug offenses, rape, marital assault, or white collar or economic crime. In regard to most areas of economic crime, the creation and enforcement of laws are relatively recent in the history of crime control. Most of the statutes are regulatory in nature, not criminal. In general, the role of regulatory agencies are only secondarily to apprehend and prosecute offenders. Their principle role is primarily educational. Thus built into the system of social control for economic crime is a hesitancy to criminally prosecute. Only after repeated failures of compliance is there consideration of referral to the U.S. Justice Department to either civil or criminally prosecute. Friedrichs notes that “a great deal of evidence of white collar crime activity comes to the attention of the Internal Revenue Service, the Environmental Protection Agency, and the Securities and Exchange Commission, these agencies are not always eager to refer cases to the Justice Department. In one sense, any such referral is an admission of failure on their part; once the Justice Department takes on a case, the regulatory agency loses control of it (Friedrichs, 2010, p. 315).”

Controlling white collar crime has always been highly political because of the political power of the offenders and those who may benefit by their actions. This is especially the case for corporate crime. The level of enforcement and prosecution in the United States has shifted as there are swings from political conservatism to liberalism of the executive branches of government. This is the case with federal prosecution, but even more so at the state government level of regulation and prosecution. In general, state agencies are even more affected by political ideology and in general are less likely to prosecute corporate crime in particular because of the fear of economic consequences as the regulatory environment becomes defined as burdensome by business owners and managers. For the most part, the controls in most areas of corporate crime were created during times of dominance of political liberalism. Beginning with the progressive era at the turn of the 20th century with the creation of the Sherman
Anti-Trust Act in 1899.

As Friedrichs (2010) notes however, it wasn’t until the 1970s when there was a significant increase in the prosecution of white collar crime in general in the United States possible in response to the Watergate investigations during the Nixon Presidency. For most of the 1980s and early 1990s, with the Reagan and George H. Bush Presidential Administrations, there was little focus on white collar crime. However, because of the widespread fraud as a result of banking deregulation during the 1980s resulting in the Savings and Loan banking crisis, and the more politically liberal Clinton Presidential Administration, criminal prosecution increased and by the mid-1990s white collar prosecutions accounted for almost 18% of federal prosecutions, the highest percent total in US history.

With another political/ideological shift with the election of George W. Bush, there began a gradual reduction in prosecutions. Early in the Bush Presidency, the Justice Department signaled its change in policy toward economic crime when they withdrew its anti-trust case against Microsoft. This general reduction in prosecutions occurred despite the major fraud cases that led to the bankruptcy of the energy trading company, Enron and the accounting firm, Arthur Andersen that was charged with contributing to the fraudulent actions of the corporation that occurred at the beginning of Bush’s presidency. During the G. W. Bush Administration, the U.S. Department of Justice moved to centralize prosecution of fraud cases, thereby reducing the independence of what was defined as “over-zealous” federal prosecutors operating in the states. Between 2000 and 2007, prosecutions of securities fraud cases declined 17 percent, frauds against financial institutions declined 48 percent, and insurance fraud cases declined dramatically, by 75 percent. Overall, white collar crime prosecutions declined 50 percent during this period. By 2012, only 9.4% of federal prosecutions were white collar crime cases (Friedrichs, 2010). During the most recent period, beginning with the second term of Obama, there has been increase in high profile cases in part as a result of the massive fraud again occurring in the
banking sector in the wake of a deregulations governing this sector.

Aside from the ideological orientation of the executive branches of government who oversee the regulatory and criminal justice agencies, there is also the influence of corporate actors in determining the nature of the regulatory and criminal justice environment as it pertains to violations that they are more likely to commit. This is unique in enforcement of laws. For most conventional crime those who are likely offenders have generally no significant influence in the creation and enforcement of laws which they are likely to commit. The influence of corporations over the nature of the regulatory environment significantly limits the enforcement of laws controlling economic crime. The political influence of the wealthy and corporations has grown dramatically over the last 35 years, paralleling the increase in wealth and income inequality in the U.S.

However this is not unique in American history, the controlling influence of wealth or money in U.S. elections occurred at the very beginning of American democracy and has grown in significance as the nation has grown and there has been an increasing reliance on mass media to sell the candidate to the voting public. Attempts at controlling the influence of money in elections begins in the latter half of the 19th century, with the 1867 with the passage of a series of civil service reforms to limit the contributions of federal workers to political parties. In the early 20th century during the liberal, progressive era, there was legislation passed to prohibit political contributions by corporations with the passage of the Tillman Act of 1907. The history of attempts to control the influence of corporations on elections is beyond the scope of this paper. It is sufficient to say that this most recent era with the US Supreme Court decision in the Citizens United V. Federal Election Commission case many of the previous restrictions on the influence of money in elections have been nullified. A forthcoming analysis by Gilens and Page found that in their multivariate analysis “that economic elites and organized groups representing business interests have substantial independent impacts on U.S. government policy, while average citizens and
mass-based interest groups have little or no independent influence (Gilens & Page, 2014, p. 2).” The influence of money in elections, the legislative process, and the execution of laws and regulations by the executive branch of government clearly restrains the mechanism of social control as it pertains to the crimes in which corporations and the wealthy most benefit.

Revolving Door between Regulators and the Corporations they Regulate

Another facet of the influence of corporations in the enforcement of the regulations is the “revolving door” of personnel between the regulatory agencies and the corporations that they are regulating (Meghani & Kuzma, 2011). Personnel from all levels within the various regulatory agencies that oversee business activity can easily find employment in the very corporations that they were regulating and usually at much higher salaries. On the other hand, lawyers and former corporate officials appear to be prime candidates to run the agencies that they were regulated by when they were working in the private sector. Bill Buzenberg, executive director of the Center for Public Integrity, (an independent think tank that investigates government operations) after what seemed like a quick succession of failures of the regulatory system that led to the collapse of Enron, one of the largest coal mine disasters occurring at the Big Branch Mine in West Virginia, and the BP oil spill in the Gulf of Mexico concluded that "We're seeing the consequences of inadequate regulation stemming from the revolving door, lobbying and the impact of money on both Congress and the agencies” (Powell, Dunham, & Gaffney, 2012).

The Business of Blocking Regulations

In addition to the revolving door between regulators and the regulated, in recent years there has also developed an industry to combat the regulation of economic activity. Michaels (2008) describes how an industry of public relations, product defense lawyers, and scientists in the service of large corporations work to “manufacture doubt” about the claims of harm often delaying the necessary
regulations to protect the public. Michaels, a former Assistant Secretary for Environment, Safety, and Health in the Department of Energy, argues that “the regulatory agencies in Washington, D.C., are intimidated and outgunned and quiescent.” He notes that polluters and manufacturers of dangerous products tout “sound science,” but what they are promoting just sounds like science but is not. Michaels documents case after case of corporations that spend billions of dollars each year lobbying politicians to pressure regulatory agencies, hiring public relations and legal firms to create doubt in the scientific research, and hiring scientists to conduct research in the interest of making profits from the sale of dangerous products and polluting production methods.

The Cost of Prosecution

Not only is there a great deal of political influence in the creation and execution of the laws, there is also the challenges to prosecute economic crime cases. The regulations and laws that regulate and control most areas of white collar crime are more complex than statutes for conventional crime. One of the central challenges is establishing intent to do harm or “mens rea.” The complexity of the organizations and the insulation of the leadership from decisions made by lower level functionaries create challenges to prosecution. Most crimes are identified as accidents or oversights and only where there are patterns of repeated violations and “smoking guns” in the forms of memos authorizing the actions are there clear paths to prosecution. In the vast majority of cases, the violations, if identified, are punished with fines that in the case of corporate crime, are far less than the benefits they accrue from violation of the laws.

There is also the problem of defining the violator as the organization and not particular individuals who authorized the decisions and carried out the activity. Criminologists recognize that although the corporate organization plays an important role in defining the context for the criminal behavior. The
behavior is the decision of individuals (Cressey, 2001). Despite the legal status of the corporation as a
person, the organization, itself, does not commit crime, it is the individual officers within the
corporation that commit the crime. This is important in the search for causes but also in the context of
creating a system of social control that would be most effective. There is important scholarship that
has been done that identifies the significance of the corporate culture and bureaucratic structures, and
market factors that can establish an important context for the action (Vaughn, 2001; Rosoff, Pontell, &
Tillman, 2007; Friedrichs, 2010). Nevertheless, it is individual who are acting in the context of
expectations of performance and a corporate culture that provides the rationalizations for the actions.
This is even more important when considering control strategies. Defining the corporation as the
violator significantly limits what social control measures can be applied. Sanctioning the
organization without sanctioning individual actors within the corporation will have a limited effect on
deterring white collar crime/corporate crime.

In most cases, aside from a cease and desist order, the levying of fines will have a limited impact. The
reason for this is not only are the fines small relative to the size of the profits that the corporation
achieves in any given year, but also in many cases the fines can be deducted as a cost of business.
“Historically, corporations have often found it less costly to contend with civil lawsuits than to limit
profits by fully complying with the law or correcting the hazards they created (Friedrichs, 2004, p.
354).” More severe sanctioning such as suspension or revocation of corporate charters, the so called
corporate death penalty, in the business area of the violations are politically extremely difficult to
achieve and also are seen as punishing not only the corporation, but the workers and communities that
the corporation operates and the shareholders who have invested.

A greater level of deterrence is achieved by targeting the individual actors, the decision-makers,
in the criminal activity. Relatively few white collar criminals are incarcerated, especially for most
areas of corporate crime. Although, criminologist believe that punishment would have a greater
deterrent effect than when applied to conventional crime. There is probably no other area of crime
where there is as much calculation of the costs and benefits of the action than economic crime in
general. Nevertheless, there are difficulties in prosecuting individuals because of their status and
power in the communities that they reside. Friedrichs (2010) notes that the relatively high educational
level and occupational prestige of many white-collar offenders is seen as creating a “status shield” that
protects them from the harsh penalties applied with greater frequency to “common” criminals.

Prosecutors also assess the difficulty of prosecution based on the amount of resources that the
accused can bring to their defense. In the case of corporate crimes in general, prosecutors will most
often assess that the resources that would have to be expended on the part of the government to achieve
a successful prosecution far exceeds the benefit of a prosecution. In most cases, if there is a referral to
the Justice Department to prosecute, the outcome will be a cease and desist order, in which the
defendant does not admit guilt but agrees to desist from continued violation of the law.

The Criminogenic Culture of Capitalism

In addition to all the other challenges to crime control mentioned, there is the role of a
criminogenic culture that defines the context in which white collar crime occurs. Coleman (2001) saw
the root of white collar crime is in what he referred to as the culture of competition. For Coleman
there is a drive for accumulation of wealth through competition in the marketplace are key factors in
creating a criminogenic culture for economic crime. He noted that the market in capitalist society not
only was it the place for the realization of profit or loss, but also winners and losers in the pursuit of the
accumulation of wealth. According to Coleman what develops in response to the competition is
a “win at any cost” morality that encourages even the scrupulous entrepreneur or executive to bend the
rules – or to engage in outright fraud and deception – in order to stay ahead of the competition. He notes that these pressures may be found in any society that produces a surplus, but it is felt most acutely in advanced capitalist societies like US society, “where upward mobility is regarded as a right.”

Coleman notes that in contrast to traditional values, the competitive struggle for personal gain is defined as positive, not a selfish or harmful activity. This competition for status and wealth is pervasive throughout U.S. capitalist society, but especially concentrated among the wealthy, since they have the greatest means to engage in the competition and to win and to commit economic crimes. He also notes that “the key components of the culture of competition and motivating the white-collar criminal—the desire from wealth and success in the fear of failure—have, if anything, grown stronger in the 20th century.” (Coleman, 2001, p. 349)

In addition to the culture of competition, there is the capitalist ideological component of culture that plays a large role in rationalizing the criminal behavior or in the language of Sutherland (1949), providing an excess of definition of the motives favorable to violation of the law, or in what Sykes and Matza’s (1957) defined as the “techniques of neutralization.” The ideology of capitalism itself discourages regulation and control of economic activity. According to classical liberalism, more known today as Neo-liberalism, the principle coercive force in a free market capitalist society is the state and that economic problems stem from the state’s interference or regulation of the invisible hand of competition in the marketplace.

Regulations of economic actors is seen as repressive and that most areas of white collar and in particular corporate crimes are not crimes at all. For Neo-liberals like Nobel Prize Laureate Milton Friedman the only responsibility that corporations have is to make profits and if profits can be maximized by the violation of regulations that in the mind of capitalists and neo-liberal ideologues for
the most part shouldn’t exist anyway, so be it. Caveat Emptor or “let the buyer beware” would be an acceptable, if not preferred practice according to neo-liberalism. It is all a matter of consumer choice, and interference by government through the establishment of regulations, is worse than the problem.

According to Snider, this ideological shift to neo-liberalism beginning with the Reagan and Thatcher administrations swept across OECD nations and virtually eliminated the concept of corporate crime and delegitimized and reduced the enforcement of laws against economic crime (Snider, 2000). “The adoption of neo-liberal claims around corporate crime is tied in a complex interactive process to an on-going corporate counter-revolution that has legitimized virtually every acquisitive, profit-generating act of the corporate sector, and challenged every policy that impeded this agenda. A decline in legal, political and moral regulation of capital, and a pronounced shift in public levels of expectation vis-à-vis business, has resulted (Snider, 2000, p. 170).” What also followed from the neo-liberal transformation and increasing government deregulation beginning with the Reagan and Thatcher regimes were increases in levels of inequality, reduction in the power of unions, a shredding of the social safety net, and along with decreased enforcement of regulations controlling economic crimes.

Conclusion

China’s economic liberalization and transformation to a form of state directed capitalism coincides with the shift and spread of neo-liberalism across the globe. Accompanying the rapid economic growth with this transformation has been increasing levels of inequality and crime, both conventional and economic crime (Zhang, Messner, & Liu, 2008). There is case after case of economic crime that have been reported in China that are quite similar to the ones reported in the United States. The recent
National Profile Report on Occupational Safety and Health in China reported some improvements in occupational accidents but increases in several categories of occupational diseases, especially pneumoconiosis, lung diseases from mining, metal processing, and textile (Herbert, 2012). There have also been cases of product safety violations across large number of product areas including food (2008 Sanlu Group Milk adulteration case and most recently the selling of expired meat to fast food restaurants (Moss & Gough, 2014), building construction (Sichuan earthquake damage investigations (Jacobs & Wong, 2009)), and environmental pollution (Kahn & Yardly, 2007)).

There also appears to be similar challenges to the enforcement of regulations to control economic crime as experienced by the United States (Ghazi-Tehrani, Pushkiarna, Shen, Geis, & Pontell, 2013). Corporate managers and owners having increasing influence over the enforcement of state regulations. Similar to the United States, white-collar offenders in China are more likely than street offenders to be acquitted. However, unlike the United States when white-collar offenders are convicted they receive more severe sentences, in some cases death sentences (Badkar, 2013). Often times this a result of periodic crackdowns in which the convictions and severe sentencing during these times show that the government is serious about the problem. Furthermore, during these crackdowns lower level, unsophisticated white-collar are more likely to be caught (Ghazi-Tehrani, Pushkiarna, Shen, Geis, & Pontell, 2013). However, outside of these crackdown periods, punishment tends to be minimal, similar to the United States. For example, van Rooij (2012) notes that for environmental crimes, the law allows up to 1,000,000 RMB ($160,000 U.S.) in fines, yet the average fine in 2006 was only 10,000 RMB ($1,600 U.S.).

There is also the problem of the connections between local government officials and their public interest maintaining a positive climate for the economic development of their jurisdiction and their own personal economic interest make the detection and prosecution of white collar crime difficult
China is not unique in this case, the direct and indirect influence of capitalist or their legal or political surrogates on the nature of enforcement of regulations and laws is an artifact of the nature of capitalist development. The differences between the United States and China may be more of an artifact of the nature of the political systems and not as much because of the class structure of the respective societies. The dramatic rise in power of capitalist in China is the most recent chapter of the history of Peoples Republic of China, post cultural revolution) and their influence may be more indirect through linkages and overlap between party officials and the rising capitalist class.

Lastly, both the United States and China suffer from the problem of weak detection capacity resulting from the lack of enforcement agents. According to van Rooji, in China there were 40,000 labor inspectors for an estimated 30 million businesses or approximately 750 businesses per inspector. In the United States the federal Occupational Safety and Health Administration (OSHA) and the state OSHA plans have a total of only 1,955 inspectors (864 federal and 1,091 state inspectors) to inspect the 8 million workplaces under the OSH Act’s authority, or 4092 workplaces per inspector, more than 5 times fewer inspectors per workplace than China. According to the most recent report issued by the AFL-CIO it would take Federal OSHA 139 years, on average, to inspect each workplace once, and for state OSHA plans, 79 years. The current levels provide one inspector for every 67,847 workers in America (AFL-CIO Safety and Health Department, 2014).

Recent cultural changes and increases in inequality in the China may also be important factors in creating similar challenges as experienced in the United States. China has certainly been experiencing another cultural revolution since the one ending in the late 1970s. One that has embraced capitalist

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values and ideology that, like in the United States, may encourage the growth of white-collar crime and hamper the enforcement of laws to control it. Although, this new ideological and cultural landscape is less stable than in the United States. As Liu notes, “global capitalism has infiltrated China’s cultural landscape not only with its commercial mass culture products but also with its academic, intellectual products, namely, contemporary Western “theory.” It is true that imported Western academic theoretical discourse already had a prominence in the 1980s debate about culture, but its function then was radically different from what it does now” (Kang, 2004, p. 38). He goes on to note that the irony is that “Deng Xiaoping’s reform, which began as a “revolt against the rule of thoughts”—that is, Maoist ideology (or hegemony)—seems to have run its course of materialist or economic reversal and reverted to the initial problem of the Maoist legacy that not only haunts the social consciousness like a specter of the past but also lives in the present (Kang, 2004, p. 47).” The increasing problems of white-collar crime in China especially in the areas of corruption and economic violence may force a resolution of the contradictions of the two cultural revolutions, the one of the past of the Maoist era that ended with the reforms of Deng Xiaoping, and the one of the present between the ideology of communism and the economic and social transformation resulting from the integration of capitalism into Chinese society.


