Fraud and Media Apologia: Why Aren't Big Bankers in Jail?

Why ask Why, Say their Enablers in the Financial Press

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The man in charge of a bank that engaged in massive mortgage fraud chatted with a corporate media host (**CNBC Squawk on the Street**, 7/12/13) about the fact that virtually none of those who enriched themselves while eviscerating the life savings of many blameless people, derailing the US economy along the way, have faced criminal prosecution:

> **Jim Cramer:** Shouldn't they have indicted somebody who actually did bad things in banking?
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> **JPMorgan Chase CEO Jamie Dimon:** I think if someone did something wrong, they should go to jail.
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> **Cramer:** Well, who did? Who went to jail?
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> **Dimon:** One of the great things about America, failure is not illegal or wrong. You can't just say it failed. But I do think America looked at the crisis—and this is too bad—and there was no, anywhere, Old Testament justice. What they saw is people got overpaid—and some of these people lost all their money, their reputation, all that. If someone did something wrong, they should pay. You've got to be specific. Did they do something wrong, or you just don't like the fact that they failed? You make investments. They don't always pay off. It doesn't mean you're a criminal.
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> **Cramer:** Right.

Granted, Cramer is no one's idea of a serious interrogator of the financial system (**FAIR Blog**, 3/13/09). But much journalism on the question of criminal prosecution of industry leaders amounts to similar apologia.

While there have been substantive inquiries into the wrongdoing of investment banks and auditors, those calling for jail time are often dismissed as irrational, driven by "blood lust" (**Washington Post**, 9/12/13), "anger" (**Chicago Tribune**, 11/30/13) or "vengeance" (**Washington Post**, 11/18/13).

We're told such calls come from the margins: That no "financial industry types" have been jailed is "a recurring theme among Occupy Wall Street protesters and some Democratic politicians" (**Christian Science Monitor**, 10/11/11) or "the Occupy Wall Street crowd" (**New York Times**, 3/1/13).

People who believe bankers should go to jail are deflecting blame—from the people: "The real scandal," explained the **Washington Post**'s Charles Lane ("Banks Aren't the Bad Guys," 11/18/13), was "Americans' shared, erroneous belief in ever-rising housing prices and corresponding mania to profit from them."

And maybe they need to move on: "This all happened a really long time ago. What-ever happened to the statute of limitations?" the **Washington Post** (11/19/13) asked itself in a recent Q&A.

Above all, to advocate prosecution is to be simple-minded, to believe that "public revulsion indicates likely culpability" (**Bloomberg Businessweek**, 5/12/11) and to "reduce complex historical processes to the machinations of an evil few" (**Washington Post**, 11/18/13).

Wiser heads must prevail. "The meltdown was multi-causal," concluded **Businessweek**'s Roger Lowenstein. "That explanation will be unsatisfying to armchair prosecutors, but it has the virtue of answering the complex nature of the bubble."

"You're entitled to wonder whether any of the highly paid executives who helped kindle the disaster will ever see jail time," allowed the **New York Times**' Joe Nocera (2/25/11). "The harder question, though, is whether anybody should."

What the soft-headed among us don't recognize, evidently, is that "blowing up your company isn't necessarily a crime," as the **Christian Science Monitor** (10/11/11) put it. "America doesn't criminalize bad business decisions," wrote the **Washington Post** (9/12/13). Or, from **Businessweek** (5/12/11): "In the American legal system, people who merely act badly or unwisely do not do time."

But some have no trouble pointing to actual crimes in the crisis. "Issuing a mortgage that is known to be based on false information and then selling it in the secondary market is fraud and punishable by time in jail," economist Dean Baker (**Beat the Press**, 9/13/13) noted, citing the Financial Crisis Inquiry Commission. "Packaging loans into mortgage backed securities that an investment bank has good reason to believe are based on false information is also fraud and punishable by time in jail."

Former federal bailout inspector Neil Barofsky agrees we're not talking about a perhaps lamentable but inactionable "culture." Asked by **NPR** (7/26/13) about the no-actual-crime "narrative," Barofsky answered: "No. I think that there was a tremendous amount of fraud."

Certainly the problem extends beyond the actions of a few bigwigs. But people who say jailing industry executives should be the sole response exist only in pundits' minds.

William Black, who advocates prison for industry executives (**Moyers & Company**, 9/17/13), pointed to structural reasons for a lack of prosecutions, including regulatory agencies' abandonment of key functions since the 1980s' Savings & Loan scandal. "When the regulators ceased making criminal referrals—which had nothing to with an end of crime, obviously; it just had to do with a refusal to be involved in the prosecutorial effort anymore—they doomed us to a disaster where we would not succeed."

Others say revolving-door relationships between banks and their government watchdogs contribute to settlements that are too generous to serve as deterrents (**LittleSis**, 10/23/13). Even the historic $13 billion JP Morgan settlement winds up being less than meets the eye, as much of the fine is tax-deductible, $4 billion of it is part of an earlier settlement and much of the rest will take the form of mortgage relief that will help the bank in the long run (**Salon**, 11/20/13).

But imprisoning people wouldn't be effective, we're told. "Higher capital requirements may not satisfy blood lust the way a CEO in chains would," wrote the **Washington Post** (9/12/13), "but they're going to do a lot more."

While economists like George Akerlof and James Galbraith (**Washington's Blog**, 11/4/10; **PBS.org**, 1/22/13) argue that the failure to punish responsible leaders creates incentives for more economic crimes, **The Economist** (5/13/13) warns that "stricter liability has its drawbacks. Countries such as the United Arab Emirates that penalise bankruptcy…are not known for their vibrant start-up cultures."

"Real life criminals bear little resemblance to those seen in films," **The Economist** (5/13/13) reports; "although the bosses may create or perpetuate a culture in which those lower down in the ranks feel entitled or expected to abandon morality, there is seldom a chain of emails or other direct instructions that actually advocates wrongdoing."

This notion that without a smoking email "bosses" have committed no real crime ("no matter how much a basic sense of fairness makes a person wish it were so"—**Washington Post**, 9/12/13) ignores what we know about corporate crime. Executives routinely "push down" the details of decision-making to avoid the appearance of culpability. This doesn't mean that grievous wrongs are not committed for which those executives are ultimately responsible. If the current legal system is inadequate to properly address crimes of this nature, that's a problem, not an answer. But many press accounts seem more intent on explaining why what CEOs did wasn't a crime than on asking whether it should be.

Indeed, it sometimes seems, as when Nocera (2/25/11) refers to "aficionados of financial crises," that "why haven't bankers gone to jail?" is a sort of parlor game for the corporate press. Of course, it's easier to see it that way when you erase the victims. Many accounts contain nary a mention of homeowners wrongly foreclosed on, communities disrupted, hard-earned savings lost. As economist Joseph Stiglitz (**Daily Finance**, 10/22/10) put it: "These are not just white-collar crimes or little accidents. There were victims. That's the point. There were victims all over the world." (That's why, Stiglitz said, we ought to "actually put many of these guys in prison.")

An unscientific assessment suggests that those outlets that acknowledge that "Wall Street's wrongdoing was about more than a dollar cost—it was about the widespread human suffering that remains with us today" (**San Francisco Chronicle**, 11/21/13) are less likely to dismiss the idea of putting some of the wrongdoers behind bars.

SIDEBAR:

An Unarrestable Class?

Calls for executives of malfeasant financial institutions to be jailed shouldn't be seen as endorsements of the US prison system, but demands that the powerful abide by the same laws as everyone else—that there not be what **Rolling Stone**'s Matt Taibbi (2/28/13) called "an arrestable class and an unarrestable class."

Taibbi was reporting the devastating news that there'd be no jail time or individual fines for anyone in charge at HSBC, despite the bank's decades of money laundering for Mexico's violent Sinoloa drug cartel, along with groups linked to Al-Qaeda and Russian gangs, among others.

"Even worse" than the decision, Taibbi wrote, was Justice Department prosecutor Lanny Breuer's justification: "Had the US authorities decided to press criminal charges, HSBC would certainly have lost its banking license in the US, the future of the institution would have been under threat and the entire banking system would have been destabilized."

The **New York Times**' Ben Protess (3/1/13) called this "tirade at **Rolling Stone**" part of the heat Breuer was taking for "not throwing Wall Street executives behind bars." (He's "somewhat bruised," by the criticism, readers were told; "In short, it has been grueling.")

What some in the media appear or pretend not to see is that the outrage is not just that the Justice Department, in the **Times**' words, "stopped short of indicting HSBC," but that this occurred in a country in which a homeless man got life in prison for serving as middleman in a $10 marijuana sale.

In "A Living Death: Life Without Parole for Nonviolent Offenses" the ACLU reports on 3,278 people—a majority of them black, many poor, many struggling with mental illness or drug problems—who can expect to die in prison for crimes like carrying drugs for an abusive boyfriend, stealing a $159 jacket or possessing a crack pipe.

It'd be hard to go from reading about that to a claim that in the US "people who merely act badly or unwisely do not do time." But the undercoverage of the ACLU report made such a jarring juxtaposition unlikely.—*J.J.*

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