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Combating Corporate Crime

Taylor Turner*

Before 2002, Americans paid little attention to the high level of corporate crime throughout the country. Few people comprehended the severe economic, environmental, and human costs corporate crime inflict on society.

From the robber barons of the 1900s to the cyberspace felons of the twenty-first century, corporate criminals have long plagued the U.S. Through embezzlement, bribery, environmental destruction, and product safety violations, corporate criminals damage the economy and endanger the health of the American people. Before 2002, Americans paid little attention to the high level of corporate crime throughout the country. The public considered street crime far more harmful than the crimes of the elite. Few people comprehended the severe economic, environmental, and human costs corporate crime inflict on society. Little interest was given to the country's efforts to combat corporate crime through the criminal justice system, regulatory agencies, and legislation.

Because the media has recently focused on the fall of high-profile companies such as Enron and WorldCom, corporate crime is catching the nation's attention. After the wave of highly publicized corruption cases in 2002, government leaders recognized the need to crack down. While meeting with corporate crime prosecutors, Attorney General John Ashcroft equated the threat of corporate crime with terrorism: "Just over a year ago, Americans were called to defend our freedom from assault from abroad.

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Today we are called to preserve our freedom from corruption within.1 The media, general public, and government are realizing that corporate corruption is a serious hazard to the nation's well-being. Despite this recent recognition, many Americans still do not fully understand the nature of corporate crime or the tactics used to reduce the corruption. This essay examines the corporate crime crisis in America as well as current efforts to deter corporate crime and prosecute corporate criminals, and it proposes ways the government could more effectively combat corporate corruption.

THE CORPORATE CRIME CRISIS

The corporate crime crisis is especially dangerous because few people acknowledge it as a significant threat. Few Americans consider corporate criminals to be serious offenders. Consumers trust corporations not to breach regulations and rarely notice when they do. Few realize the pain and destruction companies cause when they violate the law. While the public focuses on street crime, corporate criminals seem to go unnoticed.

Society maintains a stereotypical definition of the criminal type, and most corporate criminals do not fit that mold. According to Tony G. Poveda, sociology professor, "the modern myth of the criminal type portrays the criminal as a particular type: poor, young, male, lower class, minority."2 Poveda further describes the criminal stereotype, explaining, "a recent version of this myth portrays crime as highly concentrated in a small, hard-core group of offenders, variously known as 'chronic offenders' or 'career criminals.'"3 By believing that the same small group of lower-class offenders is responsible for most crime in America, the public neglects the fact that many white-collar workers commit crimes. The stereotypical concept of the criminal blinds the public to the offenses of the corporate elite.

Government officials also concentrate more on lower-class crime. The government has conducted numerous studies to identify the magnitude of conventional crime but has neglected to collect as much data on corporate crime.4 Recent statistics do show, however, that corporate crime is a serious problem for American business. One investigation revealed that 23 percent of the nation's 500 largest corporations had "criminal or civil actions brought against them for serious misconduct over a 10-year period."5 Additionally, of the 25 corporations at the top of this list, 14 were criminally convicted or paid civil penalties of at least $50,000.6 Although the majority of American companies work in accordance with the law, the corporations that do operate illegally cause serious harm to the country.

The economic, environmental, and human costs corporate crime inflicts on the nation are devastating. Commenting on the economic threat of corporate crime, Attorney General John Ashcroft stated, "The malignancy of corporate corruption threatens more than the future of a few companies. It destroys workers' incomes, decimates families' savings, and casts a shadow on the health, integrity, and good name of American business itself."7 Every year antitrust violations alone cost the nation around $250 billion, while the IRS claims that $150 billion is lost to tax fraud.8 Economic losses from corporate crime far outweigh those from street crime, which are estimated to cost $13.3 billion every year.9

In addition to economic costs, corporate crime also endangers the environment. Pollution caused and covered up by corporate criminals can even threaten public health. The Love Canal controversy in New York shows how corporate crime can cause environmental disaster and health risks. After burning 20 million pounds of chemical waste in an abandoned waterway, the Hooker Chemical Corporation covered the Love Canal and sold the land to the city. After an elementary school and housing development were built on the site, residents began to discover contaminated groundwater. It was determined that the pollution caused a higher level of miscarriages, birth defects, cancer deaths, and other health problems. Although Hooker Chemical recognized the threat early, it did nothing to prevent the disaster.

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3 Ibid.
4 Ibid.
5 Ibid.
6 Frieden, "Ashcroft Vows Tough Stand".
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2 Tony Poveda, Rethinking White-Collar Crime (Westport, CT: Praeger, 1994), 4-5.
3 Ibid.
5 Ibid.
6 Ibid.
7 Frieden, “Ashcroft Vows Tough Stand”
Hooker was finally forced to pay the government $129 million to clean up the contaminated canal. The Environmental Protection Agency estimates that "of the 100 billion tons of hazardous waste produced each year in the United States, 90 percent is disposed of in an environmentally unsafe manner." Without stricter enforcement, companies will continue to act in ways that endanger the environment.

Corporate crime often ruins the lives of workers and consumers. By disregarding worker safety laws, companies cause injury to their employees. Occupational safety laws kill around 100,000 Americans every year and 390,000 employees suffer from work-related sicknesses. Although not all of these injuries result from corporate negligence, one study of industrial accidents revealed that 45 percent of employee injuries result from violation of safety codes. Additionally, many consumer injuries occur when companies sell unsafe products. The National Commission on Product Safety has determined that "20 million Americans have suffered injuries from using unsafe consumer products." Not all companies knowingly distribute dangerous merchandise, but some jeopardize their customers and break the law for the sake of profits. The Ford Motor Company in the 1970s is a sad example. Despite crash test evidence that showed flaws in the Pinto's design, Ford continued to make and distribute these cars because they were profitable. After many Pinto accidents and after Ford lost a number of lawsuits, the Department of Transportation finally declared the Pinto unsafe and demanded a recall.

Society's understanding of corporate crime directly influences methods used to combat corruption. When people consider the typical criminal to be a member of the lower class, they create laws to control crimes committed by the poor. Prosecution efforts target street crime and conventional criminals. If society fails to recognize that some companies break the law, corporate crime will continue to flourish. As long as the general public and government leaders consider street crime more harmful than corporate crime, the resources necessary to smother corporate corruption will not be available.

9 Ibid., 9.
10 Rosoff, Pontell, and Tillman, 133–34.
11 Ibid.
12 Poveda, 13
13 Rosoff, Pontell, and Tillman, 98.

Government Efforts to Combat Corporate Crime

Because the public emphasizes capturing lower-class criminals, enforcement agencies use most of their resources fighting street crime. While police forces focus mainly on street crime, the government has made an effort to reduce corporate crime by creating regulatory agencies that investigate corruption and punish offenders. Additionally, government officials continue to pass new legislation to combat corporate crime. Regulatory agencies can use legislation to help bring corporate criminals to justice, but these agencies currently lack the resources needed to operate effectively.

Confusion over jurisdiction and insufficient resources prevent government enforcement agencies from effectively fighting corporate crime. Local police forces lack the expertise and manpower necessary to investigate complex corporate crimes. The FBI has more resources than local police agencies but tends to focus on individuals committing white-collar offenses. In addition, the FBI's commitment to combating corporate crime is subject to changes in administration and political pressure. Some FBI directors consider corporate crime less important, and in consequence the agency as a whole gives corporate corruption little attention. The IRS has been effective in uncovering some corporate crimes, but their focus is usually limited to tax evasion.

Even when investigations yield enough evidence to press charges against corporate criminals, prosecutors often struggle to convict the offenders. According to James William Coleman, sociology professor, "prosecutors, like most other parts of the justice system, are ill-prepared to meet the challenge posed by white-collar crime." While prosecutors are "ill prepared," most corporate criminals have abundant financial resources and can afford the best possible defense. Because of this, corporate criminals are often acquitted or have their sentences reduced. The Clinard study of corporate crime determined that 62.5 percent of convicted corporate executives received probation, 21.4 percent had sentences suspended, and only 28.6 percent received jail sentences. For those sent to jail, the average stay was just 37.1 days. Corporate felons escape the harsh punishments imposed on
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conventional criminals. Michael Milken's case is typical. Milken, a Wall Street mastermind who made millions on an illegal junk bond scheme, received a ten-year prison sentence after pleading guilty. His sentence was later reduced, and he eventually only served two years in a minimum security facility. While many small-scale offenders receive lengthy sentences for stealing pocket change, corporate criminals embezzle millions and use their power and wealth to escape severe consequences.

The government also uses regulatory agencies to check corporate corruption. Agencies such as the SEC, FDA, OSHA, and the EPA were created to regulate the stock market, protect the environment, and preserve the health and safety of workers and consumers. These agencies have advantages over the criminal justice system that make them more effective in combating corporate crime. They can use their expertise to create laws against corporate corruption and don't have to deal with the political pressure that influences politicians.

However, regulatory agencies also face obstacles in the fight against corporate corruption. The first is political opposition to strict corporate regulation. Over the years, some government administrations have promoted deregulation by reducing resources allotted to regulatory agencies. From 1980 to 1986, staffs for regulatory agencies were cut by 26 percent. When justifying such budget cuts, politicians claim that fewer market restrictions help bolster the economy. Even if cutting restrictions leads to economic growth, politicians neglect to admit that less regulation could give corporate criminals more freedom to operate. Regulatory agencies are often forced to fight on two fronts: they struggle to combat corporate crime while enduring budget cutbacks from the national government.

Because regulatory agencies often lack sufficient funding, they produce low corporate crime conviction rates. The Clinard study analyzed sanctions brought against some of America's largest manufacturing firms and found that in 75.8 percent of the cases, the companies escaped without penalty. Legal action brought against Exxon in the early 1970s shows that regulatory agencies are often outmatched when facing the nation's wealthiest companies.

Because of the case's "length and complexity," it was eventually dropped after eight years, having drained 12 to 14 percent of the Federal Trade Commission's antitrust budget.

In addition to using regulatory agencies and the criminal justice system, the government also enacts legislation to curb corporate crime. The government tries to protect the American people by passing laws against monopolies, political corruption, pollution, and corporate fraud. By passing such laws, the government uses the threat of punishment to dissuade potential offenders from committing felonies. One recent example of legislation is the Sarbanes-Oxley Act, which Congress passed to respond to the public outcry over the corporate scandals of 2002.

The Sarbanes-Oxley Act of 2002 provides the nation with new weapons in the battle against corporate crime. According to the South Carolina Law Review, the new act has the power to "change corporate accountability dramatically" by demanding "honesty in financial disclosures, management accountability for the financial affairs of the corporation, and avoidance of personal financial interest or conflict in decision-making by corporate executives." One of the chief goals of the Act was to impose tougher penalties on corporations and accounting firms that try to cover up their corruption. The Act can also help prosecutors pursue cases against high-profile corporate defendants. The Harvard Law Review observes that convictions in such cases are important in combating corporate crime because they "provide greater deterrence value than civil or administrative fines." Many aspects of the Sarbanes-Oxley Act should assist prosecutors as they struggle to convict corporate offenders. The Act demonstrates the government's ability to combat corporate crime through legislation.

Despite the government's best efforts, many corporate felonies continue to go unnoticed or unpunished. According to white-collar crime expert James William Coleman, "there is no question that the overall level of prosecutions of white-collar offenses remains extremely low compared with the frequency and severity of the offenses themselves." Until the government

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24 Coleman, 144.
25 Ibid., 134.
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\(^{20}\) Coleman, 144.

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strengthens regulation by providing adequate funding and training, the country will continue to lose the battle against corporate crime.

Reforms to Improve Corporate Crime Regulation

Government agencies have the potential to more effectively control corporate crime, but they currently lack the skill and funding required to combat corporate corruption. To strengthen the fight against corporate crime, I propose that the government establish a law school to train attorneys for regulatory agencies. In addition, I suggest that the government increase funding for these agencies. Although these actions would require initial increased spending, regulatory agencies and a government law school could be funded through fines collected from corporate crime offenders. Over time, a specialized law school and stronger regulatory agencies should actually save money for the American people by helping recover money lost to corporate crime. With increased funding, regulatory agencies could pursue more cases against corporate criminals and use a stronger threat of conviction to discourage crime.

The government already has a medical school which trains doctors to eventually work in the military. Similarly, a government law school could give lawyers specific training in corporate regulation and prepare them to join regulatory agencies in the fight against corporate crime. Such a school could use scholarships to recruit the nation's top prospective attorneys and offer them future jobs serving their nation by fighting corporate crime. To draw the public's attention to the project and to recruit candidates, the government could fund commercials describing the threat of corporate crime and the aims of the government law school. By establishing a law school specifically designed to improve prosecution against corporate offenders, the government could help the public understand the threat of corruption, and show the nation's dedication to combating corporate crime.

After increasing public awareness and recruiting outstanding students, a government law school could then give recruits specialized training to prepare them for corporate crime prosecution. Some scholars propose that "we do not need more regulation; rather, we need 'smarter' regulation." Instead of creating new laws, the government could use a law school to better train prosecutors in applying existing laws to combat corporate crime. Prosecutors trained at the government law school could learn how to use such techniques as "parallel proceedings": bringing simultaneous investigations or prosecutions against a corporation. This strategy forces defendants to face several lawsuits at once and increases the likelihood of conviction. Graduates of the government law school would also be familiar with the most recent legislation against corporate crime, such as the Sarbanes-Oxley Act. Knowledge gained through a government law school would better qualify lawyers within regulatory agencies to investigate and prosecute corporate crime.

Along with more qualified lawyers, regulatory agencies should also receive more funding and larger staffs to keep pace with the wealth and influence of corporate criminals. President Bush has recently declared, "If you're a CEO and you think you can fudge the books in order to make yourself look better, we're going to find you, we're going to arrest you, and we're going to hold you to account." Regulatory agencies currently lack the means to carry out Bush's threat. Because they are "chronically underfunded organizations," regulatory agencies need more financial resources to carry out costly investigation and prosecution efforts. Without sufficient funding, government prosecutors will not be able to compete with highly skilled and well-paid corporate crime defense lawyers.

Conclusion

After the problem of corporate crime has long been underestimated, company scandals in 2002 have caused many Americans to question whether business can be trusted. Even though the majority of U.S. companies work within the law, those that violate regulations destroy the country's corporate image, the economy, the environment, and the health of the American people. Government efforts to combat corporate corruption through regulatory agencies have fallen far short of their potential. If the

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28 Coleman, 140.
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CONCLUSION

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28 Coleman, 140.

29 Rosoff, Pontell, and Tillman, 475.


32 Coleman, 134.
government were to establish a law school to train prosecutors in combating corporate crime, regulatory agencies would be better qualified to curb corruption. With larger budgets, regulatory agencies would have more muscle to find and convict corporate criminals. These measures could help restore the public's trust in U.S. companies.

The Sarbanes–Oxley Act: Investor Protection through Corporate Governance

Nicholas Beckstead*

The Sarbanes–Oxley Act effectively responded to calls for reform following the Enron fiasco and the dot-com collapse. Furthermore, the Sarbanes–Oxley Act includes significant preventative measures to ensure corporate responsibility.

Enron shocked the world when it unexpectedly declared the largest bankruptcy in American history. Mark Weisbrot, codirector of the Center for Economic and Policy Research, wrote this after the incident:

This master trader of everything from energy futures to advertising space. . . went from number seven on the Fortune 500 list of America’s largest corporations to a bankrupt failure in a matter of months.1

Enron reported a staggering $13.15 billion in debt, yet some bankers estimate that the unreported balance-sheet debt was near $27 billion. The result was an enormous group of disgruntled employees and irritated shareholders, as well as wide distrust for the corporate system. Political leaders called for reactive legislation. In the 2002 State of the Union Address, President Bush expressed this sentiment:

Through stricter accounting standards and tougher disclosure requirements, corporate America must be made more accountable to employees and shareholders and held to the highest standards of conduct.2

* Nicholas Beckstead, from St. Paul, MN, is an applied physics major with a biomedical emphasis. He is also minoring in math, chemistry, and philosophy. He plans to attend law school and practice patent law.
