

# Why is there no criminology of wage theft? (wrongful withholding of \$50 billion of wages earned)



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Presented at the American  
Society of Criminology, 2016

# Outline

1. Understanding wage theft  
[wage and hour violations]
2. There is no criminology of  
wage theft
3. Why there isn't/should be  
a criminology of wage  
theft
4. Conclusion/call to action



Photo by Heather Mooney



# Understanding wage theft

- Fair Labor Standards Act of 1938, 29 U.S.C. 201, et seq
  - Congress finds “the existence... of labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers
  - Minimum wage
  - 40 hour workweek w/ overtime at 1.5X regular pay
  - Dept of Labor Wage and Hour Division
- State and locals laws *may* go further
  - Can require higher than minimum – even a ‘living’ – wage
  - Specification for pay periods, data on paycheck, deductions
  - State Wage and Hour agencies



# Understanding wage theft

- Fair Labor Standards Act of 1938: Penalties
  - 6 months in prison for second conviction under the Act (29 USC 216a)
  - And
  - Civil action for wages due + 100% penalty (§216b)
- Some state laws also specify imprisonment
- Inherent in wage theft is fraud with payroll taxes, punishable by up to 5 years in prison 26 USC 7202



# Understanding wage theft

- Types

- Not paying for all hours worked – falsify time card
- No overtime
- Fail to pay minimum wage (esp piece work or with tips)
- Changing paid breaks into unpaid, working through breaks
- Requiring employees to work before or after shift
- Violations of ‘donning and doffing’ [clothes, protective gear]
- Improper classification of employee as independent contractor
- Internships with no educational component (takes place of additional salaried employee)
- Not paying retirement contributions, benefits or payroll taxes



# Understanding wage theft

- 2009 study of low wage industries in three major cities found wage theft totaled \$3 billion
- \$50 billion loss updates and extrapolates to the rest of the low wage work force [[Economic Policy Institute 2014](#)]
  - 2012 – almost \$1 billion in actual, known recovered wages
- [FBI](#): losses from all property crime in 2012 = \$15.5 billion
- \$50 billion underestimate because wage theft happens to middle and upper income employees



# No criminology of wage theft

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# No criminology of wage theft

- No major criminology journal has published an article primarily about wage theft in more than 20 years.
- *Criminology*, *Justice Quarterly*, *Journal of Research in Crime and Delinquency*, *Law and Society Review*, *Journal of Criminal Law and Criminology*, *Crime and Delinquency*, *Criminology and Public Policy*, *Theoretical Criminology*, *Criminal Justice and Behavior*, *Social Justice*, *Crime, Law, and Social Change*, *The Journal of Criminal Justice*



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# Why there isn't/should be a criminology of wage theft

- Wage theft is a crime of the powerful
- “...the most important things done for good or ill... [are] done by corporate rather than individual actors.”
- We cannot proceed “as if Sutherland never gave his 1939 Presidential address to the American Sociological Society that brought ‘white collar crime’ into the English language.”



• Braithwaite, 2003. What's wrong with the sociology of punishment?  
*Theoretical Crim*, 7(1): 5-28.

# Why there isn't/should be a criminology of wage theft

- Wage theft is about regulation
- The social control of (natural and corporate) persons requires an understanding of how criminal law mixes with civil law and regulations to create social control.
- “...today we live in a world where criminal action is increasingly embedded in organizational action.”
  - Braithwaite, 2003. What's wrong with the sociology of punishment? *Theoretical Crim*, 7(1): 5-28.



# Why there isn't/should be a criminology of wage theft

- Criminology programs claim they want to prepare students for the job market... just not the exploitation in the workplace
  - Prepare resume, practice presentations, discuss dress and practice interview questions
  - BUT
  - Don't discuss the laws that give them rights over what they earned and how to challenge the theft of their earnings
- Teaching about wage theft could help empower students



# Why there isn't/should be a criminology of wage theft

- Criminology programs claim they want to help students think critically about crime and justice, even expose the injustice of harsh punishments for the poor... just not the hypocrisy of a system with little accountability for the powerful
  - Why do some state wage and hour divisions who police business have no investigative power?
  - Why were the wage and hour divisions of several states completely defunded for several years, so that there was no state policing of wage theft?



# Conclusion: Call for a Criminology of Wage Theft

- “A fair day’s pay for a fair day’s work”
- Victimology: Mass financial victimizations
  - Can cost individuals a significant % of income, esp stressful when in precarious economic situation
  - Cheat govt out of taxes [reduce services, increase taxes]
- Competitive advantages to businesses engaged in wage theft, so practice spreads if enforcement is weak
  - Outsource to lowest bidder, so less directly accountable for wage theft that is part of the business model



# Conclusion: Call for a Criminology of Wage Theft

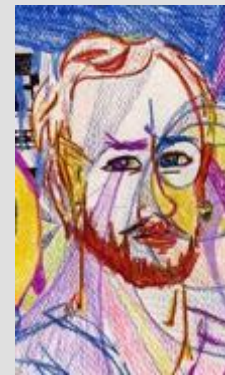
- Criminology should study all significant crimes and embrace equal protection under the law.
- Especially NOT
  - “workplace theft” means employees stealing, not employers
  - “insurance fraud” means insurance company victims, not perpetrators
  - “credit card fraud” means financial institution victims, not predatory and illegal behavior by financial institutions
- Jock Young notes that at times, criminology is “parodying the most conventional prejudices of bourgeois society” (in Pearce, Crimes of the Powerful [1976], p 11)



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More information:

<http://paulsjusticepage.com/paul/pauls-cv.htm>



See also:

