Penn State International Law Review

Volume 13
Number 3 *Dickinson Journal of International Law*

Article 8

5-1-1995

The Re-Defining of White Collar Crime

M. I. Dixon

The Re-Defining of White Collar Crime

M.I. Dixon*

I. Introduction

Some view financial crime as an aspect of white collar crime, whereas others, perhaps the more phlegmatic traditionalists, believe that only certain financial crimes can be viewed as white collar crime. To do so, however, is unnecessarily restrictive and ignores the socio-economic changes that have occurred since the term "white collar crime" was first created.

Included in the category of financial crimes is a variety of offenses including false accounting, deception, and theft. Each term used to describe a financial crime describes the substance of the offense. In contrast, the terms used to describe white collar crimes have traditionally incorporated the characteristics of the offender into the definition. As such, both terms are ambiguous and must be further clarified.

This article asserts that the term "white collar crime" includes all financial frauds. Fraud is described as "the deliberate deception, trickery, or cheating in order to gain an advantage."[1] This concept of deceit is central to contemporary views on white collar crime.

The term "financial fraud"—that is, white collar crime—encompasses a wide variety of acts. What might be considered as fraud by the archetypal man on the Clapham Omnibus, however, may not be fraud in the strict legal sense. An example of this is the concept of tax avoidance, which is legal, and that of tax evasion, which is illegal. Indeed, the insidious nature of white collar crime and the fact that it is chameleon-like, blending into those acts that are considered legitimate, has prompted some to say that offenders of white collar crime pose a far greater threat to society than those committing what is considered as conventional crime.[2]

---

*The author is a graduate of the Centre for Police & Criminal Justice Studies, University of Exeter, England. He is now serving as a police officer in Cambridgeshire, England.

1. COLLINS CONCISE DICTIONARY OF THE ENGLISH LANGUAGE 445 (2d ed. 1988).

2. Charles F. Abel, *Corporate Crime and Resolution*, 9 J. OFFENDER COUNSELLING, SERV. & REHABILITATION 71-94 (1985).

In 1907, E.H. Ross presented one of the first and most-lasting denunciations of white collar criminality. He depicted the misery caused by the "criminaloids" running big business by stating that they were "societies most dangerous foe, more redoubtable by far than the plain criminal because he sports the livery of virtue and operates on a titanic scale." E.H. ROSS, SIN & SOCIETY: AN ANALYSIS OF LATTER DAY INIQUITY (1907).

Indeed, the London fraud squad emphasizes that the 20th century has witnessed a vast expansion in recorded fraud and the number of offenders who are officially prosecuted for their fraudulent acts. M. LEVI ET AL., THE INCIDENCE, REPORTING, AND PREVENTION OF COMMERCIAL

II. White Collar Crime as Originally Defined

E.H. Sutherland first penned the term white collar crime in 1940.[3] It is now apparent that his definition is somewhat restrictive and, like many other words in common usage, has evolved to cover a wide range of behavior. Sutherland first defined white collar crime in an attempt to challenge what he considered to be the inequitable and classicist nature of the attribution of criminal behavior. That is, he attempted to demonstrate that actions of the more well-to-do could also be classified as criminal. Specifically, Sutherland defined white collar crime as "a crime committed by a person of respectability and high social status in the course of his occupation."[4] His attempts to classify upper-class crime, however, embroil only those acts that are no more than petty deceptions and theft. Nevertheless, his definition proffers a platform for debate.

A. Differential Association and Social Disorganization

Sutherland's work was based on the dealings of several large U.S. corporations and distinguished individuals.[5] Basically, his study sought to fulfill two objectives: (1) to present evidence that members of the upper socio-economic class commit many crimes and that these crimes should be included within the general theories of criminal behavior; and (2) to present an hypothesis that explained all criminal behavior, namely that of "differential association".[6]

Sutherland theorized that criminal behavior was not attributable to personal or social pathologies, as such predispositions did not apply to white collar crime.[7] Rather, in his hypothesis, differential association may equally apply to both white collar crime and lower class crime.[8] Differential association, as defined by Sutherland, was as follows:

> The hypothesis of differential association is that criminal behavior is learned in association with those who define criminal behavior favorably and in isolation from those who define it unfavorably, and

---

FRAUD (Home Office & Police Foundation ed., 1986). At present, commercial fraud represents more than three times the total cost of all other property crimes in London. *Id.* Recorded fraud has increased 5% annually since 1980, along with increased business perception of an increase in the risk of fraud. *Id.* Two-thirds of business persons surveyed believe fraud is more common now than 10 years ago. *Id.*

3. *See* E.H. Sutherland, *White Collar Criminality*, 5 AM. SOC. REV. 1 (1940).
4. *Id.*
5. *Id.*
6. *Id.*
7. *Id.*
8. ROSS, *supra* note 2.

> that a person in an appropriate situation engages in such criminal behavior, if and only if the weight of the favorable definition exceeds the weight of the unfavorable definitions.[9]

Sutherland offered evidence that indicates that white collar crime is due to differential association.[10] He discusses the concept in terms of illegal practices. For example, a firm or individual may devise an illegal method for introducing profits that others are obliged to adopt in order to remain competitive.

Further, Sutherland juxtaposed the concept of differential association and that of social disorganization. In doing so, it became apparent to Sutherland that both concepts rely upon interaction between individuals and the rest of society. Specifically, Sutherland stated that social disorganization may be one of the following two types: (1) anomie, which is the lack of standards that define behavior of members of a society in general or in specific areas of behavior; or (2) conflict of standards, the organization within society of groups that are in conflict with regard to specific practices.[11] In sum, Sutherland asserted that social disorganization may appear in the form of lack of standards or conflict of standards.

B. Anomie

The general term of anomie comes from the Greek word *anomia*, which means lawlessness. Now, the term has generally come to be known as the lack of social or moral standards in an individual or society.[12] The term anomie is now synonymous with the societal conditions espoused by Robert Merton in his 1938 paper titled, *Social Structure and Anomie*.[13] Merton defined anomie as "a breakdown in the cultural structure, occurring particularly when there is an acute disjunction between the cultural goals and the socially structured capacities of the members of the group to act in accord with them."[14]

Merton asserted that his theory of anomie explained the correlation between crime and poverty, yet he noted that poverty, in isolation, is not sufficient to induce a conspicuously high rate of criminal behavior.[15]

---

9. *Id.*
10. *Id.*
11. *Id.*
12. NEW COLLINS CONCISE ENGLISH DICTIONARY (1989).
13. R.K. Merton, *Social Structure & Anomie*, *in* W.A. RUSHING, DEVIANT BEHAVIOR & SOCIAL PROCESS (1967).
14. *Id.*
15. *Id.*

In his opinion, poverty and social disadvantages are in competition with the cultural values approved for all members of society, particularly a society that considers monetary accumulation a symbol of success.

Some have argued that Merton's theory is too simplistic and that the dichotomy of cultural goals and institutional means may be so artificial as to have little meaning since both are linked in reality.[16] Others state that Merton's conception is more concerned with an environment of scarcity, as Merton's theory had its nexus in the post-war years, when there was a lower standard of living.[17]

III. A Contemporary Definition of White Collar Crime

In essence, Sutherland's definition of white collar crime dictates that it is an occupational crime. That is not to suggest that all occupational crimes are white collar crimes, however. For instance, if a packer steals small quantities of goods from his employer, such would not be included in Sutherland's white collar crime definition, as the element of high social status is not present. It is apparent, however, that with strict adherence to Sutherland's definition, a high number of offenses such as crimes committed against insurers and credit card companies could not be classified as offenses, as they are not typically effected through the course of the miscreant's occupation.[18]

---

16. M.B. CLINARD, ANOMIE & DEVIANT BEHAVIOR (1964).

17. W. SIMON & J. GAGNON, THE ANOMIE OF AFFLUENCE: A POST-MERTONIAN CONCEPTION (1976). Simon and Gagnon discuss the difference between what they describe as Merton's Anomie of Scarcity and contrast it with their Anomie of Affluence. They give an example of the Anomie of Affluence as the atmosphere of greed pervading the city markets, where the jungle mentality takes over many of the "players" and the self-regulatory mechanisms that had previously contained any problems fail to have an effect.

Simon and Gagnon used the Mertonian principles to form their model of social structure within the financial markets, however. Under their model, economic success generates a position in which an individual no longer feels bound by moral or social norms. Indeed, a situation of pure individualism, the successful believe anything and everything is possible. *See* E. DURKHEIM, SUICIDE (1898) ("The less limited one feels the more intolerable all limitations appear."). Eventually, however, the individual evolves into a conforming deviant, who, having acquired the means of financial gratification, is compelled to proceed with legitimizing his deviant actions. This notion of legitimization of actions appears to mimic the concept of differential association proffered by Sutherland. *See supra* part II.A. *See also* C. Stanley, *Serious Money: Legitimization of Deviancy in Financial Markets*, 20 INT'L J. SOC. L. 43-60 (1992) (discussing the notion of anomie of affluence and city culture and asserting that the deregulation and promulgation of Enterprise Culture in the City of London caused the consequent displacement of the influential sub-cultural codes in the City).

18. Author Ezra Sotland includes within the definition of white collar crime the phenomena of consumer fraud. Ezra Stotland, *White Collar Criminals*, 33 J. SOC. ISSUES 179 (1977) ("White collar crimes can be loosely . . . defined as theft by the use of concealment, guile, fraud—basically by a misuse of trust. The definition includes all sorts of frauds: consumer stock, land, welfare, Medicare, home repair, auto repair and so on.").

Reference to more contemporary writers shows that Sutherland's definition is too restrictive, and others even suggest that it has less significance in these more prosperous days. Moreover, some suggest that analysis of white collar crime may concentrate too heavily on the corporate offender and make over-simplistic distinctions between corporate and other varieties of white-collar offending.[19]

Perhaps the greater criticism of Sutherland's definition, however, is its preoccupation with the offender. For instance, the established conception of crime is seen as a gross violation of ordinary social expectations, exemplified by among others, murder, rape, and armed robbery. Thus, the ordinary perception of a criminal is one typified by the inmates of a high security prison, perceptions that include images of working class, disreputability, and pathological. In contrast, the white collar criminal has been perceived as one of high status.

In essence, however, white collar crime consists of betrayals of trust and as such, those committing white collar crime have effected an abuse of trust.[20] Thus, contemporary writers assert that any bias in the detection and sentencing of white collar crime should be attributed to the peculiarities of the crime and not the class status of the perpetrator.[21] To discuss the concept of white collar crime in terms of what constitutes a white collar criminal therefore confuses the acts with the actors, norms with norm breakers, and the *modus operandi* with the operator.

IV. Conclusion

The business area is not the only place where one has to impart trust. Fiduciaries exist in all walks of life—from hospitals and courts to universities and charities. Unfortunately, Sutherland, although intending to expose the misdeeds of the elite as criminals, has created a concept of white collar crime that has had the opposite effect, "segregating the rich

---

19. H. Croall, *Who is the White-Collar Criminal?* 29 BRIT. J. CRIM., Spring, 1989, at 157-74. In fact, a British study of food offenses committed against the consumer revealed that offenders were typically small businesses, employees, and criminal businesses. *Id.* (citing BRIT. FOOD J. (1982-84)). In her later book, Croall lists characteristics of white collar crime as follows: (1) low visibility; (2) complexity; (3) diffusion of responsibility; (4) diffusion of victimization; (5) difficulty in detection and prosecution; (6) lenient sanctions; (7) ambiguous laws; and (8) ambiguous criminal status. In examining these characteristics, the author of this article suggests that the characteristics of white collar crime and insurance fraud are identical. *See* M.I. Dixon, Insurance, Crime Figures & Insurance Fraud (1994) (dissertation, Exeter University) (copies available at Radzinowizc and Squire Law Libraries, Exeter University).

20. Susan Shapiro, *Collaring the Crime, Not the Criminal: Reconsidering the Concept of White-Collar Crime*, 55 AM. SOCIOLOGICAL REV., June 1990.

21. J. Braithwaite, *White Collar Crime*, 11 ANN. REV. SOCIOLOGY 1 (1985); Shapiro, *supra* note 20.

and the poor and removing intensive inquiries about those of privilege from the mainstream criminology."[22]

The adoption of the contemporary view of white collar crime, namely the assessment of the crime instead of the offender, will assist the criminologist to understand the nature of white collar crime offenses. It is apparent that time would be better spent examining what causes the crimes, rather than arguing over what distinguishes a white collar criminal. Accordingly, it is time "to integrate the white collar offenders into mainstream scholarship by looking beyond the offenders wardrobe and social characteristics and exploring the *modus operandi* of their misdeeds and the ways in which they establish and exploit trust."[23]

22. Shapiro, *supra* note 20.
23. *Id.*