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WHITE-COLLAR CRIMINALITY

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THIS PAPER¹ is concerned with crime in relation to business. The economists are well acquainted with business methods but not accustomed to consider them from the point of view of crime; many sociologists are well acquainted with crime but not accustomed to consider it as expressed in business. This paper is an attempt to integrate these two bodies of knowledge. More accurately stated, it is a comparison of crime in the upper or white-collar class, composed of respectable or at least respected business and professional men, and crime in the lower class, composed of persons of low socioeconomic status. This comparison is made for the purpose of developing the theories of criminal behavior, not for the purpose of muckraking or of reforming anything except criminology.

The criminal statistics show unequivocally that crime, *as popularly conceived and officially measured*, has a high incidence in the lower class and a low incidence in the upper class; less than two percent of the persons committed to prisons in a year belong to the upper class. These statistics refer to criminals handled by the police, the criminal and juvenile courts, and the prisons, and to such crimes as murder, assault, burglary, robbery, larceny, sex offenses, and drunkenness, but exclude traffic violations.

The criminologists have used the case histories and criminal statistics derived from these agencies of criminal justice as their principal data. From them, they have derived general theories of criminal behavior. These theories are that, since crime is concentrated in the lower class, it is caused by poverty or by personal and social characteristics believed to be associated statistically with poverty, including feeble-mindedness, psychopathic deviations, slum neighborhoods, and "deteriorated" families. This statement, of course, does not do justice to the qualifications and variations in the con-

¹ Thirty-fourth Annual Presidential Address delivered at Philadelphia, Pa., Dec. 27, 1939 in joint meeting with the American Economic Society (its Fifty-second) at which President Jacob Viner spoke on the relations of economic theory to the formulation of public policy.

ventional theories of criminal behavior, but it presents correctly their central tendency.

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?"

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 com-

modities, 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. Because of its scattered character, that evidence is assumed rather than summarized here. A few statements will be presented, as illustrations rather than as proof of the prevalence of this criminality.

The Federal Trade Commission in 1920 reported that commercial bribery was a prevalent and common practice in many industries. In certain chain stores, the net shortage in weights was sufficient to pay 3.4 percent on the

investment in those commodities. Of the cans of ether sold to the Army in 1923-1925, 70 percent were rejected because of impurities. In Indiana, during the summer of 1934, 40 percent of the ice cream samples tested in a routine manner by the Division of Public Health were in violation of law. The Comptroller of the Currency in 1908 reported that violations of law were found in 75 percent of the banks examined in a three months' period. Lie detector tests of all employees in several Chicago banks, supported in almost all cases by confessions, showed that 20 percent of them had stolen bank property. A public accountant estimated, in the period prior to the Securities and Exchange Commission, that 80 percent of the financial statements of corporations were misleading. James M. Beck said, "Diogenes would have been hard put to it to find an honest man in the Wall Street which I knew as a corporation lawyer" (in 1916).

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.²

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

² 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.

"crime problem." An officer of a chain grocery store in one year embezzled \$600,000, which was six times as much as the annual losses from five hundred burglaries and robberies of the stores in that chain. Public enemies numbered one to six secured \$130,000 by burglary and robbery in 1938, while the sum stolen by Krueger is estimated at \$250,000,000, or nearly two thousand times as much. *The New York Times* in 1931 reported four cases of embezzlement in the United States with a loss of more than a million dollars each and a combined loss of nine million dollars. Although a million-dollar burglar or robber is practically unheard of, these million-dollar embezzlers are small-fry among white-collar criminals. The estimated loss to investors in one investment trust from 1929 to 1935 was \$580,000,000, due primarily to the fact that 75 percent of the values in the portfolio were in securities of affiliated companies, although it advertised the importance of diversification in investments and its expert services in selecting safe securities. In Chicago, the claim was made six years ago that householders had lost \$54,000,000 in two years during the administration of a city sealer who granted immunity from inspection to stores which provided Christmas baskets for his constituents.

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 crimi-

nologists 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 $11\frac{1}{2}$ 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. Judge Woodward, when imposing sentence upon the officials of the H. O. Stone and Company, bankrupt real estate firm in Chicago, who had been convicted in 1933 of the use of the mails to defraud, said to them, "You are men of affairs, of experience, of refinement and culture, of excellent reputation and standing in the business and social world." That statement might be used as a general characterization of white-collar criminals for they are oriented basically to legitimate and respectable careers. Because of their social status they have a loud voice in determining what goes into the statutes and how the criminal law as it affects themselves is implemented and administered. This may be illustrated from the Pure Food and Drug Law. Between 1879 and 1906, 140 pure food and drug bills were presented in Congress and all failed because of the importance of the persons who would be affected. It took a highly dramatic performance by Dr. Wiley in 1906 to induce Congress to enact the law. That law, however, did not create a new crime, just as the federal Lindbergh kidnaping law did not create a new crime; it merely provided a more efficient implementation of a principle which had been formulated previously in state laws. When an amendment to this law, which would bring within the scope of its agents fraudulent statements made over the radio or in the press, was presented to Congress, the publishers and advertisers organized support and sent a lobby to Washington which successfully fought the amendment principally under the slogans of "freedom of the press" and "dangers of bureaucracy." This proposed amendment, also, would not have created a new crime, for the state laws already prohibited fraudulent statements over the radio or in the press; it would have implemented the law so it could have been enforced. Finally, the Administration has not been able to enforce the law as it has desired because of the pressures by the offenders against the law, sometimes brought to bear through the head of the Department of Agriculture, sometimes through congressmen who threaten cuts in the appropriation, and sometimes by others. 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."

In contrast with the power of the white-collar criminals is the weakness of their victims. Consumers, investors, and stockholders are unorganized, lack technical knowledge, and cannot protect themselves. Daniel Drew, after taking a large sum of money by sharp practice from Vanderbilt in the Erie deal, concluded that it was a mistake to take money from a powerful man on the same level as himself and declared that in the future he would confine his efforts to outsiders, scattered all over the country, who wouldn't be able to organize and fight back. White-collar criminality flourishes at points where powerful business and professional men come in contact with persons who are weak. In this respect, it is similar to stealing candy from a baby. Many of the crimes of the lower class, on the other hand, are committed against persons of wealth and power in the form of burglary and robbery. Because of this difference in the comparative power of the victims, the white-collar criminals enjoy relative immunity.

Embezzlement is an interesting exception to white-collar criminality in this respect. Embezzlement is usually theft from an employer by an employee, and the employee is less capable of manipulating social and legal forces in his own interest than is the employer. As might have been expected, the laws regarding embezzlement were formulated long before laws for the protection of investors and consumers.

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.

In view of these defects in the conventional theories, an hypothesis that will explain both white-collar criminality and lower class criminality is needed. For reasons of economy, simplicity, and logic, the hypothesis should apply to both classes, for this will make possible the analysis of causal factors freed from the encumbrances of the administrative devices which have led criminologists astray. Shaw and McKay and others, working exclusively in the field of lower class crime, have found the conventional theories inadequate to account for variations within the data of lower class crime and from that point of view have been working toward an explanation of crime in terms of a more general social process. Such efforts will be greatly aided by the procedure which has been described.

The hypothesis which is here suggested as a substitute for the conventional theories is that white-collar criminality, just as other systematic criminality, is learned; that it is learned in direct or indirect association with those who already practice the behavior; and that those who learn this criminal behavior are segregated from frequent and intimate contacts

with law-abiding behavior. Whether a person becomes a criminal or not is determined largely by the comparative frequency and intimacy of his contacts with the two types of behavior. This may be called the process of differential association. It is a genetic explanation both of white-collar criminality and lower class criminality. Those who become white-collar criminals generally start their careers in good neighborhoods and good homes, graduate from colleges with some idealism, and with little selection on their part, get into particular business situations in which criminality is practically a folkway and are inducted into that system of behavior just as into any other folkway. The lower class criminals generally start their careers in deteriorated neighborhoods and families, find delinquents at hand from whom they acquire the attitudes toward, and techniques of, crime through association with delinquents and in partial segregation from law-abiding people. The essentials of the process are the same for the two classes of criminals. This is not entirely a process of assimilation, for inventions are frequently made, perhaps more frequently in white-collar crime than in lower class crime. The inventive geniuses for the lower class criminals are generally professional criminals, while the inventive geniuses for many kinds of white-collar crime are generally lawyers.

A second general process is social disorganization in the community. Differential association culminates in crime because the community is not organized solidly against that behavior. The law is pressing in one direction, and other forces are pressing in the opposite direction. In business, the "rules of the game" conflict with the legal rules. A business man who wants to obey the law is driven by his competitors to adopt their methods. This is well illustrated by the persistence of commercial bribery in spite of the strenuous efforts of business organizations to eliminate it. Groups and individuals are individuated; they are more concerned with their specialized group or individual interests than with the larger welfare. Consequently, it is not possible for the community to present a solid front in opposition to crime. The Better Business Bureaus and Crime Commissions, composed of business and professional men, attack burglary, robbery, and cheap swindles, but overlook the crimes of their own members. The forces which impinge on the lower class are similarly in conflict. Social disorganization affects the two classes in similar ways.

I have presented a brief and general description of white-collar criminality on a framework of argument regarding theories of criminal behavior. That argument, stripped of the description, may be stated in the following propositions:

1. White-collar criminality is real criminality, being in all cases in violation of the criminal law.
2. White-collar criminality differs from lower class criminality principal-

ly in an implementation of the criminal law which segregates white-collar criminals administratively from other criminals.

3. The theories of the criminologists that crime is due to poverty or to psychopathic and sociopathic conditions statistically associated with poverty are invalid because, first, they are derived from samples which are grossly biased with respect to socioeconomic status; second, they do not apply to the white-collar criminals; and third, they do not even explain the criminality of the lower class, since the factors are not related to a general process characteristic of all criminality.

4. A theory of criminal behavior which will explain both white-collar criminality and lower class criminality is needed.

5. An hypothesis of this nature is suggested in terms of differential association and social disorganization.