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Recommended Citation

Nolasco, Claire and Spaic, Aneta, "Book Review Essay: Sarah Wilson, The Origins of Modern Financial Crime: Historical Foundations and Current Problems in Britain" (2014). *Criminology and Criminal Justice Faculty Publications*. 1.
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Book Review Essay:
Sarah Wilson, *The Origins of Modern Financial Crime: Historical Foundations and Current Problems in Britain*

Routledge, 2014; 260 pp.;
ISBN: 9780415627634

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This book traces the roots of financial crime to the Victorian Era roughly between the years 1840-1880. Wilson situates financial crime within the context of the concerns, perceptions, developments, and issues endemic to that period. She attempts to draw the reader to the realities of this particular Victorian era as it was unfolding and explains how financial misconduct within commerce became rampant as construction of the railways spurred the growth of industrialization. The book contributes to existing literature on financial crime by providing a historical analysis of its etymology and creating awareness of its historical origins and prevalence long before the twentieth century. The author's insights on business misconduct show how, contrary to current perceptions of financial crime as a modern crime facilitated by rapid developments in technology, this type of criminal activity occurred long before the modern era. She also argues that current scholarly focus on the twentieth and twenty-first centuries when analyzing financial crimes discounts how history has contributed to the way it is currently perceived and enforced.

The author describes the importance of historical analysis at the outset. She explains that the book utilizes archival study of fraud trials during this period, 1840-1880. According to the author, the book uses interdisciplinary analysis, combining literature and methodologies from criminology, history, and law. The book attempts, albeit unsuccessfully, to demonstrate the significance of these fraud trials in shaping the concept of financial crimes as it is understood in modern society. Description of the trials were sparse and the author assumes that the average reader is familiar with details of various litigations resulting from speculative trading such as the South Sea Bubble, *Tulpenmanie*, and those involving directors and officers of the Royal British Bank and City of Glasgow Bank.

Certain portions of the book were also repetitious and redundant particularly Chapters 3 and 6 when describing how financial crime was associated with perpetrators of high socio-economic status and how this type of

misconduct violated norms of respectability and honesty and Chapters 1 and 3 on how Sutherland's definition of white collar crime somehow contributed to the ambivalence in legal responses and societal treatment of white collar crime. The book at times drew too heavily from secondary sources, such as commentators and scholarly literature on the era, instead of examining primary accounts from those involved in the financial crime litigation.

The author did not attempt to analyze financial crime as it occurred during this particular Victorian era through any of the various criminological theories, including strain theory or rational choice theory. The analysis was limited to historical descriptions of societal responses to financial crime and litigation surrounding both the railway and the banking industry. A key strength of the book, however, lies in its juxtaposition of Victorian legal responses to financial fraud and twenty-first century legal regulatory framework on financial activities in various chapters.

One other strength of this book lies in its contextualization of financial crime within the social, economic and political factors of this particular Victorian era. The author's background in both law and history provides a unique perspective wherein she analyzes financial crime not in a strictly criminological or legal perspective but within a socio-economic setting. Socio-legal studies enhance knowledge of the law by facilitating analysis of the social, economic, and political context within which it developed and by encouraging multi-disciplinary analysis of a specific legal issue (Bradney, 1998).

The social sciences, including history and criminology, can provide a more comprehensive and systematic knowledge of the practical realities of law, its institutions, and the legal profession (Benakar, 2011). Harris (1986, p. 112), for instance, argues that, "empirically, law is a component part of the wider social and political structure, is inextricably related to it in an infinite ways, and can therefore only be properly understood in that context." Duxbury (2003) also points out that the law and society movement has made important contributions in examining how law operates within a social context beyond what can be gleaned from the study of strictly black letter law.

The central thesis of the book is that during this particular era, there was growing awareness that perpetrators of large scale financial misconduct should incur criminal liability but that this type of misconduct was different from and less criminal than ordinary violent crimes. The author points out that criminal law has been historically a tool of enforcement against financial misconduct within the business community during this era and that legal responses to financial crime attempted to balance risk-taking and legal responsibility within the growing business community.

The author focuses on the years 1840-1880 because of several reasons: (1) the earliest legal responses to financial crime in Britain appeared to have occurred within this timeframe alongside the rise of the railway industry and urbanization; and, (2) the first criminal trials for financial misconduct

occurred during the 1850s in response to discovery of business misconduct within both the railway and the banking industries. However, the legal and business communities at the time were concerned that imposing criminal liability on perpetrators would deter risk taking activity and enterprise that is part and parcel of any commercial activity. Criminal law was thus both seen as “a blunt instrument of response to business crime” and as “being inappropriately heavy-handed, taking insufficient account of the exigencies of business, and often amounting to using a sledge hammer to crush a marshmallow” (Wilson, 2014, p. 15).

The book examines the history and development of fraud laws, the etymology of fraud, and the origins and evolution of the financial crime. Two views of white collar crime are discussed, namely: (1) white collar crime is not different from ordinary crime and should be analyzed under general criminological theories; and (2) white collar crime is “qualitatively distinct,” being committed by those higher-level income offenders as opposed to ordinary crimes of the lower socioeconomic classes (Wilson, 2014, p. 22).

The author further describes two approaches on how financial crime should be proceeded against. One view supports criminal enforcement as the norm for all financial crimes. The other view supports civil/administrative enforcement with heavy fines for majority of financial crimes, opting for criminal enforcement as the last recourse only for the most serious violations. The U.S. Securities Exchange Commission, for instance, adopts the second strategy, reserving criminal enforcement only for the most severe violations (Wilson, 2014). The author emphasizes the need for criminal enforcement and its growing adoption in the European community, resulting in the enactment of the Regulation on Market Abuse and Directive on Criminal Enforcement being adopted by the European Parliament in December 2012 (Wilson, 2014).

The decreasing number of settlements reached by the U.S. Securities and Exchange Commission reinforces the need for criminal enforcement instead of civil enforcement in deterring financial crimes (Nolasco, Vaughn, & del Carmen, 2013). Nolasco, Vaughn, and del Carmen (2013, p. 376), for instance, note that, “the number of settlements obtained by the Securities and Exchange Commission (SEC) from fraudulent investors has declined over the years--- an indication of the difficulty of proceeding against these types of offenders.” The NERA Economic Consulting (2008) databases also indicate that the total dollar value of civil settlements reached by the Securities and Exchange Commission with individual defendants for financial service misappropriations decreased from \$258.8 million (involving 29 individual offenders) in 2002 to \$129.3 million (involving 80 individual defendants) in 2008. Civil remedies at present appear insufficient in deterring financial crime and are unlikely to deter engagement in financial misconduct due to the massive pay-offs associated with most types of financial fraud.

The author explains why financial crime has been linked to activities of individuals with high socio-economic status and with notions of respectability, resulting in differential treatment and responses from law enforcement and the legal community. The author traces current perceptions of financial crime to Sutherland's definition of the perpetrator as a "person of respectability and high social status" as well as the dilemma and initial responses of Victorian society to financial crime (Wilson, 2014, p. 26). According to Wilson, Sutherland's definition exacerbated views that businessmen who committed financial crimes were not similar to the conventional common criminal and, hence, should also not be treated similarly. The author points out, however, that Sutherland did not intend differential treatment of white collar criminals, but regarded all crimes as including conduct not only "legally defined but also activity which was, instead, socially and legally controversial" (Wilson, 2014, pp. 79-80).

The author further traces the differential view of financial crime to nineteenth-century Britain (early 1830s), even earlier than Sutherland's analysis. She describes the Report of the Royal Commission on the Constabulary Force 1839, a landmark report marking the modernization of British law enforcement. The Royal Commission's report confirmed that that "'fraudulent [financial] crime was rising" while "violent crime was declining (Wilson, 2014, p. 83). The report viewed the decline of violent crimes and concomitant increase in financial crimes as an improvement in the crime situation because financial crimes were "characteristic of a state less barbarous," the offender is devoid of "animosity," and there was no "physical injury and physical alarm" to the victim (Wilson, 2014, p. 83). The report exemplifies law enforcement's attitude during the Victorian era as well as societal views of financial crimes as being less urgent and requiring less allocation of policing resources. There was also a pervasive view that effective and adequate responses to financial crime already existed in the form of civil sanctions that would deter its profitability.

Extant literature on the era also emphasized that perpetrators of financial crime were dissimilar from ordinary offenders who were "born, bred and nurtured into crime, and who resort to it naturally and from necessity" (Wilson, 2014, p. 92). Ordinary criminals committed violent crimes "naturally and/or out of necessity" while financial criminals committed crime out of "temptation or design tamper with the weighty trusts reposed in them" (Wilson, 2014, p. 92).

The author points out that the earliest association of financial crimes with persons of respectability can be traced to the railway industry and resulting litigation arising from abuse and fraud by company directors. Key officials, members of parliament, and professionals such as lawyers and businessmen were all involved in the railway business. The stature of these individuals –respected and esteemed in society–led the public to perceive investing in the railway industry as primarily safe and profitable. Also, the

Special Act of Incorporation governing incorporation of railway companies required an elaborate process that was more onerous than registration of an ordinary company under the Joint Stock Companies Act 1844. The complex process involved detailed petitions, hearings before parliament, and proof of sufficient capital. The grant of corporate charter to railway companies was thus viewed by the public as an assurance of the company's legitimacy, authenticity, and viability. However, abuses in the railway industry and discovery of large scale fraud on the part of those involved in railway construction precipitated the earliest criminal trials involving financial crime.

According to the author, discovery of financial misconduct in the railway industry alongside increasing recognition that civil remedies were not adequate to deter financial crimes weighed heavily on the courts and the legislature. These factors also created pressure for criminal enforcement through the criminal justice process, instead of reliance on civil remedies. Concerns regarding financial crime led to the establishment of the office of Public Prosecutor in 1879, ensuring that crimes affecting the public interest were prosecuted by the government instead of relying on the discretion or financial ability of individual crime victims.

Archival records of criminal trials against perpetrators in both the Royal British Bank and City of Glasgow Bank fraud show efforts to dissociate financial criminals from the upper echelons of society who were both respectable and honorable. A common argument in these trials emphasize that by committing financial crimes, these perpetrators have "fallen to the position of common felons" and are no longer members of respectable society (Wilson, 2014, p. 170). Thus, Victorian society preserved the prevailing notion that respectable people did not commit crime unlike the criminal classes. The approach evident in the criminal justice system was to argue that perpetrators of financial crime "relinquished their elevated status, and were so stripped of their claim to respectability" (Wilson, 2014, p. 183). Respectability thus remained untainted among those who have not behaved like the criminal classes.

The book then focuses on hindrances and difficulties encountered by Victorian society when litigating financial crimes. First, members of the legal community were not generally conversant with commercial and business dealings. Hence, courts relied on experts from the business community, including juries composed almost entirely of merchants with distinct social or property qualifications. Second, courts acknowledged that they were not in a position to intervene in the internal management of companies and that the courts had no jurisdiction to interfere with "lawful corporate decision-making" except in cases of fraud and impropriety. Third, the creation through a resolution of the Council of Judges on 17 June 1892 of a specialized commercial court was considered "one of the most successful and enduring judicial experiments, implemented without legislation or government assistance" (Wilson, 2014, p. 197). This commercial court is the precursor of today modern commercial courts. Fourth, increase in litigation involving financial

crimes led to the growth of commercial lawyers with expertise in commercial law. Fifth, the courts often relied on businessmen as expert witnesses to determine what types of conduct were “acceptable” and what were “transgressive” of reasonable commercial transactions (Wilson, 2014, p. 200).

In the final chapter, the author juxtaposes Victorian experiences with financial crime alongside twenty-first century treatment and responses to financial misconduct. She describes how the Victorian experiences helped shape its current etymology. Among current practices, for example, resort to specialized expertise in commercial courts when determining the acceptability of certain business practices and emphasis on notions of respectability and violations of trust appear to trace its origins to the trials that occurred during the Victorian era.

Overall, the book adds a unique perspective to the study of financial crimes. It adds to the growing literature on financial crime from various disciplines, including criminology, law, and sociology. Although the author attempts an “interdisciplinary analysis” of financial crime by “drawing on literature and methodologies from criminology, history and law”, the current analysis is primarily a descriptive historical account of early Victorian society’s reactions to financial crime (Wilson, 2014, p. 1). Methodologies from criminology are not used, contrary to the author’s assertion. Legal methodology is used at various points when the author examines how concepts of fraud and embezzlement are legally construed as well as during discussion of changes in the law on financial crime. In subsequent editions, more editorial work needs to be done on sentence construction. Also, the organization of book chapters could be improved upon since some later chapters discussed subjects and concepts already explained in prior chapters as mentioned above.

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