

*SOX it to the government* — In 2002, a period of high-profile corporate financial scandals, Congress enacted the Sarbanes-Oxley Act (“SOX”), a no-nonsense law intended to crack down on bogus corporate accounting. A key provision of SOX is that the top officers of a corporation must sign off on key public financial statements, essentially opening themselves up for criminal prosecution if those statements prove fraudulent.

Now, I’m a philosopher, not an economist, so I can’t speak to the economic merits or defects of SOX. But I am struck by a severe ethical lapse. SOX applies to a narrow range of fraudulent accounting, namely, that done by publicly traded corporations. Yet it is a basic axiom of moral philosophy that valid ethical principles are universalizable, that is, that they apply, not only to a few arbitrary cases, but to all cases that are similar in relevant respects.

What brings all this to mind is the appalling public employee pension scandals that surround us. San Diego is just the most notorious case: until a whistleblower brought the scam to public attention, city officials had cheerfully looted

the municipal workers' pension for years to pay for ongoing municipal services, resulting in a \$1.4 billion deficit in the fund. But similar problems are now rife in cities and states throughout the nation, with Illinois, Colorado, and New Jersey recently making the news. For instance, New Jersey's state employee pension fund now has a deficit of \$18 billion.

Indeed, a recent New York Times article cites one estimate that the *unfunded* liabilities of state, county, and municipal employee pension plans total \$375 billion, and Barclays Global Investments reckons that if we use the accounting practices that corporations must follow, the true figure is more like \$800 billion. Instead of properly funding the promised pensions, governments have routinely used the money for other projects, leaving the taxpayer to pick up the eventual tab.

This is just one of many huge frauds that have been perpetrated by governments at all levels. Whether it is the unfunded government employee pension liabilities, the Pension Benefit Guaranty Corporation's growing deficit, the scandals surrounding dicey Fannie Mae and Freddie Mac accounting, or the granddaddy of them all, the Social Security Ponzi scheme, we see deliberate frauds perpetrated by elected officials — frauds for which private corporate leaders would pay with big-time jail time — being completely unpunished, nay, even rewarded. And the combined frauds of business add up to only a tiny fraction of the governmental ones.

The problem is at base a moral one: the failure of government to universalize, to do unto itself what it does to private corporations. If governments hold corporate officers to standards, government officials should be held to the same standards. In fact, I would argue that government officials should be held to even higher standards, because while people by nature distrust corporations, rightly viewing them as inherently self-interested entities, people have unfortunately been conditioned to see government as interested only in the public good — a view long since debunked by economists working in Public Choice Theory.

To turn the public employee pension fund scandals around, we ought to at a minimum require public employee pension plans to be governed by the same laws that govern private pensions, such as the Employee Retirement Income Security Act. And we need to modify the SEC charter to make it responsible for the review of all public pension funds.

But I would go even further. Under SOX, corporate CEOs and CFOs must personally certify their companies' financial reports, and face long jail time for willfully misstating financial reports. Let's extend SOX to government. Let's demand that the legislators who enact budgets that fund pension schemes, and the executive-branch politicians who supposedly administer them, be required to sign financial statements that disclose how sound those funds are. If the pension plans later prove to be underfunded, put those politicians in the same jail where we put corporate miscreants. — Gary Jason