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Commentary: Why We Need to Stop Fining Big Banks Like Wells Fargo

By Mehrsa Baradaran

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[Wells Fargo](#) settled with U.S. regulators last week, [agreeing to pay a \\$1 billion fine](#) for harming customers by creating fake accounts, selling unlawful insurance products, and charging unnecessary fees.

The bank didn't have to suffer through a trial. The worst public shaming came, perhaps, when President Donald Trump called it out on Twitter. Public scrutiny did lead to the resignation of CEO John Stumpf and a few members of the board, but no one went to jail or lost their shirts. Given how profitable other banks have been after they've been hit with similar fees, it's likely Wells Fargo will bounce back from this soon.



When big banks behave badly, they know that the worst thing they'll get is a fine; no one is going to end up in jail. Instead, shareholders end up paying the cost, not the bank employees responsible. Shareholders are a diffuse group of investors, many of whom hold shares as a part of a diverse portfolio. They are not the ones who commit such fraud, nor do they have much power to change the bank's day-to-day operations.

Clearly fines don't work to prevent misconduct. We should instead rely on the constitutional method of dealing with wrongdoing: the criminal justice system. This involves a court hearing, a public airing of evidence, and neutral decision making. When settlements and fines take the place of trials, banks avoid weeks of testimony and the forced disclosure of documents. That prevents public and bank regulators from understanding exactly what went on and whether other laws were broken.

Banks and bankers hardly ever go through this process. Since the 2000 Enron scandal, no large bank has been prosecuted by the Justice Department for financial crimes (and [no big bank executives have gone to prison](#)).

Fines can deter bad behavior, but there's something about the fear of prison and bankruptcy that serves as an excellent reminder to follow the rules.

Banks and bankers, therefore, must be prosecuted and punished through the same legal process as everyone else. Along those lines, Sen. Elizabeth Warren recently introduced the [Ending Too Big to Jail](#) Act, which would create a permanent law enforcement unit to investigate crimes at financial institutions and require executives at big banks to take on some of the responsibility of rooting out criminal conduct. This seems like a much-needed balance in the scales of justice. Hopefully other legislators will take on the cause.

We who advocate for harsher penalties for banks are not seeking vengeance, nor do we delight in the suffering of bankers. In fact, I believe that the majority of bankers are good and honest people. The point of harsher penalties is to send a clear message to bad actors that their fraud will not be tolerated. If that message had been sent clearly after the 2007–08 financial crisis, perhaps Wells Fargo would not have so spectacularly scammed its customers.

Mehrsa Baradaran is an associate dean and J. Alton Hosch associate professor of law at the University of Georgia School of Law, and author of [How the Other Half Banks](#) and [The Color of Money](#).