

The Big Banks Are Criminal Enterprises

The Mainstream Media Acknowledges the Criminal Nature of the Banking System

By [Washington's Blog](#)

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"The Government Has Bought Into the Notion that Too Big to Fail Is Too Big to Jail"

Alternative financial media have noted for years that:

- Fraud caused [the Great Depression and the current financial crisis](#), and the economy will [never recover until fraud is prosecuted](#)
- Criminal fraud is the [main business model](#) adopted by the giant [banks](#). See [this](#)
- Largely because they are out-of-control criminal enterprises, [economy cannot recover unless the big banks are broken up](#).
- The Obama administration has made it [official policy](#) *not* to [prosecute fraud](#). Indeed, the "watchdogs" in D.C. are [so corrupt](#) that they are [as easily bribed](#) as a policeman in a third world banana republic.
- Instead of prosecuting, the government [throws money at them](#)
- As Nobel prize winning economist Joseph Stiglitz [noted](#) years ago:

"The system is set so that even if you're caught, the penalty is just a small number relative to what you walk home with.

The fine is just a cost of doing business. It's like a parking fine. Sometimes you make a decision to park knowing that you might get a fine because going around the corner to the parking lot takes you too much time."



Image by [William Banzai](#)

Now - with the slap on the wrist of giant HSBC for laundering huge sums of drug money - even the mainstream press is starting to catch on.

The New York Times [notes](#):

Congressional hearings exposed weaknesses at the Office of the Comptroller of the Currency, the national bank regulator. In 2010, the regulator found that HSBC had severe deficiencies in its anti-money laundering controls, including \$60 trillion in transactions and 17,000 accounts flagged as potentially suspicious, activities that were not reviewed. Despite the findings, the regulator did not fine the bank.

During the hearings this summer, lawmakers assailed the regulator. At one point, Senator Tom Coburn, Republican of Oklahoma, called the comptroller "a

lap dog, not a watchdog.”

A New York Times editorial [argues](#):

It is a dark day for the rule of law. Federal and state authorities have chosen not to indict HSBC, the London-based bank, on charges of vast and prolonged money laundering, for fear that criminal prosecution would topple the bank and, in the process, endanger the financial system. They also have not charged any top HSBC banker in the case, though it boggles the mind that a bank could launder money as HSBC did without anyone in a position of authority making culpable decisions.

Clearly, the government has bought into the notion that too big to fail is too big to jail. When prosecutors choose not to prosecute to the full extent of the law in a case as egregious as this, the law itself is diminished. The deterrence that comes from the threat of criminal prosecution is weakened, if not lost.

Even large financial settlements are small compared with the size of international major banks. More important, once criminal sanctions are considered off limits, penalties and forfeitures become just another cost of doing business, a risk factor to consider on the road to profits.

According to several law enforcement officials with knowledge of the inquiry, prosecutors found that, for years, HSBC had also moved tainted money from Mexican drug cartels and Saudi banks with ties to terrorist groups. Those findings echo those of a Congressional report, [issued in July](#), which said that between 2001 and 2010, HSBC exposed the American “financial system to money laundering and terrorist financing risks.”

As the New York Times correctly [points out](#):

If banks operating at the center of the global economy cannot be held fully accountable, the solution is to reduce their size by breaking them up and restricting their activities — not shield them and their leaders from prosecution for illegal activities.

The Washington Post [writes](#) that its not just HSBC:

A string of august names in global banking — Credit Suisse, Lloyds Bank, ABN Amro, ING Bank and now HSBC — have reached settlements in the past couple of years with the U.S. government for billions of dollars in tainted transactions. These investigations have revealed that weaknesses in the financial system lay not with the so-called hawala brokers of Karachi, Pakistan, but the bespoke bankers of London, Amsterdam and Geneva, and their American affiliates.

The settlement drew criticism that HSBC had escaped lightly, given the gravity and scale of the crimes.

“If these people aren’t prosecuted, who will be?” asked Jack Blum, a

Washington attorney and a former special counsel for the Senate Foreign Relations Committee who specializes in money laundering and financial crimes. “What do you have to do to be prosecuted? They have crossed every bright line in bank compliance. When is there an offense that’s bad enough for a big bank to be prosecuted?”

The Guardian [notes](#):

“Steal a little,” wrote Bob Dylan, “they throw you in jail; steal a lot and they make you a king.” These days, he might recraft the line to read: deal a little dope, they throw you in jail; launder the narco billions, they’ll make you apologise

The dealings had been flagged up to HSBC bosses by an anti-money laundering officer, but to no avail - the dirty business continued.

[A couple of years ago, when Wachovia was busted for laundering drug money,] no one from Wachovia went to jail - and, said Woods at the time of the settlement: “These are the proceeds of murder and misery in Mexico, and of drugs sold around the world. But no one goes to jail. What does the settlement do to fight the cartels? Nothing. It encourages the cartels and anyone who wants to make money by laundering their blood dollars.”

Wachovia was not the first, neither will HSBC be the last. Six years ago, a subsidiary of Barclays - Barclays Private Bank - was exposed as having been used to launder drug money from Colombia through five accounts linked to the infamous Medellín cartel.

And the issue is wider than drug-money. It is about where banks, law enforcement officers and the regulators - and politics and society generally - want to draw the line between the criminal and supposed “legal” economies, if there is one.

No one was sanctioned under criminal law last month when the [ING bank was fined \\$619m](#) for illegally moving billions of dollars into the US banking system....

A foremost trainer of anti-money laundering officers in the US is Robert Mazur, who infiltrated the Medellín cartel during the prosecution and collapse of the BCCI bank in 1991, and who tells the Observer that “the only thing that will make the banks properly vigilant to what is happening is when they hear the rattle of handcuffs in the boardroom”.

“People don’t like to ask how close the banker’s finger is to the trigger of the

killer's gun," says Woods.

But in this newspaper - when we [revealed the original "cease and desist" order against HSBC](#) - the former head of the UN Office on Drugs and Crime, Antonio Maria Costa, posited that four pillars of the international banking system are: drug-money laundering, sanctions busting, tax evasion and arms trafficking. [indeed, [drug dealers kept the banking system afloat](#) during the depths of the 2008 financial crisis.]

The response of politicians is to cower from any serious legal assault on this reality, for the simple reasons that the money is too big (plus consultancies to be had after leaving office). The British government recruits a former chairman of HSBC as trade secretary just as the drug-laundering scandal breaks.

The notion of any dichotomy between the global criminal economy and the "legal" one is fantasy. Worse, it is a lie. They are seamless, mutually interdependent - one and the same.

The Guardian [reported](#) last year:

"Wachovia's blatant disregard for our banking laws gave international cocaine cartels a virtual carte blanche to finance their operations," said Jeffrey Sloman, the federal prosecutor. Yet the total fine was less than 2% of the bank's \$12.3bn profit for 2009. On 24 March 2010, Wells Fargo stock traded at \$30.86 - up 1% on the week of the court settlement.

The conclusion to the case was only the tip of an iceberg, demonstrating the role of the "legal" banking sector in swilling hundreds of billions of dollars - the blood money from the murderous drug trade in Mexico and other places in the world - around their global operations, now bailed out by the taxpayer.

Huffington Post [writes](#):

"The message this is sending is if you want to engage in money laundering, make sure you're doing it within the context of your employment at a bank," [University of Notre Dame law professor Jimmy Gurulé, a former assistant U.S. Attorney General and former Undersecretary for Enforcement for the U.S. Treasury Department] said in a phone interview. "And don't go small. Do it on a very large scale, and you won't get prosecuted."

"It's essentially telling the executives in these institutions crime pays," Neil Barofsky, former Special Inspector General for the Troubled Asset Relief Program, the government's bailout program, told CNN. "Go ahead, do whatever you want to do, enjoy your profits, and the worst thing that happens, well, you have some fines that really make up a couple of weeks of profits that you lose."

Barofsky [explains](#):

DOJ's actions with regards to HSBC are ... downright terrifying for weakening the general deterrence for megabanks, both foreign and domestic, which could rationally interpret yesterday's actions as a license to steal.

Yesterday's action now spikes the punch with a new toxin, confirmation that criminal penalties are off the table, leaving a worst-case scenario of a fine totaling far less than even a single quarter's earnings. Given the potential profits of criminal behavior and the unlikelihood of personal consequences for the executives directing it, the message is clear: Crime pays. This will inevitably lead to more reckless risk-taking that will further undermine systemic stability and lead to an even greater financial meltdown down the road.

Matt Taibbi [notes](#):

When you decide not to prosecute bankers for billion-dollar crimes connected to drug-dealing and terrorism (some of HSBC's Saudi and Bangladeshi clients [had terrorist ties](#), according to a Senate investigation), it doesn't protect the banking system, it does exactly the opposite. It terrifies investors and depositors everywhere, leaving them with the clear impression that even the most "reputable" banks may in fact be captured institutions whose senior executives are in the employ of (this can't be repeated often enough) murderers and terrorists. Even more shocking, the Justice Department's response to learning about all of this was to do exactly the same thing that the HSBC executives did in the first place to get themselves in trouble - they took money to look the other way.

The top Wall Street fraud expert - William Black - [confirms](#):

Public reports of the results of the government investigations of HSBC describe a bank that has been a criminal enterprise for at least 15 years. The current settlement addresses only three of the many scandals HSBC has committed over that time period. HSBC is a recidivist of epic proportions, but the Obama and Cameron governments have failed to prosecute HSBC or any of its officers. When powerful corporations and their controlling officers grow wealthy through massive frauds and do so with impunity from criminal sanction integrity and justice are eaten away. Effective financial regulation, supervision, and prosecutions are essential to "free" financial markets. When cheaters prosper honest firms are driven from the markets, a point that the Nobel Laureate George Akerlof explained in his famous 1970 article on markets for "lemons." He described a "Gresham's" dynamic in which bad ethics drove good ethics from the marketplace.

BBC points out that [we](#) will end up paying for the banks' sins:

The point, as the Governor of the Bank of England said recently, is that banks may not have adequate capital to absorb the full financial cost of all the punishment being meted out for banks' past sins.

And as you will be tired of hearing, capital is expensive. And when banks are obliged to raise more of it, the burden falls initially on investors and subsequently on customers - who are forced to pay more for banking services to reward the providers of the capital.

Or to put it another way, we are all punished when banks are found guilty.

Senators Slam Department of Justice

Congress is almost entirely [bought and paid for](#).

But even so, Democratic Senator Merkley just [wrote](#) a letter slamming the Department of Justice:

Assistant Attorney General Lanny Breuer highlighted just how brazen the violations were, with traffickers depositing “hundreds of thousands of dollars in cash, in a single day, into a single account, using boxes designed to fit the precise dimensions of the teller window.” Sanctions violations were equally deliberate, with the bank intentionally stripping information from transactions to avoid detection. Yet despite these clear and blatant violations, the Department of Justice refused to bring criminal charges against the bank, relevant employees, or senior management.

Indeed, Mr. Breuer stated yesterday that in deciding not to prosecute, the Department considered the “collateral consequences” of its decision on the financial system. Mr. Breuer stated “If you prosecute one of the largest banks in the world, do you risk that people will lose jobs, other financial institutions and other parties will leave the bank, and there will be some kind of event in the world economy?” The HSBC decision comes on the back of deferred prosecution agreements with Standard Charter Bank and ING Group related to similar charges.

I am deeply concerned that four years after the financial crisis, the Department appears to have firmly set the precedent that no bank, bank employee, or bank executive can be prosecuted even for serious criminal actions if that bank is a large, systemically important financial institution. This “too big to jail” approach to law enforcement, which deeply offends the public’s sense of justice, effectively vitiates the law as written by Congress. Had Congress wished to declare that violations of money laundering, terrorist financing, fraud, and a number of other illicit financial actions would only constitute civil violations, it could have done so. It did not.

Drug cartels are also increasingly connected to terrorism. According to the Drug Enforcement Administration, 39 percent of State Department-designated foreign terrorist organizations (FTOs) have “confirmed links” to the drug trade, as of November 2011. The consequences to U.S. national security for violations involving terrorism financing ... are obvious and severe. Congress deemed criminal law the appropriate tool for punishing and deterring actions that have such serious and damaging public consequences.

According to the U.S. Sentencing Commission, jail time is served by over 96 percent of persons that plead or are found guilty of drug trafficking, 80 percent of those that plead or are found guilty of money laundering, and 63 percent of those caught in possession of drugs. As the deferred prosecution agreement appears now to be the corporate equivalent of acknowledging guilt, the best way for a guilty party to avoid jail time may be to ensure that the party is or is employed by a globally significant bank. The Department’s deferred prosecution agreements may offer something in the way of promises of future compliance, but they look sorely lacking in justice and accountability.

Merkley also notes that failing to criminally prosecute bank crimes makes the [“too big to fail” problem](#) even worse:

Refusing to prosecute on the grounds of financial stability is also troubling from the perspective of ending “too big to fail.” The Dodd-Frank Wall Street Reform and Consumer Protection Act, which declared some institutions to be systemically important financial institutions subject to tougher regulation, did not declare that those institutions would be exempt from criminal prosecution. Indeed, the Dodd-Frank Act explicitly created new authority to permit a failed institution to be wound down safely, without impacting financial stability. If a financial institution, because of its criminal actions, ultimately fails, that may indeed be precisely the consequence that justice and accountability demand, and which is so necessary to deterring future illegal behavior. I am deeply concerned that the Department’s continuing application of deferred prosecution agreements on the grounds of financial stability runs contrary to the intent of Congress and undermines the accountability to the rule of law that is so fundamental to a healthy, functioning free market economy.

In a separate letter, Republican Senator Chuck Grassley also [slammed](#) the justice department:

The Department has refused to prosecute any individual employees or the bank responsible for these crimes. This troubling lack of real enforcement will have consequences for the health of our economy and the safety and prosperity of the American people.

Despite the fact that this is a “record” settlement, for a bank as gigantic as HSBC this is hardly even a slap on the wrist. It only amounts to between 9 and 11% of HSBC’s profits last year alone, and is a bare fraction of the sums left unmonitored. Additionally, the DPA states that “at least \$881 million in drug proceeds” entered the U.S. financial system, but how much more remains undiscovered? Did HSBC profit from the DPA because it actually made more than \$1.92 billion by providing services to drug kingpins and terrorists? The American people may never know, because you have declined to prosecute.

Even more concerning is the fact that the individuals responsible for these failures are not being held accountable. The Department has not prosecuted a single employee of HSBC—no executives, no directors, no AML compliance staff members, no one. By allowing these individuals to walk away without any real punishment, the Department is declaring that crime actually does pay. Functionally, HSBC has quite literally purchased a get-out-of-jail-free card for its employees for the price of \$1.92 billion dollars.

There is no doubt that the Department has “missed a rare chance to send an unmistakable signal about the threat posed by financial institutions willing to assist drug lords and terror groups in moving their money.” One international banking expert went as far as to argue that, despite the “astonishing amount of criminal behavior” from HSBC employees, the DPA is no more than a “parking ticket.” A former banking regulator added that it is “mind-boggling” how the Department believes that “you can have a financial system and allow this kind of impunity.” Future bank employees with a choice between following the law or profiting from illegal activities will have been taught the lesson that they will never face prison time for their actions. Consequently, this DPA does little to discourage future lawbreakers, and leaves the U.S. financial system highly vulnerable to exploitation by drug cartels and terrorists.

The Department's inexcusable reluctance to prosecute is the continuation of a failed policy allowing lawbreakers to escape justice. In a letter to the Department on March 9, 2012, I noted that the Department had "brought no criminal cases against any of the major Wall Street banks or executives who are responsible for the financial crisis" As others have repeatedly warned, failing to prosecute individuals or banks when they have committed crimes will result in perverse incentives and ultimately undermine the integrity of the U.S. financial system and economy.

The United States is already seeing the results of these failed policies. Past settlements with large banks prove that they do nothing to change what appears to be a culture of noncompliance for some businesses. In March 2010, the Department arranged a then-record \$160 million deferred prosecution agreement with Wachovia based on its laundering of more than \$110 million from Colombian and Mexican drug cartels. Officials at the time stated that "blatant disregard for our banking laws gave international cocaine cartels a virtual carte blanche to finance their operations." In this case, a bank escaped with a record monetary settlement and a conspicuous absence of individuals behind bars. If the story sounds eerily similar, that's because it is. It happened again with HSBC.

Make no mistake, the Department's refusal to prosecute individuals or the bank directly threatens the safety of Americans. After evidence revealed Wachovia's involvement with money-laundering, one whistleblower stated, "[i]t's simple: if you don't see the correlation between the money laundering by banks and the 30,000 people killed in Mexico, you're missing the point." HSBC's criminal actions have no doubt enabled similar violence in Mexico by supporting the very cartels now terrorizing Mexican civilians. This violence often spills over the border into American cities

As the Ranking Member of the Senate Judiciary Committee, I have an obligation to ensure that the executive branch is fully, fairly, and effectively enforcing the law. But what I have seen from the Department is an inexplicable unwillingness to prosecute and convict those responsible for aiding and abetting drug lords and terrorists. I cannot help but agree with an editorial in the New York Times that "the government has bought into the notion that too big to fail is too big to jail."

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