

An Economy Run by Criminals: Reflections on Gregg Barak's *Theft of a Nation*

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Gregg Barak's (2012) *Theft of a Nation* is an important, and sobering, addition to the accumulating body of critical scholarship on crime and punishment—or the absence of punishment—in the financial sector of the United States economy. It's a compelling indictment of the long history of what he calls "looting and colluding" by the private financial sector and the public agencies ostensibly devoted to controlling it, and is particularly strong in its description of the economic and political forces that underlay the emergence and maintenance of the great financial crisis of the last few years.

Let me preface my comments on *Theft of the Nation* by acknowledging that I'm not by any means a specialist on white-collar crime generally, much less on financial crime specifically. I come at these issues from the perspective of a criminological generalist, and of course as a citizen, but necessarily as a relative outsider. So my "take" on the meaning and implications of the situation Barak incisively describes may be a little different from those of scholars who have studied the issues more closely. The way this manifests itself is that I find myself, as a relative outsider to the study of financial crime, coming away from this book with a "take away" message that is, if anything, even more dire and more troubling than what Barak—as well as other recent writers like Henry Pontell, William Black, or Tomson Nguyen—suggests.

What strikes the relative outsider most powerfully in this body of work is the sheer magnitude and pervasiveness of the criminality that it describes. It isn't surprising, particularly for those of us who are not exactly enthusiastic supporters of the drift of modern-day corporate capitalism, that there is a great deal of predation and law breaking among the people who control the highest levels of the American (and global) financial system. But what I take away from Barak's work in particular is the sense that predation at the highest levels of

that system is not merely pervasive, but for all practical purposes universal. That is, just about *every* major financial institution in the United States – and perhaps increasingly the rest of the world – has engaged in at least some illegal and/or corrupt practices at least some of the time over the last several years.

And what this means is that we have to accept the shocking realization that the commanding heights of our financial system are controlled by criminals. It's not just that there are a lot of crooked people in high places, but that this system that controls and directs the resources that are the lifeblood of the American and world economies is controlled, and its most important decisions dictated, by people who are criminal not merely in some rhetorical sense but in an absolutely literal one.

That astonishing reality and its profound implications are, I think, often obscured in the recent specialized literature on financial crime. This isn't the fault of the scholars who do this indispensable work. There is a way in which – again, at least for the outsider – the subject is intrinsically so complex, the array of regulatory agencies and relevant legislation so dizzying (not to mention the complexity of the financial instruments through which much of the recent predation has been facilitated) – that these issues can be mind-numbingly difficult to follow. It's easy to get lost in the details. That's especially true for someone like me, who never once had the slightest desire to become a banker or a hedge fund manager, in part because the whole subject of finance is thoroughly mysterious to me. It can be especially perplexing to try to sort out the different kinds of collateralized debt obligations, or the alphabet soup of past and present regulatory agencies and laws. And so it's easy to lose sight of the forest—not just for some scholars, but, I suspect, even more for most of the public. Again, I'm not blaming Gregg Barak or other recent writers on financial crime for

that problem; on the contrary, I give them great credit for having the patience and skill to sort through all of this technical detail for the rest of us. But I do think that the inherent complexity of the issues means that we have to step back from the particulars in order to see the bigger picture. And when we do that, the picture we see raises profound and dismayingly difficult questions for those of us who seek to create a better society in the United States and the world, and who want to maximize the possibilities for human well-being and social justice.

Let's ask ourselves for a moment what it means to live in a society whose financial institutions are essentially run by criminals. What are the consequences for all of the things that we value – social solidarity, productivity, material well-being, civic values – of living in a society where the commanding heights of the economy are held by people who, pretty much by definition, are out for their own interest and care not at all for the human consequences of their actions? I'd say there are many of those consequences, but let me just point to one that I think is especially important: the way in which a criminally-driven financial sector exacerbates the larger tendency of contemporary capitalism toward the massive diversion of economic resources from productive human purposes, and the consequent slowing or even reversing of the progress that our technological capacity should make possible.

One of the most significant questions of our time is what happened to the supposed march toward affluence that scholars as far back as the 1950s thought was upon us? More than half a century ago, at a time when the American economy was far less productive than it is today, such was the belief in the imminent coming of genuine abundance that pundits worried --not about the need to tighten our belts--but about what we were going to do with our unprecedented material resources and with our newly expanded leisure time. Some of those pundits believed that poverty was on its way to becoming a marginal phenomenon – what John Kenneth Galbraith (1958) called “case” poverty, an affliction of a relative handful of maladjusted individuals within an otherwise affluent society.

It hardly needs pointing out that, if we flash forward to today, we encounter an entirely different, indeed almost reversed, social and economic vision. The language of economic scarcity is back with a vengeance, and austerity is the social and economic strategy of choice – in a global economy where it is presumed that there are not *enough* resources to support the expectations of the past.

So the obvious question is: what happened to derail the expected trajectory toward affluence? How was it that we wound up losing so many of the fruits of the increased productivity that seemed to promise a very different future than what we face now? Well, I think a big part of the answer is that the march toward affluence has been hijacked. And one aspect of that hijacking – though by no means the largest part of it – is the massive diversion of

economic resources (and potential resources) through outright financial crime. In other words, part of the answer to the question of what happened to the expected economic surplus from our ever-increasing productivity is that it was stolen.

If that sounds overwrought, let's think for a moment about the magnitude of the looting that *Theft of the Nation* describes. No one claims to have a precise estimate of exactly how much of our society's wealth is siphoned off or destroyed as a result of private sector financial crime and the government collusion which Barak charts in such detail. But no one who has studied this doubts that the sums are enormous. The usual figures are not in the billions but in the hundreds of billions and even trillions over the past few years. Let's, just for the sake of argument, take as a rough yardstick that we may lose something in the neighborhood of \$1 trillion every year, in a variety of ways, as a result of financial crime. We lose it in ways that are themselves enormously complicated and that also serve to obscure both the nature and the extent of that diversion. We lose it in the vanishing of wealth that unlucky homebuyers during the mortgage crisis once thought they had in their homes. We lose it in the public tax money that goes, in many and complex ways, to bail out and prop up the financial institutions that are deemed too big to fail – a process that Barak discusses in ways that are extremely illuminating. As many commentators have shown, this public largesse isn't confined to formal bailout funds, some of which do indeed get paid back by the financial institutions that receive them. As Matt Taibbi (2013) recently documented in a compelling article in *Rolling Stone* magazine, those sums are only the tip of the iceberg-- and are potentially dwarfed by other subsidies that are much less transparent and much more difficult to track. We lose precious economic resources through theft in many other ways as well, but let's reflect for a moment about what it means to say that we may lose \$1 trillion a year to financial crime.

One way to think about this is to envision what *else* we could do with those trillion dollars. The magnitude of this loss is put into some perspective when you put that figure of \$1 trillion up against some of the most contested categories of the federal budget. Thus, the entire budget for benefits under the TANF (Temporary Assistance to Needy Families) program in 2009 was approximately \$10.5 billion, and the entire federal expenditure on the program—what passes for our central income support effort for poor families—is a little over \$30 billion, including administrative costs and everything else.

Or consider job creation: suppose that it takes roughly \$100,000 overall to create a solid, socially useful entry-level job that pays a living wage, once we include benefits, necessary training costs, and other expenses in addition to wages. That means that every \$1 billion of investment in direct job creation can create 10,000 jobs. \$100 billion can create 1 million of those decent, socially useful entry-level

jobs that can provide a ladder upward into a life of dignity and contribution. And \$1 trillion could provide 10 million of them, thus wiping out a very significant proportion of the country's current unemployment and sub-employment.

Or consider that the average income deficit of poor families in the United States is currently about \$9,600--in other words, it would take about \$9,600 to bring the average poor family in the United States up to the poverty line. That means that it would cost a little under a million dollars to bring a hundred American families up to the poverty line; every billion dollars would bring 100,000 families to that level. Ten billion brings a million families up to the poverty line. You do the math: there are roughly 9.5 million poor families in the United States. We could therefore officially eliminate family poverty with an annual expenditure that is only a fraction of what financial crime may be costing us. That would also remove the social stain of widespread extreme poverty in the United States, whose magnitude now unfavorably distinguishes us from every other advanced industrial society in the world.

Again, I'm just playing with the possible numbers here, for illustrative purposes. But the point I want to make is that when we are talking about sums on the level of those that we can credibly say are lost due to financial crime, we are talking about the diversion of amounts of resources that are so large that if we were to retain and redirect them we could transform some of the most pressing and entrenched social problems in America. That's not, of course, to say that we *would* actually use that money in socially constructive ways if we had it—if we didn't lose it to financial predation. But it does illustrate both the startling magnitude and the potential social significance of the problem of resource diversion as a result of financial crime.

And the magnitude of resource diversion – the sheer size of the sums involved in the looting that Barak describes – coupled with its near universality at the highest levels of the financial system also forces us, I think, to confront the extraordinary difficulty of doing anything about it within any of the conventional frameworks of reform or “re-regulation” that are currently on the table. To me, again speaking as a relative outsider to this field, it often seems that there is a gap between the descriptions we're given of the extent and nature of financial crime, and the proposals put forward to control it: the proposals for reform of the financial system tend not to match the staggering implications of the analysis of the problem. Again, the picture that Barak paints of the extent of private sector financial looting and the hapless and timid—or actively collusive--response of the regulatory agencies is extraordinarily grim. And it raises the issue of agency – that is, agency for social change—in a particularly thorny way. Who is going to make the changes that all serious observers believe need to be made? Who has the capacity to make the private financial sector even remotely honest—or even minimally compliant?

It seems abundantly clear from Barak's analysis and those of others that we can expect very little serious self-regulation from the private sector actors themselves: that's a little like expecting street drug dealers to infuse their operations with keen principles of social justice and service to the community. The hard reality is that no one operating with the impunity that our chief private financial actors enjoy in the United States is going to voluntarily give up a racket as lucrative as the one they're now in. So who will make them do it? As Barak shows, successful re-regulation of a crooked and powerful private sector in the service of productive social ends is unlikely to come from a fragmented and under-resourced (conveniently under resourced, as Barak correctly notes) regulatory sector that is at best relatively powerless in the face of the size and might of the global private sector, and at worst is actively in cahoots with them. When the nation's chief law enforcement officer, Attorney General Eric Holder, openly admits to Congress, as Andrew Ross Sorkin (2013) of the *New York Times* recently reported, that a number of the biggest American financial institutions are simply too big to prosecute – even if we know they've committed egregious violations of the law—you know that even the best of the public authorities have pretty much thrown in the towel.

This means that some of the discussion in Barak's concluding chapter can seem a bit tentative and undeveloped by comparison to the sweeping and detailed indictment that's come before. Barak cites extensively from recent work of the economist Robert Shiller, of Cornell University, who writes of the need to “democratize and humanize” the financial sector. But it's not easy to see who has the power to ensure the implementation of even good ideas about the democratization and humanization of the financial sector--if it's in fact mainly run by people who have enormous economic power, who can use that power with little interference, and who apparently have virtually no concern for the long-term consequences of their behavior for the economy and the larger society. Barak appeals at one point in this concluding chapter to the economic rationality of controlling the excesses of financial sector greed: measures to restore equity in people's homes that are now underwater, for example, can put money in the pockets of people who are now so strapped that they can't contribute anything to the economy. That's certainly true--but almost by definition it may mean nothing to financial criminals in high places who really don't care about the current health of the local, national, or global economies, much less what those economies will look like in the generations to come.

I think the weight of the evidence Barak assembles in *Theft of a Nation*-- coupled with that assembled by other recent writers on financial crime-- points inexorably to two related ideas. One is that the needed change has to come from below. We're not going to get anything approaching serious control of the American financial system without a

mass progressive movement that not only reconfigures the personnel in Congress but that also is willing to challenge the most basic rules that now govern the American financial system. The second is that we won't get anything approaching an honest and socially constructive financial system as long as it remains largely private. Barak, very importantly, brings up the radical possibility of the public taking over the commanding heights of finance in the postscript to *Theft of a Nation*, but I wish the discussion wasn't confined to a few lines in a postscript. My reading of Barak's analysis in the preceding 165 pages is that it's illogical to believe that we will ever get socially conscious investment of the nation's, and the world's, vast resources as long as the institutions where the decisions about that investment are made are run by people who at best – even if they're not flat-out lawbreakers – have shown themselves to be incapable of thinking about social ends or long-term consequences.

Barak usefully points to a number of examples, both in the United States and abroad, to suggest that nationalization, or the development of strong public banking institutions at the state level, is a potentially fruitful way to go. I'd go farther – I think it may well be the *only* way to go. And I hope that, having charted, in such illuminating detail and with such deep moral concern,

the extent and magnitude of the looting of America by the private financial sector, scholars will now turn their attention toward helping us understand the outlines of a credible public alternative to the current financial apparatus, and helping us create a roadmap of how to get there through strategic political mobilization.

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