

## White-Collar Criminality

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. . . The thesis of this paper is that the conception and explanations of crime which have just been described are misleading and incorrect, that crime is in fact not closely correlated with poverty or with the psychopathic and sociopathic conditions associated with poverty, and that an adequate explanation of criminal behavior must proceed along quite different lines. The conventional explanations are invalid principally because they are derived from biased samples. The samples are biased in that they have not included vast areas of criminal behavior of persons not in the lower class. One of these neglected areas is the criminal behavior of business and professional men, which will be analyzed in this paper.

The "robber barons" of the last half of the nineteenth century were white-collar criminals, as practically everyone now agrees. Their attitudes are illustrated by these statements: Colonel Vanderbilt asked, "You don't suppose you can run a railroad in accordance with the statutes, do you?" A. B. Stickney, a railroad president, said to sixteen other railroad presidents in the home of J. P. Morgan in 1890, "I have the utmost respect for you gentlemen, individually, but as railroad presidents I wouldn't trust you with my watch out of my sight." Charles Francis Adams said, "The difficulty in railroad management . . . lies in the covetousness, want'of good faith, and low moral tone of railway managers, in the complete absence of any high standard of commercial honesty."

The present-day white-collar criminals, who are more suave and deceptive than the "robber barons," are represented by **Krueger**, **Stavisky**, **Whitney**, **Mitchell**, **Foshay**, **Insull**, the **Van Sweringens**, **Musica-Coster**, **Fall**, **Sinclair**, and many other merchant **princes** and captains of finance and **industry**, and by a host of lesser followers. Their criminality has been demonstrated again and again in the investigations of land offices, railways, insurance, munitions, banking, public utilities, stock exchanges, the oil industry, real estate, reorganization committees, receiverships, bankruptcies, and politics. Individual cases of such criminality are reported frequently, and in many periods more important crime news may be found on the financial pages of newspapers than on the front pages. White-collar criminality is found in every occupation, as can be discovered readily in casual conversation with a representative of an occupation by asking him, "What crooked practices are found in your occupation?"

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White-collar criminality in business is expressed most frequently in the form of misrepresentation in financial statements of corporations, manipulation in the stock exchange, commercial bribery, bribery of public officials directly or indirectly in order to secure favorable contracts and legislation, misrepresentation in advertising and salesmanship, embezzlement and misapplication of funds, short weights and measures and **misgrading** of commodities, tax frauds., misapplication of funds in receiverships and bankruptcies. These are what **Al Capone** called "the legitimate rackets." These and many others are found in abundance in the business world.

In the medical profession, which is here used as an example because it is probably less criminalistic than some other professions, are found illegal sale of alcohol and narcotics, abortion, illegal services to underworld criminals, fraudulent reports and testimony in accident cases, extreme cases of unnecessary treatment, fake specialists, restriction of competition, and fee-splitting. Fee-splitting is a violation of a specific law in many states and a violation of the conditions of admission to the practice of medicine in all. The physician who participates in fee-splitting tends to send his patients to the surgeon who will give him the largest fee rather than to the surgeon who will do the best work. It has been reported that two thirds of the surgeons in New York City split fees, and that more than one half of the physicians in a central western city who answered a questionnaire on this point favored fee-splitting.

These varied types of white-collar crimes in business and the professions consist principally of violation of delegated or implied trust, and many of them can be reduced to two categories: misrepresentation of asset values and duplicity in the manipulation of power. The first is approximately the same as fraud or swindling; the second is similar to the double-cross. The latter is illustrated by the corporation director who, acting on inside information, purchases land which the corporation will need and sells it at a fantastic profit to his corporation. The principle of this duplicity is that the offender holds two antagonistic positions, one of which is a position of trust, which is violated, generally by misapplication of funds, in the interest of the other position. A football coach, permitted to referee a game in which his own team was playing, would illustrate this antagonism of positions. Such situations cannot be completely avoided in a complicated business structure, but many concerns make a practice of assuming such antagonistic functions and regularly violating the trust thus delegated to them. When compelled by law to make a separation of their functions, they make a nominal separation and continue by subterfuge to maintain the two positions.

An accurate statistical comparison of the crimes of the two classes is not available. The most extensive evidence regarding the nature and prevalence of white-collar criminality is found in the reports of the larger investigations to which reference was made. . . .

White-collar criminality in politics, which is generally recognized as fairly prevalent, has been used by some as a rough gauge by which to measure white-collar criminality in business. James A. Farley said, "The standards of conduct are as high among officeholders and politicians as they are in commercial life," and **Cermak**, while mayor of Chicago, said, "There is less graft in politics than in business." John Flynn wrote, "The average politician is the merest amateur in the gentle art of graft, compared with his brother in the field of business." And Walter **Lippmann** wrote, "Poor as they are, the standards of public life are so much more social than those of business that financiers who enter politics regard themselves as philanthropists."

These statements obviously do not give a precise measurement of the relative criminality of the white-collar class, but they are adequate evidence that crime is not

so highly concentrated in the lower class as the usual statistics indicate. Also, these statements obviously do not mean that every business and professional man is a criminal, just as the usual theories do not mean that every man in the lower class is a criminal. On the other hand, the preceding statements refer in many cases to the leading corporations in America and are not restricted to the disreputable business and professional men who are called quacks, ambulance chasers, bucket-shop operators, dead-beats, and fly-by-night swindlers.'

The financial cost of white-collar crime is probably several times as great as the financial cost of all the crimes which are customarily regarded as the "crime problem." . . .

The financial loss from white-collar crime, great as it is, is less important than the damage to social relations. White-collar crimes violate trust and therefore create distrust, which lowers social morale and produces social disorganization on a large scale. Other crimes produce relatively little effect on social institutions or social organization.

White-collar crime is real crime. It is not ordinarily called crime, and calling it by this name does not make it worse, just as refraining from calling it crime does not make it better than it otherwise would be. It is called crime here in order to bring it within the scope of criminology, which is justified because it is in violation of the criminal law. The crucial question in this analysis is the criterion of violation of the criminal law. Conviction in the criminal court, which is sometimes suggested as the criterion, is not adequate because a large proportion of those who commit crimes are not convicted in criminal courts. This criterion, therefore, needs to be supplemented. When it is supplemented, the criterion of the crimes of one class must be kept consistent in general terms with the criterion of the crimes of the other class. The definition should not be the spirit of the law for white-collar crimes and the letter of the law for other crimes, or in other respects be more liberal for one class than for the other. Since this discussion is concerned with the conventional theories of the criminologists, the criterion of white-collar crime must be justified in terms of the procedures of those criminologists in dealing with other crimes. The criterion of white-collar crimes, as here proposed, supplements convictions in the criminal courts in four respects, in each of which the extension is justified because the criminologists who present the conventional theories of criminal behavior make the same extension in principle.

First, other agencies than the criminal court must be included, for the criminal court is not the only agency which makes official decisions regarding violations of the criminal law. The juvenile court, dealing largely with offenses of the children of the poor, in many states is not under the criminal jurisdiction. The criminologists have made much use of case histories and statistics of juvenile delinquents in constructing their theories of criminal behavior. This justifies the inclusion of agencies other than the criminal court which deal with white-collar offenses. The most important of these agencies are the administrative boards, bureaus, or commissions, and much of their work, although certainly not all, consists of cases which are in violation of the criminal law. The Federal Trade Commission recently ordered several automobile companies to stop advertising their interest rate on installment purchases as 6 percent, since it was actually 11½ percent. Also it filed complaint against Good Housekeeping, one of the **Hearst** publications, charging that its seals led the public to believe that all products **bearing** those seals had been tested in their laboratories, which was contrary to fact. Each of these involves a charge of dishonesty, which might have been tried in a criminal court as fraud. A large proportion of the cases before these boards should

be included in the data of the criminologists. Failure to do so is a principal reason for the bias in their samples and the errors in their generalizations.

Second, for both classes, behavior which would have a reasonable expectancy of conviction if tried in a criminal court or substitute agency should be defined as criminal. In this respect, convictability rather than actual conviction should be the criterion of criminality. The criminologists would not hesitate to accept as data a verified case history of a person who was a criminal but had never been convicted. Similarly, it is justifiable to include white-collar **criminals** who have not been convicted, provided reliable evidence is available. Evidence regarding such cases appears in many civil suits, such as stockholders' suits and patent-infringement suits. These cases might have been referred to the criminal court but they were referred to the civil court because the injured party was more interested in securing damages than in seeing punishment inflicted. This also happens in embezzlement cases, regarding which surety companies have much evidence. In a short consecutive series of embezzlements known to a surety company, 90 percent were not prosecuted because prosecution would interfere with restitution or salvage. The evidence in cases of embezzlement is generally conclusive, and would probably have been sufficient to justify conviction in all of the cases in this series.

Third, behavior should be defined as criminal if conviction is avoided merely because of pressure which is brought to bear on the court or substitute agency. Gangsters and racketeers have been relatively immune in many cities because of their pressure on prospective witnesses and public officials, and professional thieves, such as pickpockets and confidence men who do not use strong-arm methods, are even more frequently immune. The conventional criminologists **do** not hesitate to include the life histories of such **criminals** as data, because they understand the generic relation of the pressures to the failure to convict. Similarly, **white-collar** criminals are relatively immune because of the class bias of the courts and the power of their class to influence the implementation and administration of the law. This class bias affects not merely present-day courts but to a much greater degree affected the earlier courts which established the precedents and rules of procedure of the present-day courts. Consequently, it is justifiable to interpret the actual or potential failures of conviction in the light of known facts regarding the pressures brought to bear on the agencies which deal with offenders.

Fourth, persons who are accessory to a crime should be included among white-collar criminals as they are among other criminals. When the Federal Bureau of Investigation deals with a case of kidnapping, it is not content with catching the offenders who carried away the victim; they may catch and the court may convict twenty-five other persons who assisted by secreting the victim, negotiating the ransom, or putting the ransom money into circulation. On the other hand, the prosecution of white-collar **criminals** frequently stops with one offender. Political graft almost always involves collusion between politicians and business men but prosecutions are generally limited to the politicians. Judge **Manton** was found guilty of accepting \$664,000 in bribes, but the six or eight important commercial concerns that paid the bribes have not been prosecuted. Pendergast, the late boss of Kansas City, was convicted for failure to report as a part of his income \$315,000 received in bribes **from** insurance companies but the insurance companies which paid the bribes have not been prosecuted. In an investigation of an embezzlement by the president of a bank, at least a dozen other violations of law which were related to this embezzlement and involved most of the

other officers of the bank and the officers of the clearing house, were discovered but none of the others was prosecuted.

This analysis of the criterion of white-collar criminality results in the conclusion that a description of white-collar criminality in general terms will be also a description of the criminality of the lower class. The respects in which the crimes of the two classes differ are the incidentals rather than the essentials of criminality. They differ principally in the implementation of the criminal laws which apply to them. The crimes of the lower class are handled by policemen, prosecutors, and judges, with penal sanctions in the form of fines, imprisonment, and death. The crimes of the upper class either result in no official action at all, or result in suits for damages in civil courts, or are handled by inspectors, and by administrative boards or commissions, with penal sanctions in the form of warnings, orders to cease and desist, occasionally the loss of a license, and only in extreme cases by fines or prison sentences. Thus, the white-collar criminals are segregated administratively from other criminals, and largely as a consequence of this are not regarded as real criminals by themselves, the general public, or the criminologists.

This difference in the implementation of the criminal law is due principally to the difference in the social position of the two types of offenders. . . . The statement of Daniel Drew, a pious old fraud, describes the criminal law with some accuracy:

**Law is like a cobweb; it's made for flies and the smaller kinds of insects, so to speak, but lets the big bumblebees break through. When technicalities of the law stood in my way, I have always been able to brush them aside easy as anything.**

The preceding analysis should be regarded neither as an assertion that all efforts to influence legislation and its administration are reprehensible nor as a particularistic interpretation of the criminal law. It means only that the upper class has greater influence in moulding the criminal law and its administration to its own interests than does the lower class. The privileged position of white-collar criminals before the law results to a slight extent from bribery and political pressures, principally from the respect in which they are held and without special effort on their part. The most powerful group in medieval society secured relative immunity by "benefit of clergy," and now our most powerful groups secure relative immunity by "benefit of business or profession." . . .

The theory that criminal behavior in general is due either to poverty or to the psychopathic and sociopathic conditions associated with poverty can now be shown to be invalid for three reasons. First, the generalization is based on a biased sample which omits almost entirely the behavior of white-collar criminals. The criminologists have restricted their data, for reasons of convenience and ignorance rather than of principle, largely to cases dealt with in criminal courts and juvenile courts, and these agencies are used principally for criminals from the lower economic strata. Consequently, their data are grossly biased from the point of view of the economic status of criminals and their generalization that criminality is closely associated with poverty is not justified.

Second, the generalization that criminality is closely associated with poverty obviously does not apply to white-collar criminals. With a small number of exceptions, they are not in poverty, were not reared in slums or badly deteriorated families, and are not feebleminded or psychopathic. They were seldom problem children in their earlier years and did not appear in juvenile courts or child guidance clinics. The

proposition, derived from the data used by the conventional criminologists, that "the criminal of today was the problem child of yesterday" is seldom true of white-collar criminals. The idea that the causes of criminality are to be found almost exclusively in childhood similarly is fallacious. Even if poverty is extended to include the economic stresses which afflict business in a period of depression, it is not closely correlated with white-collar criminality. Probably at no time within fifty years have white-collar crimes in the field of investments and of corporate management been so extensive as during the boom period of the twenties.

Third, the conventional theories do not even explain lower class criminality. The sociopathic and psychopathic factors which have been emphasized doubtless have something to do with crime causation, but these factors have not been related to a general process which is found both in white-collar criminality and lower class criminality and therefore they do not explain the criminality of either class. They may explain the manner or method of crime—why lower class criminals **commit** burglary or robbery rather than false pretenses. . . .

### Note

1. Perhaps it should be repeated that "white-collar" (upper) and "lower" classes merely designate persons of high and low socioeconomic status. Income and amount of money involved in the crime are not the sole criteria. Many persons of "low" socioeconomic status are "white-collar" criminals in the sense that they are well-dressed, well-educated, and have high incomes, but "white-collar" as used in this paper means "respected," "socially accepted and approved," "looked up to." Some people in this class may not be well-dressed or well-educated, nor have high incomes, although the "upper" usually **exceed** the "lower" classes in these respects as well as in social status.