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CULTURAL ASPECTS OF CRIMINAL RESPONSIBILITY

Harry Manuel Shulman

The author is Associate Professor of Sociology and Director of the Community Service Division at the City College of New York. He has initiated there a demonstration of functional higher education, utilizing college-community relations to bridge for students the gap between classroom and life situations. Among projects of criminological interest in the program of the Division are group work with street clubs and gangs, group dynamics research into the behavior interactions of classroom teachers and problem children, and a vocational guidance and testing service for maladjusted youths.—EDITOR.

The classical theory of jurisprudence that criminal responsibility is a matter of knowing right from wrong had its origin in a simpler society in which it was possible for an individual to be, in the words of Tardé, "identical with his culture." Cultures were relatively consistent in their values, and the monolithic pressures of relatively uniform culture values concealed the fact to the philosopher that human behavior was no rational outcome of the awareness of right and wrong conduct, but a product of an equilibrium between the individual and his society, in which the struggle for individual and group survival determined means to ends.

The position taken in this paper is that modern man lives in a complex multi-cultural society whose values, whether we like or not, are determined largely by the functional needs of interest groups. In such societies, large segments of criminal behavior represent some of the means taken by groups to ensure their survival, even though these means are in conflict with larger values of the culture.

There is no necessity in positing a psychiatric basis for such criminal behavior. This does not deny the possibility that underlying group compulsions to social norm deviations there may yet be deeper personal-social feelings of anxiety, inferiority, or even pathologies of personality. But the dynamics of these crimes are to be found, not in the subjective insecurities of the individual alone, but in the way these have been shaped by the sanctions of the groups in which they exercised functional roles. The etiology of crime must always take into cognizance the social roles that contributed to the behavior and that made it appear functionally suitable within its context. Diagnosis and treatment must be likewise within the cultural context of the offender, in terms of subjective motives, social roles of the individual, and the configurations and values within which those roles functioned.

Our knowledge of the pressures leading to criminal conduct comes primarily from the study of apprehended offenders dealt with through the agencies of criminal justice, such as probation, imprisonment and

parole. The majority of these offenders have been guilty of crimes against the person and predatory crimes. Two other groups of crime; crimes against public health, safety and policy; and white collar crimes, whose volume by far exceed that of the two first categories, have contributed scantily to our knowledge of those persons who have committed them, or the pressures involved. This is because public safety, health and policy offenses are dealt with summarily in inferior criminal courts by warnings, fines and suspensions of sentence (or by short jail sentences); and white collar crimes are dealt with characteristically under administrative law, which is concerned with corporate rather than personal wrongs.

It may be possible, despite a lack of case data with reference to certain of these latter offenders, to consider the nature of some of the pressures operating in their criminal conduct. We shall undertake therefore to analyze some of the social influences leading to white collar offenses, and one public policy offense, gambling. Our thesis shall be that these crimes, over and above the inner psychological motivations, normal or abnormal, that may be operative, show the operation of strong social pressures that sanction and conventionalize them.

We shall examine these offenses in terms of a) their manner of commission; b) social processes underlying them; c) the assumptions underlying their criminal justice handling; and d) indicated steps toward more effective social control.

WHITE COLLAR CRIMES

As defined by the late Edwin Sutherland, white collar crime may be defined as crime committed by persons of respectability and high social status in the course of their occupations.¹ Offenders in these groups have no self-image of themselves as law-breakers. While they are fully aware that they are breaking the law, they usually have no sense of guilt and reject the view that they are criminal offenders. They do not align themselves with law-breakers, have no sympathy with them and are to be found on the right side of any movement aimed at social defense against organized crime. The characteristics of the white collar offender, as pointed out by Sutherland, are nevertheless often akin to those of the Series I offender—he is usually a recidivist, the extent of illegal behavior is much more extensive than complaints and prosecutions indicate, the offender does not customarily lose status among his business associates, his crimes are usually both deliberate

1. EDWIN SUTHERLAND, *WHITE COLLAR CRIME*, Dryden Press, N.Y., 1949, p. 9.

and organized, and he expresses contempt for law and government personnel. What differentiates the white collar offender from the Series I offender is that the Series I offender seeks to conceal his identity whereas the white collar offender seeks to conceal the fact that a crime has been committed.²

Among common white collar offenses are misrepresentation in financial statements of corporations, manipulations in stock exchanges, commercial bribery, bribery directly or indirectly of public officials to secure favorable legislation or favorable contracts, misrepresentation in advertising and salesmanship, short weights and measures, misgrading of commodities, tax frauds, misapplication of funds in receiverships and bankruptcies. These are what Al Capone called "the legitimate rackets." White collar crime may be individual or corporate. Criminality has been demonstrated in the operation of land offices, railways and insurance, munitions, banking, public utilities, stock exchanges, the petroleum industry, the real estate industry, receiverships, bankruptcies, and politics. Corporations have been found to have defrauded their employees, stockholders, the government and the public. The financial cost of white collar crime is many times that of Series I crime.

BLACK-MARKETING

Space forbids more than mere mention of black-marketing, a specialized form of white collar crime, arising less from artificial restraints of trade and financial misrepresentation than from economic shortages and scarcities resulting from war and inflation. Black-marketing occurs characteristically in loosely organized industries such as food, automobiles, textiles, rentals. Clinard, from an examination of the records of the Enforcement Department of the U. S. Office of Price Administration in 1944, estimated that such offenses were common in more than ten percent of all retail and pre-retail concerns.³

GAMBLING

At the risk of pedantry, we may define gambling as the wagering of money or other valuable considerations upon the outcome of events which are assumed to be determined largely by chance. Gambling is of course related to white collar crimes and black-marketing, in that all seek a relative advantage over the rest of the community either

2. *Ibid.*, pp. 218-225.

3. MARSHALL CLINARD, *Criminological Theories of Violations of Wartime Regulations*, AMERICAN SOCIOLOGICAL REVIEW, Vol. II, No. 2, June, 1946. P. 264.

See also by the same author, *THE BLACK MARKET, A STUDY OF WHITE COLLAR CRIME*, Rinehart and Co. 1952.

by superior knowledge or luck. Underlying all three is a set of culture values that exalt pecuniary gain above the value of work or of service. The gambling industry, which includes the operations of professional gamblers, has been estimated to involve more than 15 billion dollars annually. The numbers game alone has been estimated at involving from 300 millions to a billion dollars annually. Only 2.3 percent of Series I arrests, or 17,000 out of 750,000 arrests in 1948, were on gambling charges. Gambling is clearly more within the mores than outside. The size of the gambling public engaged in this huge exchange of dollars is unknown, but it must involve a considerable part of the public.⁴

THE GENESIS OF WHITE COLLAR CRIMES

White collar crimes have their origin not alone in occupational, trade and industry practices. More fundamentally their origin is in many of the currently held values of our culture, viz., the drive for financial success, the monetary basis of social position, the desirability of restraints with least governmental interference with individuals.

LEGAL PROCEDURES IN WHITE COLLAR CRIMES AND GAMBLING

White collar crimes tend to be dealt with, increasingly, in terms of a legal fiction which separates the *personal* conduct of the offender, triable under criminal law, from his *corporate* conduct, triable under administrative law. For the principle of personal responsibility there has been substituted that of corporate responsibility or even of industry-wide responsibility. In place of individual trial and punishment, and the stigma of personal publicity, have developed the practice of corporate hearings, cease and desist orders, stipulations and fines assessed on corporations. Thus the trend of legal jurisprudence in white collar crime has been to give recognition to the role of functional rather than personal pressures.

In black-marketing, the tendency has been to use non-punitive warning measures, and to proceed to court trial and application of principles of individual criminal responsibility only in a selected group of flagrant cases. In gambling, while the tendency has been to use criminal law procedures, the evidence indicates that this has been applied against small-time gamblers rather than syndicated groups that enjoy the political immunities of their corporate status. Thus we may generalize by stating that white collar crimes and gambling tend to enjoy a favored status, in that individual criminal responsibility is not as frequently invoked as in the case of Series I crimes.

4. Cited in WALTER RECKLESS, *THE CRIME PROBLEM*, New York, 1950, p. 307.

INDICATED STEPS TOWARD SOCIAL CONTROL

There are several indicated directions toward improved social control of these crimes of the businessman and of the average man. 1) Greater use of the principles and practices of criminal justice, aimed at individual criminal responsibility. 2) Extension of administrative controls and applications of stronger corporate sanctions, such as larger fines. 3) More explicit definition of corporate and industry standards of business conduct, in administrative law. 4) Public education for acceptance of higher standards of economic relations.

Probably no single one of these will serve to deal effectively with these forms of crime. Not only are these crimes still not in the mores, but there exists strong pressures within occupations, trades, industries for their rationalization and even their conventionalization. As our economy becomes more and more urbanized, the counter pressures of community sentiment become weaker. Perhaps the only effective counter to the pressures making for these crimes is the opposition of other pressure groups in the community whose own interests are adversely affected by these crimes. This includes competing corporations and industries, labor, small business, and consumer groups. This implies a system of checks and balances in the area of crime control comparable to those in representative government. Thus crime control in a democracy involves no panaceas but a constant struggle of competing forces to establish optimum conditions for their own operation.

When public opinion reaches the point that these optimum conditions include occupation, trade and industry self-enforcement of standards that are in the general public interest, both administrative and criminal law may be strengthened in their controls. But the achievement of such a public opinion requires the continued and relentless publicity to violations, the education of the public as to the need of higher standards of economic conduct, leadership within functional groups toward establishment and maintenance of higher intramural standards of economic conduct, and the use of constant pressures upon other groups in the society to desist from practices inimical to the injured groups. In short, only the maintenance of a high level of social equilibrium will serve the purposes of social control in this crime area.

Mental hygiene and psychiatry may be helpful toward curbing deeper underlying individual resistances toward self-restraint in functional behavior. But the role is clearly a limited one in these areas of crime.