

## Reflections on Madoff's 150 years sentence, a decade on

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Although there have been many cases of corporate fraud in the past century, arguably none have been as significant in financial damages as the Bernie L Madoff Investment Securities case. In total, the company defrauded \$50 bn from its investors, with Madoff overseeing \$17.1bn of those fraudulent losses, setting a record for total individual fraud (Honan, Wilchins 2008). The fraud operated under a Ponzi scheme, a form of fraud eponymously popularized by Charles Ponzi, where later investors were paid by more recent ones (*The Independent* 2009). To further understand the impact of this case: the details of the crimes committed, the outcome of the legal trial and the case's impact on society must be analyzed.

Bernie L Madoff Investment Securities started up in 1960 as a legitimate enterprise; Madoff used \$5,000 of his own savings to start what was then a penny stock company (*The Independent* 2009). Using aggressive marketing tactics and the then-new electronic trading system technology the business was able to rapidly expand over time (*The Independent* 2009). Bernie Madoff had helped created the NASDAQ stock exchange, for which he would serve as the chairman of years later (*The Independent* 2009). It is difficult to estimate the exact start date of Madoff's Ponzi scheme, with some speculation to the origin dating back to the 1987 stock market crash but allegations against long-time workers in the company revealed the company had acting in a conspiratorial manner since the 1970s, including various bank fraud charges (Wasik 2012). Madoff had set up the outlook of his portfolio to appear to be matching that of the S&P 500, he kept returns particularly low to avoid being investigated by the SEC (Smith 2012). Usually Ponzi schemes tend to fall apart due to any of three reasons: the perpetrator attempts to flee, new investors become difficult to find (resulting in a lack of cash flow), or current investors began to pull out (Yang 2014). In Madoff's case it was because of the latter, with current investors requesting a \$7 billion pay-out; with Madoff only having approximately \$200 million liquid assets (Yang 2014). However, by maintaining returns low, targeting elite investors and making it appear as though these investors could withdraw their funds at any points, Madoff was able to continue defrauding clients for decades (Smith 2012). In addition to being a well-respected member of NASDAQ, Madoff was a securities advisor to the SEC, allowing his reputation to help conceal his swindling (Yang 2014). In the end it was the enormous amount & frequent rate of borrowing that Madoff was unable maintain that forced him to confess to his sons, who turned their father in to the authorities (Smith 2012).

Bernie Madoff was convicted of 11 felonies in 2009 and thus is currently acting out a 150-year sentence (FBI 2009). The felonies include securities, investment adviser, wire and mail fraud, three counts of money laundering, false statements, perjury, stealing from an employment benefit plan and a false filing with the SEC (FBI 2009). Though he famously, claimed he acted alone; allegations and supplementary evidence against the entirety of his family indicate the implausibility of this claim (Wasik 2012). Both of Bernie's sons claimed plausible deniability but further investigation and a lawsuit against Andrew Madoff revealed that they had falsified accounts to gain access to real estate and received millions in a pay-out from their parents, disguised as loans (Cohn 2014). Unfortunately, Mark Madoff committed suicide in 2010 and Andrew died of cancer four years later, so it is purely speculative to assume involvement or further knowledge of their father's actions (Cohn 2018). Peter Madoff, like Bernie's sons, maintained plausible deniability whilst being convicted of one count of falsifying records and a count of conspiracy to commit securities fraud, having sentenced to 10 years imprisonment in 2012 (Cohn 2018). The former CFO of Bernard's company, Frank DiPascali pleaded guilty to 10 felonies

and was scheduled to be sentenced to 125 years in prison but died of lung cancer in 2015 before the sentencing began (Cohn 2018). The top five employees in the securities company also were convicted for a variety of fraud charges in 2014 (Law360 2020). Three of them have already been released with Daniel Bonventre Angette Bongiorno currently serving out the remainder of 10 years sentences and are suspected to be released in 2023 (Law360 2020). All employees and family members have maintained the same defence that they knew nothing of the crimes with Frank DiPascali having been the only key witness in the Ponzi scheme (Cohn 2018). Even if it is plausible to speculate the accused may have known of the Ponzi scheme, according to the principles of western justice, it must be maintained that the suspect is innocent until proven guilty and that to be convicted of a crime, evidence must be produced in court (Pennington 2003).

Although the sentence is approximately twice the lifespan of a person It can be argued that the sentence handed to Bernie is justified by the unprecedented nature of the crime and the total financial damages Bernie was personally responsible for parole. On top of that he has sentenced with the possibility of being considered for parole, a concept considered ethical by the European Court of Human Rights (Quandt 2018). To be denied such an opportunity would be considered “inhuman and degrading treatment (Quandt 2018).” On the contrary, it can be argued the sentences imposed on his circles of trustees, including Peter Madoff, were lenient given the amount of people and companies caused to experience financial ruin. Deciding whether merely the top executives should be blamed for the crime or whether that company serves as an instrument for the act and should also be penalized depends on whether a case is made for the atomic or organic theories of corporate responsibility, respectively (Gobert & Punch 2003). Based on the non-derivative theory of corporate liability Madoff’s employees could also be held accountable should knowledge of the crime be proven (Gobert 2011). According to Susan Wolf, in addition to subjecting organizations to civil law, “it will also be appropriate to subject persons acting within and on behalf of organizations to the requirements of the criminal law, insofar as they knowingly and significantly contribute to act that violate moral and legal bounds (Wolf 1985).” By that logic, anyone participating in a significant illicit act, had the means or knowledge of stopping it deserves a similar fate to the mastermind or planner of the act.

With regards to the crime’s impact on society, it seems that the actual victims of Madoff’s crimes are beginning to recover, financially, with 13.3 of \$19bn recovered by bankruptcy lawyer Irving Picard (Larson & Cannon 2018). Aside from a perspective of restitution, the case itself mandated a series of SEC reforms which included but were not limited to a revitalization of the “Enforcement Division,” enhancing safeguards for investors, encouraging whistleblowing through reduced sanctions and an overall increase in powers; funding (SEC 2019). From a macroeconomic perspective, using the department of justice to pay outs sums such as the 2.38bn awarded to certain victims creates an unfair deadweight welfare loss excised on US taxpayers and contributes to the US Government budget deficit (Stempel 2020). The US government federal prosecution held that JP Morgan knew it was being used for securities fraud and was charged with two felonies for not providing adequate controls (Cohn 2018). The banks were ordered to pay only \$2.6 billion in fines, which is their equivalent of 10 days of revenue (Cohn 2018).

To surmise, Bernie Madoff had practically received a double life sentence and ordered to pay restitution, which can be justified as a sufficient punishment for the nature of the crime. Should additional evidence against his circle of followers prove that they had known of the full extent of his crimes, additional sentences should be handed to those involved. From a financial perspective, there is still \$5 billion remaining to be paid in restitution of which the US government has the responsibility of providing to Bernie’s victims. Although this creates an unfair deadweight welfare loss on the US taxpayer, the £34 billion missing from Bernard L Madoff Investment Securities LLC’s reported capital indicates an inability to pay back victims of security fraud; so it must be recompensed through alternative means. In addition, SEC reform must be taken seriously so that future forms of fraud can be

prevented. Additional powers and funds must be granted to the SEC without violating any constitutional rights of US citizens.

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