

CIVIL AND CRIMINAL ENFORCEMENT TO COMBAT WHITE COLLAR CRIME: A COMPARATIVE ANALYSIS

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ABSTRACT

White Collar Crime was defined by the famous sociologist Edwin Sutherland long ago. Different countries have attempted to combat such a special crime in different ways. History shows the modern world is trying the civil and administrative ways to combat such crime by appointing specialized regulatory agencies with the help of bankers and financial experts. This Civil Regulatory Mechanism focuses on preventing the white collar crime than punishing the perpetrators, which involves imposing a systematic regulatory mechanism in the financial institutions and tracing the proceeds of crime so that the offenders find it difficult to commit it. Some jurisdictions have imposed criminal enforcement as arrest, custody and even death penalty to prevent and lessen the percentage of such crime. This study shows a comparison between these two methods of enforcement to signify the most appropriate method of dealing with a white collar crime offender as he might not be identical to other blue collar criminals. A statistical analysis of the percentage of financial crimes in different jurisdictions such as UK, USA and China has been drawn to demonstrate the fact that even with imposing death penalty in jurisdictions like China could not reduce the rate of financial crime. On the otherhand, United States, the mostly focused Civil Enforcement jurisdiction could not bring much success as well. A comparative analysis will be drawn in the paper to trace out an appropriate and effective method of combating financial crime.

KEYWORDS: *Civil Enforcement, Criminal Enforcement, Comparison between Jurisdictions, White Collar Crime*

INTRODUCTION

Edwin Sutherland in the year 1939 first defined White Collar Crime as “a crime committed by a person of respectability and high social status in the course of his occupation”, however FBI has embraced a narrow approach defining white collar crime as “those illegal acts which are characterized by deceit, concealment, or violation of trust and which are not dependent upon the application or threat of physical force or violence” (1989). Because of its nature, this particular crime has been long considered a misdeed only, as a result of which the enforcement method of the crime has been historically different from a regular street crime. This paper will analyze the diverse way of enforcement method of combating white collar crime. A general comparison will be drawn between these two types of method of enforcement along with a light shed on the enforcement method of UK, USA and China. The reason behind choosing these jurisdictions are mainly because they have different ways of enforceability such as the UK and US prefers civil enforceability than criminal whereas China has always been keen to impose stricter criminal punishment such as death penalty for the white collar criminals. On the next chapter of this paper, a statistical analysis and comparison will be drawn to demonstrate the fact that which of the jurisdiction has been mostly successful in combating white collar crime using their unique enforcement

method. In the conclusion, a balanced way between civil and criminal enforceability has been recommended.

GENERAL COMPARISON

Deterrence theory and compliance theory are two ways used to restrain white collar crime over the world. While the Deterrence theory prevents individuals from committing crimes based on a fear of the consequence, the Compliance theory depends on the financial regulatory agencies to encourage individuals not to commit the crime by imposing strict regulatory mechanisms. The preeminent dichotomy between the two is civil (Compliance theory) and criminal enforcement (Deterrence theory). The debate on discerning the right approach emerges, because such crime is significantly different from others.

To bring the spotlight on deterrence theory, i.e. combating financial crime with traditional criminal law has not provided a great deal of success in many jurisdictions. The orthodox criminal procedure and standard is not appropriate for dealing with such a multiplex and systematic crime. Law enforcement officials can readily sense the crime but can hardly prove it for 'sure' because of the nature of the crime and its factual complexity.

Law and banking, segments which are fundamentally different facilitated by officials trained and experienced in entirely two diverse sectors. Complex ways are usually adopted for these crimes so that it seems legal at the last end. To understand this complexity a precise understanding of the banking procedure is genuinely important. A group of skilled corporate lawyers and experienced bankers can diagnose the misconduct which led us to imagine a financial regulatory mechanism to prevent corporate crime and not to cure it. Even the crime itself can be identified the difficulty of proving it in a criminal standard still remains. Thus, employing specialized professionals for investigation and demonstration is the foremost challenge, and it is more difficult to bring the court into a position of due understanding, so that proper determinations can be made.

Historically, criminal enforcement is particularly concentrated on "lower class people" as Sutherland pointed out. It provides an unwanted privilege to the upper class people of the society from being criminally convicted. He added, the implementation of the criminal law is due principally to the difference in the social position of the two types of offenders. Judge Wood Ward, said to the officials of the H.O. Stone and Company who were convicted for using the mails to defraud, "You are men of affairs, of experience, of refinement and culture, of excellent reputation and standing in the business and social world". That immediately demonstrates a judge's perception about the "upper class" and proves his rationality while imposing criminal conviction upon them ignoring how disgracefully they manipulated the market and acted against their fiduciary duty. The social status, privileges them to have a loud voice in determining the provisions in the statutes and how the criminal law is implemented and administered. They prefer to return back the money that they gained illicitly and wait for a better fortune next time than defame of being criminally convicted.

This is perhaps the most discriminating obstacles of administering justice. The financial criminals are not called criminals; they are cited as "wrongdoers" largely, because of their privileged background and standard. It is readily assumed that the jails are for thieves and burglars where "upper class" "thief" who stole public property is utterly unfitted. This is a well known jurisprudence that most of the people obey law, not because they are aware of the law or respect the law but because they are afraid they might be punished. So, a criminal conviction for financial crime will not only restrict the doers from doing them, but the fear of social harassment, permanent career damage and loss of reputation will force

them to keep themselves far away from these crimes. The rules of procedure and the conduct of criminal trials have also blamed for the perceived failure of the criminal justice system to achieve creditable results. [1]

If we assume that the traditional criminal justice system is unlikely to be able to deliver the requisite degree of enforcement and we do not wish to make substantial inroads into cherished and in some jurisdictions hard fought civil rights, it behooves those concerned with policing the financial markets and other sensitive areas to fashion more efficacious devices for the control of abuse. There is no panacea, the problems are too complex and multifaceted. Even appropriate laws and rules will hardly produce satisfactory results if there is not the competence, resources and dedication to administer them. It is necessary for all the weapons of the legal system together with those in the regulatory system to be used to prevent and control such frauds and abuses. The criminal justice system working in isolation cannot be expected to have more than a partial effect.[2]

Civil Recovery on the otherhand enables to seize assets without a criminal conviction. Civil or regulatory enforcement is an investigatory process to recover the property from the perpetrator, which can be carried out collaterally with a criminal investigation. Civil recovery came from Part 5 of the Proceeds of Crime Act 2002 which permitted the regulatory agencies to recover the proceeds of crime. In April 2008, the Serious Crime Act 2007 transferred these powers to a number of other agencies (including the SFO) following the merger of ARA (Assets Recovery Agency) with the Serious Organized Crime Agency.[3]

The Act sets out the investigator's powers through a series of orders that may be obtained by the authority of a judge in the High Court. These orders consist of:

- A Production Order, requiring an individual or organization to produce certain information, such as banking records that are likely to be of substantial value to the investigation
- A Power of Entry, to allow an officer to obtain material that has been required to be produced under the Order
- Search and Seizure Warrants, empowering officers to enter premises and seize material likely to be of substantial value to the investigation
- Customer Information Orders, which require a financial institution to provide any customer information it has in relation to the person specified in the Order, including any account names numbers, names of individuals, dates of birth and addresses
- Account Monitoring Orders, imposing a duty on a financial institution to provide information for up to a period of 90 days
- Disclosure Order, which may require an individual to answer questions, to attend at a specified time and place in order to answer those questions, to provide information specified in the notice and to produce specified document[3]

The novel approach of combating White Collar Crime attracted criticism both from the judiciary and the wider public at least in the UK. Lord Justice Thomas in *Innospec* made clear that it would not be appropriate to deal corporate offending by way of Civil Recovery Order. In England and Wales the responsibility of investigating and regulating white collar crime is shared between three regulatory agencies: the Serious Fraud Office (SFO), the Financial Conduct Authority

(FCA) and the Office of Fair Trading (OFT). From the onset, three of these agencies mostly focused on civil enforceability but the recent trend shows their willingness to prosecute the perpetrators for committing such serious financial crimes. The changes in the approach primarily transpires that the novel approach of recovering the proceeds of crime is just one way approaching such a non-violent but serious crime which let people to commit even suicide; the other name of killing people physically and financially being in a fiduciary position. Recovering the proceeds of crime is never enough. This article will make a comparative analysis based on statistics of crime rate and will make an endeavor to find out which type of enforcement can be the appropriate enforcement method to combat civil enforcement.

White Collar Crime Enforcement in UK, USA and China

United Kingdom

Fraud, Bribery and Corruption, Insider Dealing and Market Abuse, Money laundering, terrorist financing and financial trade sanctions, cross border co operation are amongst many some major variety of financial crime in the United Kingdom. Fraud and Insider dealing and Market Abuse are detailed.

Fraud

The specific fraud offences are dealt by the Fraud Act 2006 and the Theft Act 1968. False representation, failing to disclose information, abuse of position, false accounting, false statement by company directors are the offences signified by the above stated statutes.

The Serious Fraud Office (SFO) is responsible for dealing with serious and complex fraud cases and the rest are dealt with by the Police the powers of whose are governed by the Police and Criminal Evidence Act 1984. The PACE empowers the police for arrest, detention, search, seizure and surveillance. The Financial Services Authority (FCA), a regulatory authority of UK's financial services has also been empowered and has been given responsibility to reduce UK's financial crime which includes fraud. The Prudential Regulation Authority (PRA) works for reducing financial crime including fraud similarly as FCA. The PRA is responsible for prudential regulation and supervision of various financial institutions.

Civil Enforcement

Penalties for individuals and authorized firms may slightly vary. While both of them are required to pay financial penalty and will be censured through public statements but in case of individuals he/she will be prevented from managing or dealing temporarily and permanently and also cannot undertake specific regulated activities. An authorized firm if found guilty will be suspended for up to 12 months from undertaking specific regulated activities or their authorization will be withdrawn.

Criminal Enforcement

The Bail Act 1976 has set out grounds for withholding bail and in criminal proceedings of UK there is a rebuttable presumption in favour of bail. The three main Fraud Act offences and the common law offence of conspiracy to defraud are punishable by a maximum of 10 (ten) years imprisonment and/or fine. The offences of obtaining services dishonestly and possessing articles for use in frauds are punishable by up to five years imprisonment and/or a fine¹ [6] A ten step process

set out by the UK sentencing Council's Definitive Guideline for Fraud, Bribery and Money Laundering offences must be followed for corporate offenders sentencing. For cases involving fraud a deferred Prosecution Agreement (DPA) may also be available. [4]

Insider Dealing and Market Abuse

Insider dealing, market manipulation, misleading impressions, misleading statements in relation to benchmarks are the major classification of insider dealing and market abuse in the UK. Section 52 of the Criminal Justice Act 1993, Part 7 of the Financial Services Act 2012 contains provision of criminal insider dealing and market manipulation. The civil market abuse regime is regulated by Part 8 of the Financial Services and Markets Act 2000. The Financial Conduct Authority (FCA) is the main regulatory, investigating and prosecuting authority for both criminal and civil enforcement.

Civil/Administrative Proceedings

The civil enforcement trend in insider dealing is same as Fraud.

Criminal Proceedings

An insider dealing offender (individual) can get maximum 7(seven) years imprisonment and unlimited fine.

However a company cannot be convicted of insider dealing but for market manipulation and that will impose upon the company an unlimited fine. Sentencing guidelines are not available for market abuse offences.

Money Laundering, Terrorist Financing and Financial/Trade Sanctions

The Proceeds of Crime Act (POCA) 2002 is the prime legislation to deal with money laundering. National Crime Agency usually investigates the money laundering offences. A terrorist financing offender is investigated by the NCA and Police and the Crown Prosecution Service usually brings the action. Part 8 of the POCA 2002 has included a wide range of investigating power including power to seek production orders, search and seizure warrants, disclosure orders, customer information and account monitoring orders.

Civil Enforcement

Under the Proceeds of Crime Act 2002 the court can impose confiscation order to recover the proceeds of crime. If a director of a company is convicted for money laundering he will be disqualified from continuing to hold appointments as directors. A convicted organization may be excluded by the public authorities from all public contracts. Civil recovery order and cash forfeiture is another tool to recover criminal property outside of criminal proceedings. Victims may be compensated for any loss.

Criminal Enforcement

In accordance with the Money Laundering Regulations (MLR) the maximum penalty on conviction for an offence is 2(two) years imprisonment and/or unlimited fine. Sections 327-329 of POCA 2002 direct the court to impose up to 14 years imprisonment and/or unlimited fine. Failure to disclose and prejudicing an investigation may entail imprisonment up to 5(five) years and/or unlimited fine. The act also imposes a maximum of 2(two) years imprisonment in case of tipping off. The Terrorism Act imposes imprisonment up to 14 years for the principal offences and 2(two) to 5(five) years imprisonment and/or fine for failure to disclose and tipping off in case of terrorist financing. [4]

United States of America

In the United States, sentences for white-collar crimes may include a combination of imprisonment, fines, restitution, community service, disgorgement, probation, or other alternative punishment. [5]

The Federal Bureau of Investigation in its Financial Crimes Report to the Public characterized white collar crimes as financial crimes, corporate fraud, health care fraud, mortgage fraud, identity theft, insurance fraud, telemarketing fraud and money laundering. In the USA for all kind of white collar crimes the main authorities responsible to deal with the investigation and enforcement are the US Department of Justice, the Securities and Exchange Commission, Financial Industry Regulation Authority (FINRA), US Department of the Treasury, Office of Foreign Assets Control (OFAC) etc. The enforcement methods of some major offences are described below:

Fraud

Banking Crimes, Anti- Trust Violations, Securities Fraud, Health care fraud, Intellectual Property crimes, Computer crimes, Tax crimes etc. are some of the possible claims under the heading of Fraud in the USA. The US justice system has given both the criminal and civil regulators a range of expansive powers to investigate, enforce and prosecute fraud offenders. The US code, Securities Exchange Act of 1934, the Sarbanes- Oxley Act, Money Laundering Control Act, Dodd-Frank Wall Street Reform and Consumer Protection Act works together for combating fraud offences. Through these legislations, the regulators have been empowered with compelling individuals to produce and testify evidences at their request, to search the documents of a financial institution and to wiretap the phone lines of the corporation.

Civil/ Administrative Enforcement

Financial penalties and sanctions are two vital penalties that the corporations may face. To impose financial penalties upon the corporation the regulators consider some factors like receipt of monetary benefit from the relevant offence, extent of injury, remedial steps taken by the corporation etc. Private parties affected by the corporate fraud may bring civil suits and can be entitled to damages or obtain relief through settlements.

Criminal Enforcement

A term of probation or a fine, criminal forfeiture, restitution are the primitive penalties for a corporate defendant. Probation is conditional on the corporation which restricts them to commit another federal, state or local crime during the probationary period. The most conventional punishment for a corporate defender is a fine up to a maximum fine of US\$500,000 per count or twice the gain to the defendant or loss caused as a result of the offence whichever is greater (US Code; Section 3571(c)). The court takes into account the corporations noble intention and steps against the responsible officer/s to prevent recurrence of the offence and whether there is a scope of transferring the burden of the fine to the consumers.[6]

Bribery and Corruption

Bribery in the US is divided into three main categories: Bribery of foreign public officials, Domestic Public Officials and Private Commercial Bribery.

Civil Enforcement

For violation of the FCPA anti-bribery provisions the DOJ and the SEC may bring a civil action against any corporation and may impose a fine of US\$ 10,000 for each act committed in pursuit of the offence. The same corporation may also be banned from doing business with the federal government or the securities business and may also impose civil penalties. Individuals who are in violation of the FCPA may face financial penalties and sanctions.

Criminal Enforcement

Being formally charged with a criminal violation of the FCPA may curtail a corporation's right to do business with the US government. Corporations and other financial institutions in breach of FCPA anti-bribery provisions are subject to a fine up to US\$ 2 million as well as civil and criminal forfeiture of assets. An individual violating the bribery provisions of the US Code may face fine and a maximum prison sentence of 15 years and holding any public office in the US will be a bar for him.

Insider Dealing and Market Abuse

Insider trading, Insider trading in connection with tender offers, Securities fraud and market abuse, mail and wire fraud are some of the varieties of insider dealing in the US. The DOJ and the SEC can obtain personal telephone records, email accounts and bank statements though wiretapping for a probable cause needs court's authorization.

Civil/ Administrative Enforcement

The corporate defendant faces fines up to thrice of the profit gained or loss avoided.

Criminal Enforcement

According to the Securities and Exchange Act of 1934 for criminal securities fraud an individual may face up to 2 years imprisonment for criminal securities fraud and a fine of up to US\$ 5 million for each willful violation. The fine for corporations for such crime can rise up to US\$ 25 million.

Money Laundering:

Domestic and International money laundering, bulk cash smuggling, terrorist financing, trade sanctions are the wings of frequent money laundering incidents in the USA. Regulators have broad investigatory power to prosecute money laundering, terrorist financing and financial trade sanctions offences.

Civil/ Administrative Enforcement

The US Code (section 1956 of Title 18 and section 5332 of Title 31) authorize civil penalties for non-compliance with the money laundering provisions. The Code also authorises fine for persons connected with terrorist financing. For financial sanctions a fine may start from US \$65,000 up to US\$ 250,000 or twice the amount of the underlying transaction depending on the regulation that has been violated.

Criminal Enforcement

Section 1956, Title 18 of the Code signifies that imprisonment of maximum 20 years and a fine equal to the greater of US\$500,000 or twice the value of the property involved in the transaction can be imposed for domestic and

international money laundering. The court can impose a maximum of 5(five) years imprisonment and a fine of US\$ 500,000 or twice the value of the property involved in the transaction for bulk cash smuggling.[9]

China

After ages of suppression and war, China recently has developed their economy in an unstoppable flow. One recent concern that has been sustained with this economic growth is their risen number of economic crimes and the money involved with these crimes. Before discussing the enforcement method of combating white collar crime in China it is important to know and understand the strategy of China to deal these crimes. The Central Committee of Supervision and Discipline are responsible for investigating the fraudulent misdeeds of the officials. The Committee then determines whether the individual needs to be transferred to the Prosecution authorities. Recently China has started administrative measures to deal with these crimes.[7]

Fraud

In China Criminal Law has recognised fraud as a criminal offence. The Anti- Unfair competition law 1993, the Securities Law 2006 has characterized and classified fraud as an administrative offence as well. The Public Security Agency, the public prosecutor and the police usually investigates fraud as it is a criminal offence.

Civil/Administrative Enforcement

Chinese business law imposes warnings, fines, confiscation, temporary and permanent suspension of the business etc. as civil penalties. Further, the fraud victims can file individual and collective suits for damages against the perpetrator. Punitive damages can be provided to the victims in case of corporation fraud. The public institutions can also bring suits if public interest is curtailed.

Criminal Proceedings

Depending on the seriousness and circumstances of the offence an individual who is convicted under Article 192 of the Criminal Law may face imprisonment up to 5(five) years to imprisonment for life and fine of RMB 20,000 to RMB 500,000. However Article 199 of the Criminal Law which was amended in 2011 allowed “life imprisonment or the death penalty” if someone violates Article 192 where the amount in fraud is significantly huge and the interest of the State and the people has been seriously affected.

Bribery and Corruption:

Chinese criminal law contains provision on domestic and foreign bribery and official corruption.

Criminal Enforcement

Bribing state officials can incur imprisonment of a maximum of 5(five) years, sentence of 10(ten) years which can extend to life and fines and confiscation of personal property if the interest of the State is seriously injured by the crime Commercial bribery are punished by fines and imprisonment to an extend of 3(three) years in case of ‘relatively large’ bribes and for ‘huge bribes’ ten years of imprisonment will be maximum. However, under the general principles of Chinese criminal law if a person confesses his criminality the punishment can be mitigated or exempted.

Civil/Administrative Enforcement

Administrative fine starting from RMB 10,000 to RMB 200,000 will be imposed for commercial bribery. The illegal profit can be traced back and accordingly confiscated. [8]

Insider Dealing and Market Abuse

The criminal law has also covered insider dealing and market abuse through Article 180 which defines an illegal act by obtaining “insider information” relating to stocks or transaction of stocks prior to publicly publishing the information and on the basis of that information make any kind of present or future transactions of those stocks and causing other people to engage in such a conduct. Market Manipulation has been defined in Article 182 of the Criminal law which signifies a situation of manipulating trading price by conspiracy.[8]

Criminal Enforcement

Criminal law of the country imposes imprisonment up to 5(five) years or 10 (ten) years in special cases and fines of five times at a maximum of the value of the illegal gain in case of insider dealing. Market manipulation is punishable by fines of five times at a maximum of the illegal profit and up to 5(five) years of imprisonment. While it is not possible to review all of the recent cases of white-collar crime in China, it will be beneficial to provide a summary of some more recent cases, and the punishments given to the perpetrators of these economic crimes. Cha (2007) notes that as China moves from a planned economy to a free-market system, cracking down on fraud, embezzlement and other financial crimes has become a major priority for the government. Among the cases taken most seriously are the ones that harmed common people. Some examples that have been reported in the media:[9]

- Two former employees of China Construction Bank, Zhou Limin and Liu Yibing, were executed for defrauding bank customers out of approximately \$50 million by offering bogus accounts they said would earn high interest rates (Sawf-News,2006).
- A small business owner, Wang Zhendong, sold overpriced ant farms to the public as part of a giant scam (\$387 million) and was given the death penalty for his crimes (Reuters, 2007).[7]

Each of the above cases resulted in a death sentence for the perpetrator. The government defended the use of the death penalty for financial crimes, which have risen as unscrupulous people attempt to take advantage of the booming economy. Supreme People’s Court President Xiao Yang told the audience at a death penalty criminal law conference:

“It is necessary to use the death penalty in China to punish criminals who commit extremely serious crimes in order to safeguard state security, public interests and smooth operation of economic construction” (Cha, 2007, para. 11). All fraud cases do not result in a death sentence but it is becoming clear, at least from these cases, that the government is making an attempt to protect the public’s interest. Other cases have also meted out harsh penalties for the perpetrators while stopping short of a death sentence. For example:

- One of China’s wealthiest businessmen, Zhang Rongkun, was sentenced to 19 years in prison for his involvement in a social security fund scandal. Zhang received over \$25 million that was embezzled from Shanghai’s social security fund. He was also convicted of bribing government officials with over \$4 million (China Daily, 2008).[9]

Statistical Analysis of White Collar Crime in US, UK and China

United Kingdom

The latest comparable figures show that fraud offences collated by the NFIB from Action Fraud, Cifas and UK Finance indicated that there was a 4% increase in the number of fraud offences recorded in England and Wales (up to 653,468 offences) in the year ending June 2017 compared with the previous year[10]. This follows similar rises in each of the last five years. The survey report by Office for National Statistics is given below:

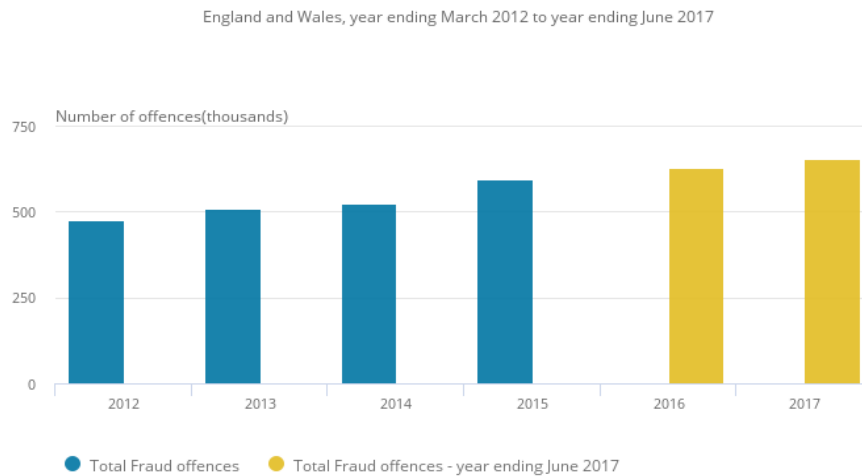


Figure 6: Fraud Offences Reported to the National Fraud Intelligence Bureau (NFIB) have been Increasing Since Comparable Records Started in 2012

Source: Action Fraud, National Fraud Intelligence Bureau

Experimental Statistics from the CSEW estimated that there were 3.3 million incidents of fraud in the survey year ending June 2017, with over half of these (57%; 1.9 million incidents) being cyber-related. The main difference between CSEW and NFIB fraud data arises from the fact that most fraud offences do not come to the attention of the police. As a result, police recorded crime data give a very partial picture of the extent of fraud, while CSEW estimates provide a more complete picture of the threat.[10]

United States

Unlike the Uniform Crime Reports (UCR) for index crimes, there is no universal dataset of white collar crime statistics. When looking for hard statistical evidence of the prevalence of white-collar crime, researchers are left with a patchwork of federal data sources (i.e., Uniform Crime Report, Judicial Business of the United States Courts, United States Attorneys Annual Statistical Report, Annual Report and Source book of Federal Sentencing Statistics, and many more) citing various crime types and a handful of self-report victim surveys. Federally published data (see Table 1) indicate that white-collar crimes in their various officially recorded forms are decreasing (Cooke, 2015). The weakness of using the UCR as a measure of white-collar crime, however, is that there are far more types of white-collar crime than the UCR system tracks.[11]

Table 1 Ten-Year Arrest Trends A

Forgery/Counterfeiting	Number of Arrests	Percent Change
2002–2011	76,770/45,543	–40.7
2003–2012	77,002/45,048	–41.5
2004–2013	71,993/37,884	–47.4
2005–2014	58,723/26,782	–54.4
Fraud	Number of Arrests	Percent Change
2002–2011	217,608/112,059	–48.5
2003–2012	221,652/105,482	–52.4
2004–2013	196,788/88,245	–55.2
2005–2014	136,954/63,492	–53.6
Embezzlement	Number of Arrests	Percent Change
2002–2011	13,289/11,075	–16.7
2003–2012	12,727/10,981	–13.7
2004–2013	11,995/10,202	–14.9
2005–2014	7,739/5,783	–25.3

Note: (a) The information in this table is taken directly from Table 33 of the Uniform Crime Reports. The year range is intended to illustrate the ten-year trends in the three offense categories tracked by UCR that would logically constitute white-collar crime offenses.[9]

The UCR data, however, are at odds with self-report victim data (such as the IC3 Annual Report and Federal Trade Commission Report) and anecdotal data sources, which indicate that white-collar crimes are on the rise. Therefore, the following questions arise: is this increase due to more awareness of the problem or to actual increases in crime rates? Do the data reflect a reluctance to charge and prosecute white-collar crime, or are white-collar crimes decreasing? With no longitudinal data and without a consistent way to count arrests and prosecutions associated with white-collar crime, it is nearly impossible to determine what is affecting the incidence of white-collar crime. That said, the comparison of statistical arrest data versus self-report data is not the most desired comparison; but the sheer lack of available white-collar crime datasets leaves us little choice as far as worthwhile comparisons go. This problem is further complicated by the fact that many white-collar crime victims may not even know that they have been victimized (Friedrichs, 2007) or do not report their victimization to the proper authorities (e.g., a victim of credit card fraud reporting to the credit card company but not to local police) (NW3C, 2006), which can further frustrate statistical counts.[11]

Meanwhile, there are clear indications that white-collar crime should be on the increase: the skills required to commit white collar crimes are becoming more common. Many white-collar crimes require significantly higher levels of education than street crimes, or specialized technical skills. All of these skills are becoming more available in our society as we witness a widespread increase in literacy rates, computer use, and educational attainment (UNESCO, 2016; File & Ryan, 2014; Ryan & Bauman, 2016).[11]

The enforcement method that is dominant in the USA and UK are mainly civil and administrative. This is evident from the above statistics that through civil and administrative enforcement the economic crimes are still on rise. The enforcement agencies are persistently trying to prevent the crime even before it happens and because of the wide variety and sectors of economic crime in today's modernized world it is very difficult to create a system which can actually block the perpetrators' activity. Comparing the scenario with China where the jurisdiction is constantly criticized for its cruel capital punishment for financial crime may enlighten us with a idea of a balanced enforcement method between civil and criminal which can truly be a proper and effective way to deal with this specialized sector of crime.

China

Wu Heping, a spokesman for China's Public Service Bureau, says economic crimes rose more than 4 percent last year to more than 84,000 cases. He says that economic crimes have reached a new peak. In recent years with China's fast economic development, economic crimes have been climbing higher every day (Schearf, 2008). It should be noted, however, that due to the illicit nature of corrupt activities, it is all but impossible to determine the "true" figures for economic crimes.[9]

This growth in corruption is not breaking news to the people in China. China's Prime Minister, Wen Jiabao, may have put it best in February 2006 when he said: "Bribery has poisoned the ethos of administrative, industrial, and social practices and has become a plague" (Plafker, 2007, p. 239). Surveys among government officials and everyday citizens point to corruption as one of their top concerns. From 1999 to 2004, officials studying at the CCP's Central Party School have continuously listed corruption as the most serious or the second most serious social problem. Transparency International, a Berlin-based non-governmental organization, releases an annual Corruption Perception Index, which orders the nations of the Fraud and white-collar crime in the world according to the degree of corruption among government officials; China consistently ranks among the most corrupt nations in the world. From 1996 to 2005, annual audits performed by China's National Audit Agency "uncovered 1.29 trillion yuan (\$170 billion) in misappropriated and misspent public funds (illegal practices include overstating the number of staff, setting up slush funds, misappropriating special funds, and collecting illegal fees)" (Pei, 2007, para. 5). [9]

In an interview with Tommy Seah, a professor of economics, chartered banker, certified fraud examiner and expert on fraud in the Chinese economy, a question was raised dealing with the overall rate of fraud in China relative to the USA. Mr Seah's response was: "I believe the rate of fraud in China is greater".[7]

Underlining the increasing impact of white-collar law breaking in the world's largest country, China's Ministry of Public Security reported that the number of violent crimes had declined while economic crimes—especially those involving fake products and smuggling—rose in the first six months of 2007. Murder, rape, arson, and bomb attacks decreased 9.1, 2.9, 7.9 and 27%, respectively, from the previous year, while the number of known economic crimes increased by 10%. "Cases involving the production and selling of fake or substandard products, smuggling and disruption of market order saw the biggest increases," it was reported (Chinadaily.com.cn. 2006). In addition, there were 3,695 financial fraud cases and 1,094 intellectual property rights violation cases, up 14.3 and 2.7% respectively. The rise in economic crimes had shown a steady increase over the past few years. Some speculated that the rise will continue as China continues to transition from a planned to a free market economy (Chinadaily.com.cn. 2006).[13]

Surprisingly in every jurisdiction violent crimes are decreasing comparing to financial crimes. The reason behind

might be access to variety of crime equipment such as computer, laptop, mobile phone and so on. In violent crimes, a perpetrator might need to carry violent items and it's easy to be caught whereas in economic crimes a mobile is sufficient to hijack billions of money with no extra violent weapon. This risk free, safe, non violent, inexpensive and non violent way of crime has been a popular medium of stealing a huge amount of money among the perpetrators.

China, where death penalty is the highest and almost frequently used enforcement method, the crime data shows it is still on the rise. Adopting the highest criminal punishment could not even help China to establish and ensure a smooth crime free economic platform. In three of the jurisdictions there is a mixture of civil and criminal enforcement method for the white collar criminals. Nevertheless, China because of it's emergence in financial world and to smoothen the financial business world it has shown zero tolerance to economic crimes and inflicted death penalty in several cases which demonstrates their willingness to inflict criminal punishment in white collar crimes. On the other hand, US and UK instead of their balanced enforcement methods are primarily dependent on the administrative agencies to deter the crime before even it occurs and to impose huge amount of fines after the perpetrator\|s are caught. This might be the reason of an increase amount of financial crime in every jurisdiction. Deterrence is equally important as punishment because of the variety of white collar crimes and the variety of equipments and methods of those crimes.

CONCLUSIONS AND RECOMMENDATION

Civil actions against corruption are launched when the plaintiff sees the need to take decisive and immediate action towards compensation and recovery. Civil actions have a public and political dimension, and plaintiffs are usually conscious of the message that they wish to send by initiating the suit. It is no longer enough for governments to prosecute and punish financial wrongdoing only. It is irresponsible government (and possibly an illegitimate government) that fails to take steps to recover stolen and unjustly acquired public property. Shareholders and members of the public are starting to demand the same corporations that have been tainted by domestic and international corruption [14]

In line with the UN Convention, civil actions should not be seen as being in competition with multilateral and public law alternatives to recovery. There is room for dual processes that can lead to more effective recovery. However, safeguards must always be in place to avoid unfairness and improper self-incrimination that might ultimately undermine any criminal proceeding [14]

The criminal law has always been considered as the law for the weak people and as a consequence the upper class people of the society have not let the system to impose criminal law upon them most possibly because it attacks their reputation much more than the civil system. For instance, a civil law system in possibly any country of the world may impose fine or take any action to recover the proceeds of crime and for that, the civil or administrative body may have to confiscate the proceeds and acquire a freeze order. It is however very important to remember that, by acquiring a freeze order or by any civil action for recovery of proceeds is without any doubt recovering the lost money but cannot stop the offender to do it again. The offender should not have any problem to give back the money that he has obtained by illicit manner, because maybe he will wait for next time and a better luck. It is an apparent truth that in most of the cases the illicit activities are caught by one mistake of the offender or by whistle blowing, so ultimately we have to wait for someone else to reach to the offender or wait for their mistake which proves catching them in the illicit process is very difficult. So if it could be possible to bring a criminal action upon them it would harm their professional reputation and may cause a serious and huge losses to their entire business career. They may feel uninterested for illicit business in near future.

To come to the point of enforcing the criminal law, it might not be always necessary that the jury with less expertise in the financial market may come up with a right decision or actually understands the complexity of the process of the illicit activity because in most of the cases these activities are extremely complicated and complex as the offenders always tries to make the process more complex as possible to seem the work legitimate. It must be accepted that banking is a quite complex and serious matter to be dealt with. If the adjudicator has not enough knowledge and expertise on the matter then it may lead to a wrong judgment.

On the other hand, dealing substantially with the civil law however is not that impressive as because the formal process of the civil procedure of the administrative bodies let them flew away, let them make the process more complicated to understand. Moreover, the officers who work there in the administrative organisations are not expert enough to deal with criminals (though they not consider these offenders as criminals). They may have expertise in banking matters but being expert in banking matters and being expert to deal in crimes of banking is different.

Thus, overall the problem stands, the jury or police or traditional criminal justice system does not have the expertise to deal with the banking complexity and the civil and administrative officers may does not have the expertise to deal with the criminals. To mention here any people may whatever class they belong from, if they are involved in any crime then they are criminals, it is not wise to consider or rename them some other phrase.

Therefore we need a system that is in the middle of these two, that can cover up both the system's lacking. Crime in the financial sector is a very complicated issue now days and also very common. So, bringing a system only for financial sector would not be so unworthy.

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