

CHAPTER 8

Social Security Fraud

Abstract Social security fraud and white-collar offences represent serious forms of financial crime. We compare previous estimates of social security fraud in Norway made using a comparable methodology to that which we have applied to white-collar crime. Although the estimated 9.8 billion NOK for social security fraud is enormous in a nation like Norway, we suggest that the amount for white-collar crime is even bigger. We also apply social conflict theory to discuss the issue of priorities in law enforcement between social security fraud versus white-collar crime. According to social conflict theory, the justice system is biased and designed to protect the wealthy and powerful. They will never accept the view that minor fraud prosecution represents a kind of over-criminalization targeted at the losers in society.

Keywords Benefits • Detection • Estimated magnitude • Expert elicitation • Fraud • NAV • Norway • Police priorities • Social conflict theory • Social security

Both social security fraud and white-collar offenses represent serious forms of financial crime causing harm and victims in society. The police have limited resources to investigate economic crime and have to prioritize their resources by dropping a large portion of cases (Brooks and Button 2011). The question we ask here is: Should law enforcement primarily dismiss social security fraud cases or white-collar crime cases?

The two types of cases are in many ways two extremes on the scale of economic criminals. While social security fraud is committed by people who basically need financial help from the community to live decent lives, white-collar crime is committed by individuals in the upper-echelons of society who abuse their positions to enrich themselves or the organizations they are associated with.

In this chapter, we compare previous estimates of social security fraud in Norway, made using a comparable methodology to that which we have applied to white-collar crime in this book. We also apply social conflict theory to discuss the issue of priorities in law enforcement between social security fraud versus white-collar crime.

A number of situations are viewed as social security fraud, including misuse of benefits, making false statements on claims, and buying or selling social security cards. Concealing information that affects eligibility for benefits is also considered to be fraud.

People who represent social security recipients commit fraud if they misuse the benefits they are entrusted with (Lensvelt-Mulders et al. 2006). It is considered fraud when people knowingly provide inaccurate information when they apply for social security benefits. Anyone receiving social security disability benefits must inform the social security administration if they also receive workers' compensation benefits from their organizations where they are or were employed.

A SOCIAL SECURITY FRAUDSTER

She is 73 years old and was sentenced to prison for 18 months by the Agder court of appeal (upholding the decision of a lower court) in Norway in 2015. She had been paid a disability pension of just under 1 million NOK over five and a half years, without disclosing that she once had revenues from fortune telling totaling 1.7 million NOK (\$212,000). Her income as a fortune teller was not reported to the authorities.

She worked as a fortune teller in a business that provided fortune telling by phone. The fortune telling service was marketed in newspapers and magazines. Each fortune teller had a unique artist name and a dedicated phone number. Callers were charged by elapsed time and paid in most cases over the phone. The minute price was 7 NOK (88 cents).

When she started to work as a fortune teller, she contacted her local social security office and asked what she was allowed to earn in addition to her disability pension. She was told that she could make no more than

5,000 NOK (\$625) per month. She followed instructions received from NAV (the Norwegian labor and welfare administration/Norwegian social security authority), and she was paid 5,000 NOK per month for about ten months per year from startup until she went over the retirement age after six years. The sum of 5,000 NOK was paid to her regardless of how much she actually worked as a fortune teller. She did not work very much, partly because she had to care for her elderly mother for a long time. After retirement, she has legally worked and earned by the hour. Her salary has been taxed in the normal way. She denies receiving any funds beyond the specified amount of 5,000 NOK per month.

The Agder (2015) court of appeal, however, found beyond any reasonable and sensible doubt that she had received remuneration for her fortune telling business beyond the 5,000 NOK that were reported to the tax authorities and NAV. The court of appeal disregarded the possibility that other people may have used the same phone number, or that there has been a confusion between different fortune tellers.

The court of appeal found it proven that for many years she had conducted a fortune telling service that was paid for in cash from the business, which is why it was not registered in bank transfers or bank deposits.

She told the court that she has lived very soberly, that she had taken only one holiday trip in 23 years, and that she has an old car bought with borrowed money. She told the court that she has borrowed money from the bank for the renovation and repair of her residential property, that she has an open and straightforward relationship with the bank, and that she has communicated with NAV on the topic of income for work in addition to her disability pension.

The Larvik district court sentenced her to imprisonment for 18 months. The judge wrote in the verdict:

As a general rule, the sentencing court emphasizes the need for deterrent mechanisms regarding social security fraud and tax evasion. On social security fraud, which is the most serious offence by the defendant, the Supreme Court has emphasized that such cases involve abuse of key welfare benefits that largely is based on confidence that recipients provide an honest and correct description of their economic and social situation. For many, the barrier against committing this kind of crime is low, since it is society at large and not individuals who is victim of the crime. It is therefore essential that this type of violations is met with a tactile reaction. This is particularly true in the case of fraud in the magnitude that we are facing here.

The court of appeal endorsed the district court's standpoint. The court of appeal referred to a number of previous convictions for social security fraud, where offenders were sentenced to ten months' imprisonment for a fraud of 650,000 NOK, one year for a fraud of 1.1 million NOK, 16 months for a fraud of 1 million NOK, and 18 months for a fraud of 2 million NOK.

The court of appeal wrote that "even if the defendant has experienced many dramatic and sad events in her immediate surroundings over the years, the court does not find any grounds to argue that there are mitigating circumstances in this case".

A claim of 993,994 NOK was submitted by NAV for payment of compensation. This claim was upheld, and she was ordered to pay this amount to NAV.

DIFFERENT KINDS OF ICEBERGS

Estimating the magnitude of white-collar crime is arguably a greater challenge than estimating social security fraud or tax evasion, as illustrated in Fig. 8.1. The only known indication of its scope is the total number of convicted white-collar criminals. As illustrated in the figure, this is a small circle within the larger circle of total white-collar crime. When estimating social security fraud or tax evasion, there are two known amounts, not just one: the detected fraud as well as the total social security payments made, and the detected evasion as well as the total tax revenue owing.



Fig. 8.1 Estimation of the magnitude of different forms of financial crime

In estimating probabilities, both psychology and statistics are needed to guide expert elicitation. When experts are asked about the magnitude of the three different kinds of economic crime illustrated in the figure, psychological biases may, for example, cause left-wing respondents to claim a large fraction of undetected white-collar crime, while right-wing respondents may claim a large fraction of undetected social security fraud, simply because they disagree about law enforcement priorities. Kynn (2008) argues that humans make probability judgments through a series of heuristics which lead to systematic and predictable biases. She suggests that researchers should be equally concerned with what they ask experts to assess and how they ask it. Probability elicitation is influenced by a number of factors such as the tendency to judge the frequency of an event by the ease of remembering specific examples. Furthermore, anchoring and adjustment is the tendency to anchor a probability estimate at an initial value and then to adjust it outwards. Insufficient adjustment results in biases of overestimation or underestimation when judging.

As we shall see below, the Norwegian government paid 194 billion NOK in social security, including public pensions to the elderly, to inhabitants in Norway in 2015 (the dark gray area in the figure). It is claimed that 9.8 billion NOK should not have been paid out, and the government prosecutes recipients for wrongful payments. The estimated fraction of social security fraud is thus 5 percent (the light gray area).

When estimating the magnitude of white-collar crime, we were faced with the opposite situation. We knew the fraction amount, but not the total amount. We knew that people were convicted of a total of 1.1 billion NOK annually in white-collar crime cases. Our experts suggest that this is only 10 percent of the total.

The magnitude of white-collar crime is affected by a number of factors. Three main effects are as follows:

- 1. The gain that can be achieved serves to avoid a threat or to safeguard a possibility. For example, a more ambitious goal orientation leads to a stronger desire for profit. This is the economic dimension of convenience theory.
- 2. The effort required to commit financial crime, the risk that the offense is detected, as well as encouragement from others to break the law. For example, a chief executive may act alone without anyone noticing or controlling him or her. This is the organizational dimension of convenience theory.

3. Excuses that can justify the offense by lack of self-control and application of neutralization techniques. For example, the offender may argue that everyone else does it, and that there is something wrong with the law. This is the behavioral dimension of convenience theory.

The magnitude of social security fraud is affected by a number of factors, such as:

- The effort required to commit fraud. The effort may vary depending on whether it is an active or a passive act, where the offender supplies misleading information or simply does not supply sufficient information.
- The risk of detection of the crime. Most important is the subjective detection probability, which is the likelihood, as perceived by the offender, of getting caught and being brought to justice.
- The gain that can be achieved in the fraud, and the importance of that gain for the offender.
- Encouragement from others to commit the crime. For example, a network of social security abusers invites newcomers into a fraud scheme.
- Excuses that can justify the offense to the offender. For example, even if social security payments are quite reasonable in Norway, recipients of social support certainly do not belong to the wealthy part of the population. An offender may feel entitled to extra profit.

MAGNITUDE OF SOCIAL SECURITY FRAUD

At least in Norway, and probably in many other countries as well, law enforcement has a tendency to focus on losers in society who commit crimes. Sutherland (1939), who coined the term "white-collar crime", was the first to point out that the elite in society is seldom prosecuted when it members break the laws developed by the elite. Although this factor was identified decades ago, many nations, such as Norway, still struggle to fight financial crime committed by members of the upper class in society. When cases come up, then they are often treated as single cases of individuals who were unfortunate in their positions. Against this background, it is interesting to compare the estimated magnitude of social security fraud with the estimated magnitude of white-collar crime.

In recent years, the Norwegian media have repeatedly directed much attention towards social security fraud. There are stories of the Norwegian social security authority (NAV) reporting not just hundreds, but over the years thousands, of people for fraud to the police. The secretary for labor in the Norwegian government repeatedly says she will make NAV swindlers unsafe. NAV is able to provide solid evidence that fraudulent recipients have received too much support from the social security system, and via the police such swindlers are prosecuted in the courts where some are convicted and sentenced to imprisonment.

In its report from 2011, the Norwegian analysis bureau Proba (2011) concludes regarding sick pay that at least 6 percent of payments are probably wrongly paid to beneficiaries who deliberately misinform NAV. This estimate emerged from questioning a group of experts, consisting of scientists, medical doctors, and mainly employees at NAV.

In a new report two years later, Proba (2013) applied the same method to conclude that for five other social security schemes the total magnitude of fraud might be 5 percent of the total payments from the government (parental 3.2 percent, unemployment 4.1 percent, disability 4.5 percent, work assessment allowance 6.6 percent, and transitional to single parents 12.8 percent). Proba then multiplied the yearly expenses with the assumed fraud percentage for each social security scheme. Its approach resulted in an estimated 6 billion NOK (\$0.75 billion) for the five schemes and 2 billion NOK (\$0.25 billion) for sick pay, totaling 8 billion NOK (\$1 billion).

Based on the total amounts that were paid under these benefits (194 billion NOK) Proba's (2013) estimate of the total social security fraud in 2015 amounted to as much as 9.8 billion NOK, or 5.1 percent of the total payments under the six schemes. This is a very high figure and Proba emphasizes that there are large uncertainties in its estimate. The introduction to their 2013 report states that:

...if we add up the estimated amounts that are the result of fraudulent behavior, we find that 5 percent of the total expenses for the five schemes are probably subject to fraud. We should note that these estimates are higher than what the experts think is most likely. The reason is that they see a clear risk that the correct figure is higher than the number they think is most likely.

As a measure of this uncertainty, Proba (2013) indicates where expert limits are found in terms of 10 percent likelihood that the fraud fraction is

Variation in estimates		
	White-collar crime (billion NOK)	Social security fraud (billion NOK)
Detected crime	1.1	0.3
Low estimate	4.4	2.6
Main estimate	11.9	9.8
High estimate	56.8	21.9

Table 8.1 Comparison of estimates for white-collar crime and social security fraud

lower or higher. The overall estimate of 5.1 percent is thus what the experts as a panel believe is most likely, with a minimum border of 1.4 percent and a maximum border of 11.3 percent, for fraud. Translated into monetary terms, these percentages suggest that the scope of social security fraud can be anywhere between 2.6 billion NOK and 21.9 billion NOK, see Table 8.1.

Another significant element of uncertainty in Proba's estimate is that there is a distinct gap between the perceptions of the various experts. For example, one expert said that the proportion of fraud in disability benefits is as high as 15 percent, while consensus among the other eight experts ranged from 2.5 percent to 5 percent. The Proba (2013) report points out that his one estimate is so extreme that it increases the average estimated fraud amount in this area from 3.2 percent to 4.5 percent, or by 1.1 billion NOK.

In 2015, NAV reported to the police 1472 people in 1559 cases who committed fraud totaling 303 million NOK. Almost all cases were in the six different support schemes mentioned above. NAV reported cases of 200,000 NOK on average to the police. This is in contrast to white-collar crime cases, each of several million NOK. Most social security fraud was related to unemployment benefits (121 million NOK in total) and work assessment allowance (98 million NOK in total).

Unemployment benefits and transitional benefits were the two schemes with the largest fraction of total police reports that year (0.9 percent of all recipients). Overall, the reported cases constituted as little as 0.15 percent of total disbursements in 2015. So this is the tip of the iceberg, or the known size, when it comes to social security fraud of 0.3 billion NOK.

Meanwhile, we recall that the experts Proba polled were of the opinion that the fraud proportion is 5.1 percent, or more than 30 times higher.

For disability benefit and parental benefit schemes, the experts estimated that the fraud is over 200 times greater than the amount actually reported by NAV to the police. In other words, Proba's (2013) expert panel suggest that the magnitude of the invisible part of the iceberg is enormous, and that NAV only manages to capture a very small proportion of the fraud that it believes is actually occurring.

In addition to the expert panel, Proba (2013) also carried out survey research among employees at NAV. The purpose was to compare and support expert estimates. When asked what percentage of swindlers they think is discovered, they responded on average with 11 percent for the six schemes. This results in fraud of only 2.7 billion NOK ($0.3 \times 100 / 11$). The sum of 2.7 billion NOK from survey research can be compared to 9.8 billion NOK from expert elicitation. An iceberg tip of 11 percent for social security fraud can also be compared to an iceberg tip of 9.4 percent for white-collar crime.

If 11 percent is indeed a relevant estimate (and the reported amount is equal to only 0.15 percent of total security payments under the six schemes), then this result indicates that the real fraud is in the order of 1.4 percent, or just over one-quarter of the expert panel's estimate in the same report by Proba (2013). Conversely, if the experts estimate that the scam is over 30 times greater than what is reported to the police, this implicitly means that NAV in its detection does not reach 11 percent, but achieves only 3 percent. The implication is either that the NAV detection fraction is extremely low or that the expert panel provided unrealistically high estimates.

The survey research also revealed that some NAV employees see a bandit in nearly every beneficiary. When asked what percentage of those receiving disability benefits and work assessment allowance "do not meet the requirements or knowingly violate the rules", several respondents indicated that as many as 30, 40, or 50 percent of recipients might fit this description.

Admittedly, NAV demanded an additional 1.2 billion NOK in 2015 to be paid back by beneficiaries, in addition to the 300 million NOK reported to the police. The 1.2 billion NOK is made up of numerous, smaller, fraud cases that are not reported to the police. The incorrect payments are caused by the user, but not necessarily because of gross negligence or intention to commit social security fraud.

Some may argue that the visible part of the iceberg is not just 300 million NOK, but 1.2 billion NOK, and then the expert estimate from Proba (2013) emerges as more realistic. However, there is no exact method to

indicate what part of the claimed amount of 1.2 billion NOK should be taken into account as part of the iceberg tip in this case.

A different estimate in 2013 was calculated by consultants from SAS Institute who ended up with a total of 2 billion NOK of social security fraud in Norway. In addition, they found 8 billion NOK that was caused by system and procedural errors at NAV. The total of 10 billion NOK is very similar to Proba's 9.8 billion NOK, but with the major difference being that incorrect payments were caused by NAV rather than by fraud committed by social security recipients.

"Ten billion is an unimaginably large amount", the secretary for employment in Norway is reported to have said, "It goes without saying that we have much to gain by strengthening efforts to combat social security fraud."

However, as it turned out, according to SAS Institute, 8 out of the 10 billion NOK was caused by social security service error and not by the recipients. In essence, there were system and procedural errors at NAV accounting for the majority of misconduct. Rather than pursue even relatively small amounts all the way through the court system, NAV should instead strengthen efforts to combat fraud by improving its internal practices.

Internal malpractice at NAV was highlighted in the fall of 2016. Media reports stated that "the public prosecutor is investigating the NAV scandal", "notifications and whistleblowers were ignored", and social security recipients "could have avoided jail". This is indeed worrying, especially given that the fraction of reports from NAV that were dismissed by the police had been reduced from 24 percent in 2011 to 15 percent in 2015. Out of all fraud cases brought in front of a judge, almost all (97.3 percent) led to convictions in 2015. Many convicts might have been innocent.

Since 2002, NAV has accused about 1,300 individuals of unemployment benefit fraud involving falsely high amounts. Police investigators and state prosecutors have relied blindly on figures from NAV and prosecuted individuals for social security fraud based on these amounts. An inquiry conducted in 2017 by the Norwegian attorney general concluded that more than 600 individuals had been sentenced severely. Many had been sentenced too severely, and many were unlawfully sentenced to community service rather than just paying a fine.

White-collar criminals and their attorneys would never accept such accusations from authorities without even being able to control and challenge claims.

The review above shows that there is a legitimate question to ask: Is the estimate for annual social security fraud of about 10 billion NOK too high? But this number is the only one that NAV has in terms of metrics in this area, and therefore the figure lives on in the public's mind.

Although the 9.8 billion NOK (\$1.2 billion) is enormous in a small nation like Norway, we suggest that the value for white-collar crime is even larger. So the magnitude itself should not be the issue. When the police prioritize hundreds and thousands of small-scale economic crime cases like social security fraud, then there tends to be few police resources left to investigate large-scale economic crime cases. While social security fraud cases are concerned with the equivalent of less than \$50,000 each, large-scale white-collar crime cases are valued at several million dollars each.

The victim of social security fraud is always the community ultimately. Victims of white-collar crime are a mixed group, such as employers, banks, customers, and the community. In criminal law, all victims are equally important.

SOCIAL CONFLICT THEORY

Social conflict theory suggests that the powerful and wealthy in the upper class of society define what is right and what is wrong. The rich and mighty can behave like "robber barons" because they make the laws. Therefore, the ruling class does not consider a white-collar offense as a regular crime, and certainly not one similar to street crime. Why would the powerful punish their own?

Social conflict theory views financial crime as a function of the conflict that exists in society (Siegel 2011). The theory suggests that class conflict causes crime in any society, and that those in power create laws to protect their rights and interests. For example, embezzlement by employees is a violation of law to protect the interests of the employer. However, it might be argued that an employer must and should protect its own assets. Bank fraud is a crime to protect the powerful banking sector. However, from the perspective of conflict theory one might argue that a bank should have systems in place making bank fraud impossible and suffers if it does not. If an employee has no opportunity to commit embezzlement, and if a fraudster has no opportunity to commit bank fraud, then these kinds of financial crime would never occur, and there would be no need to have laws against such offenses. Law enforcement protects powerful companies against counterfeit products, although they should be able to protect themselves by reducing opportunities for the production of such products.

Social conflict theory holds that laws and law enforcement are used by dominant groups in society to minimize threats to their interests posed by those whom they perceive as dangerous and greedy (Petrocelli et al. 2003). Crime is defined by legal codes and sanctioned by institutions of criminal justice to secure order in society. The ruling class secures order in the ruled class by means of laws and law enforcement. Conflicts and clashes between interest groups are restrained and stabilized by law enforcement (Schwendinger and Schwendinger 2014).

According to social conflict theory, the justice system is biased and designed to protect the wealthy and powerful. The wealthy and powerful can take substantial assets out of their own companies at their own discretion whenever they like, although employed workers in the companies are the ones who create the value. The super-rich can exploit the wealth that they have created as owners of corporations as long as they do not hurt other shareholders and employees have no right to object. It is no crime to take out value from one's own enterprise and build private mansions with the money. Even when owners have simply inherited wealth created by earlier generations, they can use it freely for private consumption. Similarly, top executives who are on each other's corporate boards grant each other salaries that are 10-20 times higher than regular employee salaries. As Haines (2014: 21) puts it, "financial practices that threaten corporate interests, such as embezzlement, are clearly identified as criminal even as obscenely high salaries remain relatively untouched by regulatory controls". Furthermore, sharp practices such as insider trading that threaten confidence in equities markets have enjoyed vigorous prosecution, since the powerful see them as opaque transactions that give an unfair advantage to those who are not members of the market institutions.

Karl Marx who analyzed capitalism and suggested the transition to socialism and ultimately to communism, created the basis for social conflict theory. Capitalism is an economic system in which persons privately own trade, industries, firms, shops, and means of production and operate these enterprises for profit. Socialism is an economic system characterized by cooperative enterprises, common ownership, and state ownership. Communism is a socio-economic system structured upon the common ownership of the means of production and characterized by the absence of social class.

Marxist criminology views the competitive nature of the capitalist system as a major cause of financial crime (Siegel 2011). It focuses on what creates stability and continuity in society, and it adopts a pre-defined

political philosophy. Marxist criminology focuses on why things change by identifying the disruptive forces in capitalist societies, and describing how power, wealth, prestige, and perceptions of the world divide every society. The economic struggle is the central venue for the Marxists. Marx divided society into two unequal classes and demonstrated the inequality in the historical transition from patrician and slave to capitalist and wage worker: this is the rulers versus the ruled. Marx also underlined that all societies have a certain hierarchy wherein a higher class has more privileges than a lower one. In a capitalist society where economic resources equate to power, it is in the interest of the ascendant class to maintain economic stratification in order to dictate the legal order (Petrocelli et al. 2003).

McKeever (2012) suggests that those who are socially, economically, and politically vulnerable are those who typically benefit from the social security system. Social security fraud can vary from sophisticated, organized, and large-scale offenses to minor, low level frauds committed by individual claimants. While the money gained through a minor fraud is relatively small, the cumulative amount lost to low level fraud constitutes a significant sum (Ceccato and Benson 2016).

When studying relatively minor social security fraud committed by individual claimants, McKeever (2012) found that the legal response to these frauds in both the UK and Australia is quite harsh. She suggests that a new policy framework is required, within which low level fraud is decriminalized. She argues that at present, minor fraud is so broadly defined that it encompasses as a norm behavior that does not uniformly meet proper standards of criminal culpability, pulling into its path claimants who have not intentionally and dishonestly committed fraud.

In contrast to this view, social conflict theory explains why the ruling class will never allow the decriminalization of social security fraud. It will never accept the view that minor fraud prosecution represents a form of overcriminalization targeted at the losers in society.

An illustration of the class perspective is the extent to which the police start investigating reported cases of social security fraud compared to white-collar crime such as bankruptcy cases. The police in Oslo start investigations into 85 percent of all cases reported by NAV, but only 10 percent of all cases reported by bankruptcy attorneys (Solem 2016).

Evasion of social security contributions can set disincentives for people to return to the official labor markets. Instead, benefit abusers become engaged in the shadow economy (Petersen et al. 2010).

Social conflict theory suggests that laws and regulations are implemented by the elite to control others in society. However, to stay in charge, the elite does have to punish their own sometimes. An example of a convicted white-collar criminal in Norway was presented in this book. When compared to another example in this book—a convicted social security fraudster—it seems that the sentencing varies depending on class. The social security fraudster was sentenced to a slightly longer prison term although the white-collar criminal had committed a more serious crime in terms of the amount of money involved in his offense.

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