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WHITE  
COLLAR  
CRIME

THE DRYDEN PRESS • NEW YORK

# Preface

THIS BOOK is a study in the theory of criminal behavior. It is an attempt to reform the theory of criminal behavior, not to reform anything else. Although it may have implications for social reforms, social reforms are not the objective of the book.

The corporations, whose records before the courts and commissions are presented in this book, are designated by numbers and letters rather than by names. The identity of the corporations is thus concealed for two reasons. First, the identity of criminals is frequently concealed in scientific writings about living offenders. Second, the objective of the book, which is the theory of criminal behavior, can be better attained without directing attention in an invidious manner to the behavior of particular corporations.

Although these reasons for concealing the identity of the corporations which are discussed are convincing, certain losses result. First, it is not possible to present citations to decisions of courts and commissions, since these citations would reveal the identity of the corporations. Even if such citations were to be presented, they could be presented only in illustrative cases. The list of citations for all decisions used would occupy approximately one-fourth of the number of pages in this book. Anyone who is interested in the general principles stated in this book or in the statistical records of the large corporations can make his own statistical analysis from the sources which are described in

## White Collar Crime Is Organized Crime

THE PRECEDING DESCRIPTIONS of the crimes of corporations have shown that these corporations have committed crimes against one or more of the following classes of victims: consumers, competitors, stockholders and other investors, inventors, and employees, as well as against the State, in the form of tax frauds and bribery of public officials. These crimes are not discreet and inadvertent violations of technical regulations. They are deliberate and have a relatively consistent unity. They are in agreement with the general characterization by Veblen:

The ideal pecuniary man is like the ideal delinquent in his unscrupulous conversion of goods and persons to his own ends, and in a callous disregard of the feelings and wishes of others and of the remoter effects of his actions, but he is unlike him in possessing a keener sense of status and in working more far-sightedly to a remoter end.<sup>1</sup>

The "ideal delinquent" of whom Veblen writes is best represented by the professional thief. The behavior of the "ideal pecuniary man" exemplifies the special culture of the business

<sup>1</sup> Thorstein Veblen, *Theory of the Leisure Class* (New York, 1912), p. 237.

world, just as the "ideal delinquent" exemplifies the special culture of the underworld. The principal specifications of white collar crime in comparison with professional theft are elaborated below, with certain points of similarity and certain points of difference.

First, the criminality of the corporations, like that of professional thieves, is persistent: a large proportion of the offenders are recidivists. Among the seventy largest industrial and mercantile corporations in the United States, 97.1 percent were found to be recidivists, in the sense of having two or more adverse decisions. None of the official procedures used on business men for violations of law has been very effective in rehabilitating them or in deterring other businessmen from similar behavior.

Second, the illegal behavior is much more extensive than the prosecutions and complaints indicate. Samuel Insull is reported to have remarked during his trial that he could not understand why he was being prosecuted since he had only done what all other businessmen were doing. Many types of violations of law are industry-wide in the sense that practically all firms in the industry violate the law. This has been demonstrated by many investigations of the Commissioner of Corporations, the Federal Trade Commission, and various Congressional committees. Lowell B. Mason, a member of the Federal Trade Commission, stated in a recent magazine article that

about the only thing that keeps a businessman off the wrong end of a federal indictment or administrative agency's complaint is the fact that, under the hit-or-miss methods of prosecution, the law of averages hasn't made him a party to a suit.<sup>2</sup>

President Truman, accepting the conclusion that violations of law are industry-wide, announced in his 1947 message to Congress that thereafter the Federal Trade Commission would

<sup>2</sup> *Nation's Business*, vol. 35, no. 1, p. 38, January, 1947.

attack violations of law through trade conferences aimed at the modification of industry-wide practices. The trade conference policy was used also at the end of the decade of the twenties and was based on the same belief in the industry-wide character of many violations of law.

Third, the businessman who violates the laws which are designed to regulate business does not customarily lose status among his business associates. Although a few members of the industry may think less of him, others admire him. Leonor F. Loree, chairman of the board of the Kansas City Southern Railway, in accordance with instructions of the board, appointed a committee in 1924 to purchase shares of the Missouri, Kansas, and Texas Railway. Prior to this, according to reports of official complaints, and with knowledge of the plan of his corporation, he purchased 14,000 shares of Missouri, Kansas, and Texas for his own account and sold them later at a profit of \$144,707. According to this complaint, he thus made a profit at the expense of the corporation which he directed. After he had been requested to explain his action and when a suit was about to be filed, he turned over his private profits to the corporation. After this whole transaction had received considerable public attention, he was elected president of the New York Chamber of Commerce.<sup>3</sup> Important executives of three of the seventy large corporations, according to court decisions, illegally appropriated funds of the corporations to their personal use and continued activities thereafter with no loss of status in the corporation or in the industry; it is reported that one of these executives made his reputation as a shrewd manipulator by this illegal transaction. Such illustrations could be multiplied. They amount to the general principle that a violation of the legal code is not necessarily a violation of the business code. Prestige is lost by violation

<sup>3</sup> *New Republic*, 56:33, August 29, 1928.

of the business code but not by violation of the legal code except when the legal code coincides with the business code.

Fourth, businessmen customarily feel and express contempt for law, for government, and for governmental personnel. In this respect, also, they are similar to professional thieves, who feel contempt for law, policemen, prosecutors, and judges. Businessmen customarily regard governmental personnel as politicians and bureaucrats, and the persons authorized to investigate business practices as "snoopers." Businessmen characteristically believe that the least government is the best, at least until they desire special favors from government, and in many cases regard the enactment of a law rather than the violation of the law as the crime. The businessman's contempt for law, like that of the professional thief, grows out of the fact that the law impedes his behavior.

White collar crimes are not only deliberate; they are also organized. Organization for crime may be either formal or informal. Formal organizations for crimes of corporations is found most generally in restraint of trade, as illustrated by gentlemen's agreements, pools, many of the practices of the trade associations, patent agreements, and cartels. Formal organization is found, also, in conferences of representatives of corporations on plans regarding labor relations. Businessmen are organized formally, also, for the control of legislation, selection of administrators, and restriction of appropriations for the enforcement of laws which may affect themselves. While some associations have developed codes of business ethics and many of the representatives have been sincere in their formulations of such codes, the actual effect of the codes is no different from what it would have been if the codes had been written by men with their tongues in their cheeks.

Even when no formal organization has been developed, businessmen have consensus. While businessmen, with consensus, give lip service to free competition and free enterprise, they also, with consensus, practice restraint of trade. They are not willing to bear the burdens of competition or to permit the economic system to regulate itself in accordance with the laws of supply and demand. Rather, they adopt the method of industrial planning and manipulation. While corporations seldom insist that their advertising agencies engage in misrepresentation, they reward the agencies which increase sales with little regard for the honesty of the methods employed. They have a high degree of consensus regarding the patent laws, as restrictions which are to be disregarded or circumvented. The chief executive of a corporation stated confidentially:

If an inventor has secured a patent on a process in our field and his invention has merit, we buy the patent if he is willing to sell it for a reasonable sum. But if he tries to hold us up, we refuse to buy it and "invent around" his patent, which we can easily do after we have examined the plans which he has submitted to us for sale.

The points of similarity between white collar crime and professional theft, which have been elaborated above, are not a complete statement of the relationship between these two types of crimes. These types of crimes have differences as well as similarities. The most significant point of differences lies in the offenders' conceptions of themselves and in the public's conceptions of them. The professional thief conceives of himself as a criminal and is so conceived by the general public. Since he has no desire for a favorable public reputation, he takes pride in his reputation as a criminal. The businessman, on the other hand, thinks of himself as a respectable citizen and, by and large, is so regarded by the general public. The federal court,

when imposing sentences on the members of the firm of H. O. Stone and Company in Chicago in 1933 for fraudulent transactions in real estate, said to the defendants:

You are men of affairs, of experience, of refinement, and of culture, and of excellent reputation and standing in the business and social world.

This characterization of these white collar criminals would apply to practically all of the men in the corporations which have been described as violating the law. Even when they violate the law, they do not conceive of themselves as criminals.

This problem of the conception of one's self as a criminal is an important problem in criminology. Some criminologists have insisted that the white collar criminal is not "really" a criminal since he does not conceive of himself as a criminal. This contention is based on two fallacies in logic: taking the part for the whole and taking the word for the essence. The general problem of criminology is the explanation of criminal behavior. Some persons who engage in criminal behavior conceive of themselves as criminals and some do not. The origin and development of the conception of one's self as a criminal is an important problem, but it is not the entire problem in criminology. Those criminologists who limit their attention to this problem and draw conclusions regarding all criminal behavior are taking the part for the whole.

One's conception of himself as a criminal is based on a general characterization and on an ideal type. Many persons who have been convicted of crime and committed to prison say: "But I am not really a criminal." Such persons do not identify themselves with the ideal type. Two of the principal factors in the identification of self with the ideal type are official treatment as a criminal and intimate personal association with those who

conceive of themselves as criminals. The white collar criminal does not conceive of himself as a criminal because he is not dealt with under the same official procedures as other criminals and because, owing to his class status, he does not engage in intimate personal association with those who define themselves as criminals.

Furthermore, many variations are found in the identification of self with others even among those who conceive of themselves as conforming to the ideal type of criminal. The word "criminal" may be applied to all of them, but the essence varies. Prisoners generally constitute a hierarchy, with high-class confidence men at the top at present and with the "yegg" or safe-breaker at the top in earlier generations. One of these classes of prisoners does not identify itself with the others and those in the upper criminal class look with contempt upon the lower criminal class. They place in the lower class of criminals the small number of businessmen who have been convicted and committed to prisons for offenses such as embezzlement. The failure of a white collar criminal to identify himself with other criminals is in part an instance of the general process of stratification and segregation among criminals.

While white collar criminals do not conceive of themselves as conforming to the stereotype of "criminal," they do customarily think of themselves as "law violators." This is another aspect of a different word for the same essence. In their confidential relations businessmen speak with pride of their violations of law, and regard the enactment of the law rather than its violation as reprehensible. Their consciences do not ordinarily bother them, for they have the support of their associates in the violation of the law. The feeling of shame at their business practices is probably found more frequently among younger businessmen who have not thoroughly assimilated the culture and rationali-

zations of business. A radio announcer made the following statement of his disgust at the practices in which he participated:

In order to hold my job I am compelled to make the most extravagant statements regarding cigarettes, tooth paste, toilet paper, cathartics, and other products which are on the program. I have to consider the various appeals and use the one which will produce the largest sales. After I have made my statement, I sometimes feel like going outside and vomiting or getting drunk, because I am so disgusted with the statements I am compelled to make.

The public, likewise, does not think of the businessman as a criminal; that is, the businessman does not fit the stereotype of "criminal." This public conception is sometimes referred to as "status." Although the concept of "status" is not entirely clear, it seems to be based principally upon power. The local community studies at least show that a person may have a high status while being recognized as a profligate. Similarly, the businessman often has a low rating as to honesty, even while he has a high social status. Trade unions, farmers, and organized consumers are certainly not convinced that businessmen have high standards of honesty or that they are meticulous in the observance of law.

In order that businessmen may maintain their status and their conception of themselves as not-criminal, public adherence to the law is necessary. The policy of corporations is general public adherence to the law and secret defections from the law. In this respect the businessman is quite different from the professional thief. In professional theft the fact of crime is a matter of direct observation, and the important problem for the thief is to conceal his identity in order to avoid punishment, but not in order to maintain his status in the general public. In white collar crime, on the other hand, the important problem for the criminal is to conceal the fact of crime, since the identity of the firm which violates the law is generally known.

Secrecy regarding the fact of white collar crime is facilitated by the intricacy of the activities and the wide scattering of effects in time and place. Consumers who are dissatisfied with the price of a commodity may not become aware for many years that the price is being manipulated by agreements among producers. Customers who read the claims presented on a label or in an advertisement may not become aware until scientific tests are made that the claims are fraudulent.

Businessmen develop rationalizations which conceal the fact of crime. Fraud in advertising is rationalized by the statement that every one puffs his wares. Businessmen fight whenever words that tend to break down this rationalization are used. A food manufacturer who had been ordered to desist from misrepresentations in his advertisements employed a chemist as adviser on proposed advertising copy. This chemist described his experience with his firm as follows:

In my first associations with this firm I referred either by word of mouth or by letter to proposed statements as "dishonest" or "fraudulent." The manager of my department objected to my use of these words and ordered me to phrase my objections in other words, such as "it would not be good policy to make such claims," or "this claim does not agree with the scientific findings."

With the same objective of protecting their reputations the business organizations have worked for a different implementation of the laws which apply to them. They do not want to be arrested by policemen, hauled before the criminal court, and convicted of crimes. Substitutes for these procedures have been found in orders to appear at a hearing, decisions by administrative commissions, and desist orders. The essential similarity between white collar crimes and other crimes has been partially concealed by this variation in procedures.

Secrecy regarding the violators of law is secured also by

juggling corporate personalities and brand names. This policy has the same function as the alias of the professional thief, namely, anonymity. The policy appears in at least three forms. First, a subsidiary of a corporation conceals its connection with that corporation. A cooperative plant which was purchased by a large meat-packing corporation continued to represent itself as a cooperative. An independent manufacturer of farm machinery was purchased by a near-monopolistic corporation but continued to represent itself as "independent" and "as fighting the trust." A public utility system employed as an appraiser of its property a firm which was represented to be independent, but in which the manager of the utility system was a silent partner. Many of the large corporations have organized dummy corporations for one or more of three purposes: to conceal transactions which would require payment of large income taxes, to increase the number of firms which may successively take profits, and to avoid laws which prohibit a corporation from owning more than a specified percentage of the stock of a public utility corporation. Second, corporations which are known to be subsidiaries are presented as distinct legal personalities. The objective in this case is to produce obfuscation as to responsibility. One of the utility systems had three sub-holding companies, each of which had the same officers and offices as the parent company; each of the sub-holding companies, in turn, had regional companies subsidiary to it, with control over the operating companies in its region. Third, corporations juggle brand names as occasion requires. During World War II, when price ceilings were imposed on old brands, many corporations through subsidiaries not known to be connected with the parent company produced the old commodities with a new brand name and claimed prices higher than the ceilings for the old brands.

With the objective of maintaining status and a conception

of themselves as non-criminal, the corporations employ experts in law, public relations, and advertising. These agencies are the corporate equivalent of the professional thief's "mouthpiece." The "mouthpiece" of the professional thief has as his principal function the defense of his client against specific charges. The function of the "mouthpiece" of the white collar criminal is much more inclusive. He has the function of influencing the enactment and administration of the law as it applies to his clients, of advising his clients in advance as to the methods which may be used with relative impunity, as well as defending his client before the courts and before the public when specific charges are made against them. Perhaps most important of all is the effort of the associations of businessmen to build up and maintain their status before the public. It is reported that a business concern, which had acquired a bad reputation through one rather scandalous episode involving its chief executive, paid a public relations firm more than a million dollars for a campaign to restore its good reputation. Cohen makes the following generalization which applies to such activities:

The efficiency with which a ruling class can secure popular recognition of their claims depends upon the popular stereotypes of that class. If ruling class membership suggests merit and ability entitling one to positions of public trust and authority, this recognition will be forthcoming. The ruling class will, accordingly, promote an ideology which incorporates such a stereotype, and will actually put some pressure on its members to conform, at least publicly, to the stereotype. If single members deviate grossly and publicly, conducting themselves in a manner "unbecoming a gentleman," such conduct reflects not only on the culprit but on the validity of the stereotype and thus threatens the standing of all who share his status and rule by virtue of the acceptance of that stereotype.<sup>4</sup>

<sup>4</sup> Albert K. Cohen, *Differential Implementation of the Criminal Law* (Bloomington, Indiana, 1942), pp. 36-37.

The activities of Insull, Hopson, and others who committed gross violations of law were not so much offensive to the sentiments of businessmen as threats to the generalized and simplified stereotypes in terms of which the public evaluates businessmen as a group. The policy of condemning the gross violators of law, whose offenses become publicly known, enables corporations to carry out a general attitude of public adherence to the law while in fact they are engaged privately in defections from the law.

The characteristics of white collar crime, as described above, depend to some extent on the corporate form of business organization. The statement is frequently made that big business is more legal and more honest than small business. No organized research has demonstrated the truth or falsity of this claim. Research on violations of price ceilings during World War II indicated but did not prove conclusively that no significant difference was found between large and small firms.<sup>5</sup> At any rate, the corporate form of organization which is generally used in big business has two advantages over other forms of organization from the point of view of violations of law: anonymity of persons so that the location of responsibility is impeded, and increased rationality in behavior.

The policies of a business which has corporate form are actions of a corporate unit. Responsibility is divided among executives, directors, subordinates, and stockholders. A director loses his personal identity in this corporate behavior and in this respect, but in no other, corporate behavior is like the behavior of a mob. Persons do not act in these situations as they would act if segregated from each other. This is true even when the corporation is essentially a dictatorship under the control of one

<sup>5</sup> George Katona, *Price Control and Business*, Principia Press, Monog. No. 9, 1945.

person. The difficulty of locating responsibility and the resulting security to individuals is exemplified in the decision against the automobile companies in the six percent case, where the corporations were convicted but all of the directors and executives were acquitted: the corporation was guilty of a crime but no person directing the corporation was guilty of a crime.

The corporate form of business organization also has the advantage of increased rationality. The corporation probably comes closer to the "economic man" and to "pure reason" than any other person or any other organization. The executives and directors not only have explicit and consistent objectives of maximum pecuniary gain but also have research and accounting departments by which precise determination of results is facilitated, and have discussions of policies by directors with diverse abilities and diverse interests, so that the sentiments of one person are canceled by those of another. This general advantage does not deny the disadvantages of corporate organization. Two principal disadvantages have been pointed out in the literature. First, the directors do not necessarily have their attention fixed on the balance sheet of the corporation, but often engage in log-rolling for personal advantages, just as is true in politics. Second, the corporation, like a government, tends to become bureaucratic with all of the limitations of bureaucratic organization.

In the earlier days the corporation aimed at technological efficiency; in the later days it has aimed more than previously at the manipulation of people by advertising, salesmanship, propaganda, and lobbying. With this recent development the corporation has developed a truly Machiavellian ideology and policy. It has reached the conclusion that practically anything is possible if resources, ingenuity, and strenuous efforts are used. It has appropriated the physical and biological sciences and applied them to its objectives of technological efficiency, and in the proc-

ess has made significant contributions to those sciences. Similarly, it has appropriated the social and psychological sciences and applied them to the objective of manipulating people.

Three aspects of the rationality of the corporation in relation to illegal behavior may be mentioned. First, the corporation selects crimes which involve the smallest danger of detection and identification, and against which victims are least likely to fight. The crimes of corporations are similar in this respect to professional thefts: both are carefully selected and both are similar to taking candy from a baby, in that the victim is a weak antagonist. The advantage of selecting weak victims was stated explicitly by Daniel Drew in the decade of the eighties:

I began to see that it is poor policy for big men in Wall Street to fight each other. When I am fighting a money-king, even my victories are dangerous. Take the present situation. I had scooped a fine profit out of the Erie deal and it was for the most part in solid cash. But—and here was the trouble—it had all come out of one man—Vanderbilt. Naturally it had left him very sore. And being so powerful, he was able to fight back. As has been seen, he did fight back. He had put me and my party to a lot of inconvenience. That always happens when you take money from a man on your own level. On the other hand, if I had taken these profits from outsiders, it would in the aggregate have amounted to the same sum, but the losers would have been scattered all over the country and so wouldn't have been able to get together and hit back. By making my money from people on the outside, an insider like myself could make just as much in the long run, and not raise up any one enemy powerful enough to cause him discomfort.<sup>6</sup>

The victims of corporate crimes are seldom in a position to fight against the management of the corporation. Consumers are scattered, unorganized, lacking in objective information as

<sup>6</sup> Bouck White, *The Book of Daniel Drew* (New York, 1910), pp. 270-271.

to qualities of commodities, and no one consumer suffers a loss in a particular transaction which would justify him in taking individual action. Stockholders seldom know the complex procedures of the corporation which they own, cannot attend annual meetings, and receive little information regarding the policies or the financial status of the corporation. Even if stockholders suspect illegal behavior by the management, they are scattered, unorganized, and frequently cannot even secure access to the names of other stockholders. In their conflicts with labor, the corporations have the advantage of a friendly press and of news commentators whose salaries are paid by business corporations, so that their unfair labor practices can be learned generally only by consulting official reports.

The ordinary case of embezzlement is a crime by a single individual in a subordinate position against a strong corporation. It is, therefore, one of the most foolish of white collar crimes. The weakness of the embezzler, in comparison with the corporation, is illustrated in the case of J. W. Harriman. He was indicted for embezzlement in 1933 and later convicted. No criminal complaint was made against the banks which were accessory to this crime, and which were discovered in the course of the investigation. Their crimes included loans to one corporation in excess of the limit set by law, a pool formed by the officers of the bank to trade in the stock of the bank in violation of law, concealment of the embezzlement by officers of the bank and of the clearing house, and refusal by many of the banks to meet the losses of the Harriman bank which they had agreed to do on condition that the embezzlement be concealed.

A second aspect of corporate rationality in relation to crime is the selection of crimes in which proof is difficult. In this respect, also, white collar crime is similar to professional theft. The selection of crimes on this basis is illustrated by advertising:

since a little puffing is regarded as justifiable, the proof of unreasonable puffing is difficult. Again, a corporation organizes a company union under its own domination because proof that this is an unfair labor practice is difficult.

Third, the rational corporation adopts a policy of "fixing" cases. This is similar to the professional thief who maintains that if he has money and good standing with the "fixer" he can fix any case anywhere, since it is always possible to find a weak link in the chain of persons necessary for a conviction. A former officer of the Federal Food and Drug Administration has described the pressures on that organization to prevent the execution of the law on particular offenders.<sup>7</sup> These pressures include threats by Senators and Representatives that appropriations for the Food and Drug Administration will be cut unless charges against a constituent are withdrawn. When the Federal Trade Commission after the First World War was active in the enforcement of the law, representatives of large corporations went to the President of the United States, who replaced some of the commissioners by others more sympathetic with business practices; this resulted in the dismissal of many complaints which had been made against corporations. When minority stockholders bring suit against the management of the corporation, a customary procedure is to make a settlement with the leader of that group. This is similar to the reimbursement by the professional thief of the victim of the theft in order to stop prosecution.

The "fixing" of white collar crimes, however, is much more inclusive than the fixing of professional thefts. The corporation attempts not only to "fix" particular accusations against it, but also to develop general good will before accusations are made, and even to prevent the implementation of the law. An instance

<sup>7</sup> See above, p. 120.

of this broader policy is provided by the fire insurance companies of Missouri, which had agreed to pay Pendergast a bribe of \$750,000 to intervene in a rate case. Four of these companies which paid shares of this bribe immediately appointed as vice-president a person who had great influence in the national capital. While Pendergast was promptly convicted and committed to prison, almost ten years elapsed before the fire insurance companies were convicted and their penalties were limited to fines.

The preceding analysis justifies the conclusion that the violations of law by corporations are deliberate and organized crime. This does not mean that corporations never violate the law inadvertently and in an unorganized manner. It does mean that a substantial portion of their violations are deliberate and organized.