REGULATING WHITE COLLAR CRIME

Whistling in the Wind?: Regulating White-Collar Crime

'There is a consistent bias involved in the administration of criminal justice under laws which apply to business and the professions and which therefore involve only the upper socio-economic group.' Edwin Sutherland, *White Collar Crime, 1949.*

Can the investigation and prosecution of white collar crime ever be consistently and successfully undertaken, in a society where those who are most suspected of having committed this offence come from the same social class as, or alternatively represent the views and interests of, those who have most to lose from the imposition of effective financial controls?

Criminal activity is widespread in every stratum of capitalist society. **Yet official statistics regularly under-estimate the extent of white collar crime and corporate crime, to a far greater degree than they under-estimate the extent of crime in general.** As a result, official statistics tend to portray crime as a predominantly working-class phenomenon.

This maintains the publicly desirable fiction that criminals are located mainly within the working class, the *'dangerous class'* of Victorian England, which in turn serves most effectively to divert attention away from the activities of the ruling or governing class.

For Edwin Sutherland, this situation arose from a tendency for systems of criminal justice in Western societies to favour certain economically and politically powerful groups and to disfavour others. The poor and unskilled, who comprise the bulk of the visible criminal population are discredited, while the behaviour of persons of purported respectability from the upper socio-economic class which frequently exhibits all the essential attributes of crime, is only rarely dealt with as such.

This, he claimed, is achieved by a two-fold process: the socio-political position of the potential white-collar criminal in a capitalist society and the general lack of labelling theory applied to white-collar criminal activity. This arises out of a complex social construct based on a series of inter-related social mores and taboos and mutually beneficial fictions (eg: *'my word is my bond'*), which govern relations between co-partners in the financial establishment, all of which are designed to render labelling ineffective and often impracticable.

Labelling white-collar criminals becomes immeasurably more difficult than other criminal actions. The activities themselves are made much harder to differentiate from similar but non-criminal behaviour. Those members of the governing class system who are most likely to benefit from the greatest degree of ill-definition of deviant behaviour, ensure that the systems which are introduced to provide oversight and regulation of their activities, are provided with the widest degree of discretion in the execution of their duties.

The fact that the regulatory bodies themselves are under-resourced and under-funded and, one might claim, staffed by persons who are sympathetic to the Establishment ethic, renders them unlikely to exercise too great a degree of investigative initiative, let alone pursue public prosecution.

Such theories lie behind the concept *self regulation*, a concept beloved by all governing class and professional bodies, and to which the enforcement of criminal and regulatory laws governing business and professional behaviour is so frequently entrusted. Not only are these Boards, Societies, Commissions, Inspectorates and Self Regulatory Organisations invested with a significant degree of discretion about the use of prosecution, but also have access to a range of administrative alternatives to enforcement through the criminal courts.

During his review of investor protection, Professor Jim Gower (1984), examined the workings of the City of London, with special emphasis on the activities of those who would most likely be construed as representatives of the governing class in society. When discussing the controls placed upon the activities of City practitioners, he said:

'It is not easy to detect any rationale for the choice of one method rather than another. All one can perhaps say is that the practice has been to avoid any form of regulation until some scandal has shown it cannot be avoided and then to choose statutory Government regulation unless there is traditional self-regulatory agency in existence to which the task may be left.' (Review of Investor Protection, Cmnd 1984).

It can be no coincidence therefore that while the primary responsibility for the investigation and prosecution of insider dealing is vested in the hands of the Department of Trade and Industry, in many cases they appoint investigators from the International Stock Exchange, itself a self-regulatory body in its own right, to conduct the investigations.

Insider dealing is rife within the financial community, yet since the Companies Securities (Insider Dealing) Act 1985 came into force, fourteen out of the twenty-four cases prosecuting have resulted in acquittal or dismissal. Only two defendants who pleaded not guilty have been convicted and one of those convictions was overturned on appeal.

The Inland Revenue has recently uncovered evidence of what it suspects to have been a massive and highly sophisticated insider dealing ring operating inside the City during the late 1980s, and as its investigations expand, a number of senior Stock Exchange members are likely to come within its ambit.

There is now considerable concern that even members of the ruling bodies of the Exchange were illegally profiting from their inside knowledge, dealing through off-shore companies to avoid tax. Such cases have become poisoned arrows aimed directly at the heart of the financial establishment. Generally speaking, however, the Inland Revenue are not concerned with criminality except where it impacts upon their direct authority. It will be of considerable interest to observe how these investigations develop, will those under suspicion be allowed to 'buy' their way out by simply & quietly paying any demand the Inland Revenue may wish to make?

The examination of white-collar crime supports the view that there is one law for the rich and another for the poor. But who are to be the effective whistle blowers on white collar crime, dirty dealings and fraud in general? Self regulatory bodies, it seems, do not blow the whistle frequently nor loud enough (*and in many cases the whistle seemingly has no pea!*).

Criminologists are now more likely to widen their endeavours to expose the extent and intricacies of such behaviour - as indeed Stuart Henry acknowledges: *'Instead of being tools of the poweful, serving to measure and modulate the largely pathetic crimes of the poor, criminologists have turned people's evidence, blowing the whistle on the far more lethally potent, socially pernicious and economically draining crimes of the powerful.' (Henry, S.,)*

How far they are 'whistling in the wind' remains to be seen.

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