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FROM WHITE COLLAR CRIME TO EXPLOITATION: REDEFINITION OF A FIELD

HAROLD E. PEPINSKY*

INTRODUCTION

Whenever a definition of the boundaries of a field of inquiry is created in the social sciences, the definition has a great deal more than academic significance. Researchers who develop knowledge about the field and those who use the knowledge to carry out policy both are constrained by the way the field characterizes the social problems they encounter. The field of white-collar crime exemplifies this constraint. When Sutherland defined white-collar criminality, he explicitly observed that acceptance of his definition would imply recognition of a set of social problems to be resolved through the application of research stated in a new set of terms. He wrote:

The thesis of this paper is that the conception and explanation 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 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.¹

In other words, Sutherland agreed that a distinctive social problem was posed by those who committed crimes and those who responded to the crimes. He saw crime as a "legally defined social injury" for which a "penal sanction" was provided, as a conceptually unitary phenomenon against which a society needed to protect itself.² What bothered him was that because of a class bias in the previous definition of the phenomenon, per-

sons of a higher socio-economic status often committed such injury with impunity. By defining white-collar crime as a matter of justice, in the sense discussed by Hart³—that like cases be treated alike—he attempted to remove the class bias inherent in previous criminological research. In reality, Sutherland's definition of white-collar crime was an extension of the generic definition of crime.

Opponents of the redefinition of crime have generally argued that the redefinition is too broad. One legal scholar, Paul Tappan,⁴ typifies such opposition in his argument that a crime exists for purposes of research or other social response only when it is that for which a defendant is prosecuted and convicted. In part, this paper attempts to show that arguments such as Tappan's, which advocate narrowing Sutherland's definition of crime, are untenable. In fact, the position taken here is that, with respect to property crime at least, Sutherland's redefinition is itself too narrow. For one thing, the distinction between what is and is not crime cannot be adequately operationalized in Sutherland's terms. For another, Sutherland has failed to eliminate the social bias he decried in the older definition of crime. That a social injury is legally defined and provided with a penal sanction distinguishes it from other social injuries only by the relatively great social powers of the legal definition's adherents. In all other senses, the nature of the social injury wrought by a Sutherland-type crime is indistinguishable from the nature of the social injury wrought by many non-criminal acts.

The type of social injury common to what are depicted as white-collar crimes is what is here termed exploitation. This paper seeks to eliminate the socio-economic bias that remained in Sutherland's redefinition of crime by subsuming the kind of phenomenon Sutherland called white-collar crime under the broader category of exploitation. The field of exploitation would thus supersede the field of white-collar crime as a socio-economi-

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¹ Sutherland, *White Collar Criminality*, 5 AM. SOCIOLOGICAL REV. 1 (1940).

² Sutherland, *Is "White-Collar Crime" Crime?* 10 AM. SOCIOLOGICAL REV. 132 (1945). This article was later published in a book by Sutherland. See E. SUTHERLAND, *WHITE COLLAR CRIME* (1961).

³ See H. L. A. HART, *THE CONCEPT OF LAW* (1961).

⁴ See Tappan, *Who Is the Criminal*, 12 AM. SOCIOLOGICAL REV. 96 (1947).

cally, unbiased, conceptually unitary area for research and its application.

THE ELEMENT OF A "PENAL SANCTION" IN SUTHERLAND'S DEFINITION

Provisions of a "penal sanction" is at the heart of Sutherland's definition. Sutherland argues that the provision of an injunction, treble damages, or a stipulation as relief from the injury caused by an act constitutes provision of a penal sanction. In the case of an injunction, this is because failure to obey its terms is in turn punishable by fine and/or imprisonment for contempt of court. Treble damages are held to be a punishment equivalent to a fine. A regulatory stipulation not followed may lead to a cease and desist order. Failure to obey the cease and desist order can lead to the granting of an injunction, and so on. In Sutherland's view, if a course of action can ultimately legally lead the actor to jail or require him to pay more than the damage he is assessed to have caused, the law provides a penal sanction.

Thus construed, a simple breach of a business or professional contract is a white-collar crime, as is negligence in carrying out one's business or profession. A plaintiff may sue for the breach or the negligence in a civil court. If the court or jury finds for the plaintiff, the court customarily will make the defendant pay court costs. This is distinguished from payment of damages caused by the breach. Payment of costs, in other words, represents payment for a social injury greater than that caused the defendant. As a social cost, the defendant pays for the injury he has done, thus fitting Sutherland's notion of a penal sanction. Sutherland's definition effectively obliterates the distinction between civil and criminal wrongs.

Sutherland is conceptually safe in not distinguishing civil from criminal wrongs. The two categories do not differentiate wrongs by seriousness. The crime of embezzlement of a few thousand dollars from a large corporation, for example, would hardly be considered more serious than a company's violation of a contract through careless delay in shipping badly needed equipment at a cost of tens of thousands of dollars in lost time to the buyer.

Sutherland maintains that white-collar crimes can occur without judicial findings of wrongful conduct. However, even if Sutherland's definition were to require a judicial finding of wrongdoing, criminal and civil wrongs would not be significantly

distinguishable. The difference in the formal burden of proof required in civil and criminal proceedings is, in practice, illusory. It is commonly held by those who act or have acted as defense counsel that the judge or jury weighing the facts in a criminal case begins with a presumption that the defendant must be guilty or he would not be in court. This generally renders meaningless the formal requirement of proof of guilt beyond a reasonable doubt. Plea bargaining leads to guilty pleas in most cases, and so criminal defendants are usually not even tried. Sudnow found that the group of public defenders he studied based their bargaining on their own practically universal presumption of the defendant's guilt, and their conclusion that trials would be a waste of time.⁵

From this author's limited experience, and from talking with other attorneys, it appears that, if anything, in practice, civil courts have a more exacting burden of proof than do criminal courts. The requirement of proof by a preponderance of the evidence appears to be more rigidly adhered to than the mythical requirement of proof beyond a reasonable doubt. A form of bargaining takes place in most civil cases too, for they are generally settled out of court. However, it is standard practice for the civil defendant not to acknowledge liability, and, in fact, to be released from all claims of liability to the plaintiff in exchange for his payment. Thus, if anything, there is greater reason to believe that a finding of civil liability demonstrates wrongdoing than to believe that a criminal conviction does so. From a conceptual point of view, if statutory offenses committed by business and professional people in the course of their work are to be considered white-collar crimes, it is appropriate to attach the same label to torts and breaches of contract committed by these people in their work.

THE ELEMENT OF A "LEGALLY DEFINED SOCIAL INJURY" IN SUTHERLAND'S DEFINITION

The words "social injury" in this part of Sutherland's definition may simply be read as "act." Sutherland does not allow for the possibility that any act legally defined for which a penal sanction is provided is not a social injury. This assumption is highly problematic. Statutory crimes may be created without adequate evidence that a social injury is stated. The electric company conspiracy cases of ten years ago illustrate the point.

⁵ Sudnow, *Normal Crimes: Sociological Features of the Penal Code in a Public Defender Office*, 12 SOCIAL PROBLEMS 255 (1965).

In 1961, twenty-nine corporations (electric companies) and forty-five individuals were tried and convicted of anti-trust violations under Sections 1 and 2 of the Sherman Act. Fines were imposed and seven of the individual defendants, including a vice-president of General Electric, received thirty-day jail sentences. The defendants' crime was to arrange whose bid would be the lowest and what the amount of the bid would be prior to the bidding for the sale of heavy electric equipment. The bids were allocated so that each participating corporation would receive a fixed percentage of the market.⁶

The injury said to be caused by such an arrangement is threefold—a poorer quality product, less efficient production and higher prices to the buyers. This shibboleth, however, is without adequate empirical foundation.

From the point of view of economic theory, the injury caused by price-fixing is shown by models contrasting oligopolistic or monopolistic markets to competitive ones. The problem with this comparison is that a competitive market as an abstraction cannot exist as a reality. The competition model assumes that there are enough suppliers so that no one of them can affect prices, that each of the suppliers has unlimited immediate access to all resources needed for production and distribution, that the resources can be obtained and used by all suppliers at equal, invariant cost, that cost accounting systems are invariant among suppliers, that the cost accounting system used shows the true cost of production and distribution, and that the quality of the product is unidimensional and invariant among all suppliers. The assumptions are rarely met in real life. In producing heavy electric equipment, for instance, there may not be immediate access to steel during periodic shortages. Not all producers of the equipment can be equally close to producers of steel at lowest available cost. Variations in cost accounting systems are legion, such as the difference between determining cost of a product shipped from inventory on a last-in-first-out versus first-in-first-out method. These methods are apt to yield different costs and neither is the right approach. Finally, advertising has taught us the vagaries of assessing the quality of a product. A supplier will naturally try to establish

that his product differs from others in a way that makes it of the higher quality, and the criteria for quality can be varied to suit the supplier's product. Hence, economic modeling has no adequate way of assessing the relative cost to the buyer or the supplier of an oligopolistic or a monopolistic market.

From an empirical point of view, it is practically impossible to establish that harm is caused by price-fixing. Damages against the electric companies were established by comparing prices during the activity of the conspiracy to prices during a period when the conspiracy had broken down. However, the price cuts were in some measure at least a product (and a cause) of movement out of the conspiracy. These price levels provide no indication of what prices would have been had there been no conspiracy in the first place. In fact, to compare price levels adequately would require the simultaneous existence in the same economy of two markets for the same product with sellers and buyers having the same resources in each—one market with a price-fixing conspiracy and the other without. That such a situation could obtain is improbable, to say the least.

As a matter of fact, the electric company conspiracies retained a strong element of competition, suggesting in another way that elements of competition on the one hand, and of oligopolies and monopolies on the other, are in reality interactive rather than independent. The electric companies fought over market shares and price levels. Demonstrably, there was considerable competition over the percentage of bids allocated to each company. Presumably, the companies who were able to make the heavy electric equipment at the lowest cost fought to have prices set at a low enough level that the less efficient producers would have to serve portions of the market at less than cost. The more efficient producers would then have had an advantage over their less efficient brethren in serving the more costly portions of the market. This would have strengthened the bargaining position of the more efficient producers in negotiations over allocation of market shares. The level of movement for competitive advantage was most forcefully demonstrated in the two periods in which electric companies underbid each other in violation of the terms of the conspiracy, and the conspiracy fell apart. From an empirical standpoint, then, price-fixing arrangements would appear to involve the same pressures for low prices

⁶ See Geis, *The Heavy Electrical Equipment Anti-trust Cases of 1961*, in *CRIMINAL BEHAVIOR SYSTEMS* 139 (Clinard & Quinney eds. 1967); Smith, *The Incredible Electrical Conspiracy*, in *DELINQUENCY, CRIME, AND SOCIAL PROCESS* 884 (Cressey & Ward eds. 1969).

and efficient production as does more manifest competition. Price-fixing, a legally defined act with a penal sanction attached, cannot be shown to constitute a social injury.

Conversely, a social injury committed in the course of business or professional activity may not be legally defined (let alone not having a penal sanction provided). For example, automobile exhaust contributes substantially to air pollution. In this sense, a driver is committing a social injury, though the act of driving is not in and of itself legally defined as a crime in any sense. Under the heading of white-collar crime, one might be moved to analyze the decision of a businessman to use trucks instead of trains to move his product for the sake of minimizing air pollution; yet, Sutherland's definition manifestly precludes consideration of such a question. Conceptually, then, use of "a legally defined social injury" as an element of the definition of the subject matter of white-collar crime cannot be defended.

PROBLEMS OF OPERATIONALIZATION OF SUTHERLAND'S DEFINITION

Even were Sutherland's definition conceptually adequate, it would still be inadequate in another critical way. It has proven to be unworkable in research in part because of the insuperable difficulties posed by its operationalization. There is no adequate way to locate Sutherland's white-collar criminals as a basis for explaining either their activity or the societal reaction to their activity.

Groves' study of income-tax compliance by residential landlords (excluding corporations) in a Wisconsin city illustrates the point.⁷ It appears to be the most careful attempt to date to locate and describe a kind of white-collar crime. Groves found what to him were some clear cases of tax evasion. Twenty-three multiple-unit landlords, who indicated in interviews that they had an average rental income of slightly over \$1000, had not filed state returns. It is possible, however, that exemptions and eligibility for reporting income jointly with spouses lowered their income sufficiently that they were not legally required to file returns. For the few (eight) multiple-unit landlords who filed returns but reported no rental income (who again reported to interviewers an average income slightly in excess of \$1000), there is no indication that the interview estimates of

income took account of vacancies or delinquent rent payments. Depending on how the interviewers presented themselves, the landlord might have felt moved to exaggerate the income they received to demonstrate business acumen. It is also possible that for these landlords rental expenses exceeded income. In such a case, the landlords would be guilty of filing improper returns, but not necessarily of tax evasion.

Groves purportedly showed that those landlords reporting rental income over-reported their expenses by approximately 10 per cent, thereby evading taxes in yet another way. This finding was based primarily on a comparison of reported expenses with realtors' estimates as to what expenses should be (*i.e.*, about 50 per cent of gross rent, whatever the type of structure). However, realtors who are in the business of selling rental property might plausibly be expected to tend to underestimate the actual expenses their buyers would incur. Here again, evasion by landlords is not adequately established.

Similar criticisms could be made of the tenability of each of Groves' findings. Even this incomplete summary highlights the problems one encounters in a field of study defined by a particular, and yet various, set of acts. One hundred-fifty years of attempts to measure the occurrence of crime have demonstrated the futility of basing the study of any area of crime on adequate knowledge of the occurrence of most categories of legally proscribed acts.⁸ The very decision that an offense has occurred is still commonly a complex, socially negotiated, largely unexplained process. It remains a formidable challenge to move from the abstract notion that legally proscribed acts occur to a set of researchable questions about that abstraction. Sutherland's definition fails to meet the challenge, and that task remains also for someone who would reconceptualize the subject matter of a field of white-collar crime.

Conceptually, also, Tappan's argument that a judicial finding of guilt should be the operational element of the definition of white-collar crime rests on weak ground. Even in those few cases in which a jury "determines" the fact of guilt or innocence, our faith in the determination has no more rational foundation than that of some of our predecessors in trial by ordeal.⁹ Indeed, protection

⁷ Groves, *An Empirical Study of Income Tax Compliance*, 11 NAT'L TAX J. 241 (1958).

⁸ H. PEPINSKY, *POLICE DECISIONS TO REPORT OFFENCES*, 1972 (dissertation, University of Pennsylvania).

⁹ See Aubert, *Chance in Social Affairs*, 2 INQUIRY 1

of the secrecy of jury deliberations is plausibly explained in part as a protection of the sanctity of the myth of the infallibility of "twelve good men and true." While adherence to Tappan's definition would protect those not adjudicated guilty of crime, it would also lend unwarranted credence to the stigma attached to convicted offenders; these latter would be the victims of Tappan's definition. Insofar as Sutherland's definition would lead us to accept the greater likelihood of our own culpability, and therefore stigmatize any white-collar criminal with less vigor than we would be inclined to do under Tappan's conception of crime, less harm would be apt to result from the use of Sutherland's definition than Tappan's reformulation. Sutherland's operational definition is thus the more acceptable of the two, though it too is inadequate.

GUIDELINES FOR AN ADEQUATE REFORMULATION OF SUTHERLAND'S DEFINITION

A reformulation of Sutherland's definition of white-collar crime should attempt to avoid the three pitfalls described above. It should not make a spurious attempt to distinguish the commission of criminal from that of civil injury. It should not rest on the assumption that legal proscriptions describe a unitary set of phenomena. It should not study unascertainable behavior directly.

Essentially, any white-collar crime is a challenge to an alleged use of private property. A finding of tax evasion, for example, implies that the property of the government has been withheld by the taxpayer for his own use. Price-fixing is deemed criminal because presumably it enables the seller either to obtain some purchase money from the buyer or to retain control of the resources that would pass to the buyer in greater quality in the product he buys for his money. By failing to exercise legally prescribed precautions in controlling smoke emissions, an industry arguably uses air that has been the property of others.

This suggests that white-collar crime is legally defined after all. The legal owner is one whose right to the use of property is superior to all others. The owner may be the one who has lost the use of the property or the one who has gained it. If the one who successfully appropriates the use has a superior legal right, his act is legitimate. If this right is inferior, he has committed a crime. In a

sense, Sutherland was correct. Property crimes are socially injurious because the law declares them to be so.

A number of social analysts, such as Marx¹⁰ and Quinney,¹¹ have pointed out the weakness of the assumption that law discriminates socially injurious preferences in use of property from non-injurious preferences. As Hart observes, in discussing justice under law, justice is relative to the respect in which "like cases are treated alike and different cases treated differently."¹² The criteria that separate socially injurious preferences from non-injurious preferences are not just in themselves; they are artifacts of social power. One of the devices that can be used to secure the use of property is to influence legislatures and courts to decree that one's use is superior to another's. When an employee is convicted of embezzlement and ordered to make restitution, it affirms the legitimacy of the employer's priority over the employee in determining how the funds shall be used. If the government that makes that decree is overthrown in a revolution, the employee may be able to use the power of the new government to make the employer surrender the funds to him. If the socio-economic bias inherent in use preference is controlled, the character of the injury to either party in not having the use of the funds is essentially the same. If the parties want to use the funds in different ways, there is a social injury of essentially the same type regardless of which party prevails. To say that there is a higher social interest in maintaining one's ordering of property rights, and that such an interest is injury, implies that the interests of various segments of the populace in the use of property have an inherent right to moral preference over the interests of others. Thus, acceptance of legal definitions of ownership would represent an acceptance of the socio-economic bias Sutherland sought to avoid by his redefinition. This reformulation of Sutherland's definition endorses no socio-economic bias, and therefore equates the position of the embezzler with that of his employer. Each causes equal social injury if he gets use of the funds in dispute. Thus, while law may be an instrument to challenge another's use of private property, it does not define the character of the use, but instead, the character of the

¹⁰ K. MARX, *EARLY WRITINGS* (T. B. Bottomore ed. 1963).

¹¹ R. QUINNEY, *THE SOCIAL REALITY OF CRIME* (1970).

¹² See H. L. A. HART, *supra* note 3, at 155.

(1959). See also, Garfinkel, *Conditions of Successful Degradation Ceremonies*, 61 AM. J. SOCIOLOGY 420 (1956).

challenge. The injury represented by the use is equivalent whenever there is a challenge, regardless of whether law is an instrument of challenge. The challenger may be assumed to be indicating that he or his client wants the use of the property enjoyed by the current user. Uniformly, then, a social injury caused by those called white-collar criminals is to deprive others of the use of private property by their own hegemony. For want of a better term, this deprivation as it is alleged to occur will be referred to as exploitation.

POSSIBLE DIVISIONS OF THE REFORMULATION

The reformulated definition is based on the social injury caused by all acts of exploitation. Manifestly, exploitation can include many acts other than those that have been considered white-collar crimes. Anything called a crime against private property would come under the rubric of exploitation. Exploitation would cover a sale of a product to a customer who expressed the belief that the quality of the product is less than he thought he paid for. Failure of a government to accept a producer's request to amend a defense contract because of allegedly previously unforeseen expenses would be exploitation. Note that the definition is already limited in its application. An unchallenged use of private property is not exploitation, nor can exploitation be applied to the use of other than private property.

Since the definition of exploitation is extra-legal, the definition of private property for these purposes is necessarily also extra-legal. Private property here refers to a resource over which the user attempts to hold dominion, on any basis other than immediate personal need for the use, against a request for use by another. Hence, state property may be private property if agents of the state refuse free access to its use by any who request it.

This definition of private property is similar to that of Marx,¹³ but does not proceed from an analysis of the relation of man to labor. What is apt in practice to distinguish private property from other resources is a claim for dominion as against others based on need that is not personal and immediate. Thus, in the first place, for the resource not to be private property, a person must be holding the resource for his own exclusive use. In the second place, the exclusive use cannot be projected for some future time without the resource being private property. Hence, if the current user responds

to the request for use by showing he is presently using the resource, and if the user makes no attempt to hold the resource when the current use has stopped, the resource is not private property. For instance, if Mr. Smith is vacuuming his house when Mr. Jones asks for the vacuum cleaner, Mr. Smith's refusal to relinquish the cleaner until the vacuuming is completed does not give the cleaner the character of private property. If, however, Mr. Smith refuses to relinquish the cleaner because he plans to use it in a few days, the cleaner takes on the character of private property and refusal to relinquish its use is exploitation. Where resources are made available to all who would use them—a collective use confirmed by an absence or any challenge—such resource is also presumed not to have the character of private property.

A failure to share a vacuum cleaner would scarcely be considered a white-collar crime, limited though the definition of exploitation may be. Not only has the element, "crime," been eliminated as a restriction on the definition of the field, but the "white-collar" has been taken from it also. This has been done in the name of conceptual unity. The only justification for placing boundaries around a field of study is to emphasize the known distinction between the character of the subject matter within and without the field. When class or occupational variables are added to exploitation to define this field of study, the distinction between intra- and extra-field research becomes intolerably blurred, or the connection between elements of the definition becomes conceptually tenuous. If we try to capture in the definition Sutherland's notion of the special character of social injuries committed by persons of relatively high socio-economic status (SES), we have no one way to operationalize the distinction between high and low SES-levels. If we choose an arbitrary income level as a point of division, or a distinction between wage-earners and the salaried, or followers of specific occupations, we do not know in advance that the nature of the injury or of the response to it changes significantly between groups. Any difference cannot conceptually be definitive of a separate field of study until the difference is known.

The same applies to an attempt to separate business or professional-related social injuries from others. An operationalization of this boundary is not obvious to begin with. Does a housewife who spends a paycheck for groceries and rent without giving her husband money for entertainment do so

¹³ See K. MARX, *supra* note 10, at 137.

in the course of her business or profession? If a list of occupations and/or professions is specified, what can unite them in distinction to other courses of activity in terms of the nature of exploitation or of a response to exploitation committed within them? The relationship between the phenomenon, exploitation, and other operationalizable variables describing classes of alleged exploiters is as yet unknown. Areas of study within the field of exploitation for specific classes or alleged exploiters can therefore not yet be distinguished to define sub-fields. While specific research questions about the character of exploitation in particular settings can be asked, the field cannot be restricted to fit the vague notion of white-collar crime or criminals.

Some divisions of the field are possible. Study of the factors associated with exploitation can be distinguished from studies of factors associated with different kinds of social response to exploitation. This is analogous to the division between the positive school¹⁴ and the societal reaction school¹⁵ in the field of deviance. While an interactionist might dispute the merits of drawing such a distinction, it does reflect a real choice that a researcher needs to make between dependent variables, and is therefore defensible. Other phenomenological distinctions are possible—exploitation from the point of view of the exploiter, of the challenger and of third parties. Further divisions are not yet warranted.

OPERATIONALIZATION OF THE REFORMULATION

The chief problem of operationalization of Sutherland's definition is the impossibility of deciding whether a violation of law has "actually" occurred. A comparable problem does not arise in the operationalization of the concept of exploitation. Exploitation is *per se* an alleged use of private property by any challenge thereto, provided the challenge is by someone who claims he, or someone in whose favor he speaks, should have, or should have had use of the property. The exploitation exists by virtue of the challenge. Whether the use of private property actually occurred may remain problematic. This latter question could conceivably, if inadequately, be explored in an investigation of factors associated with exploitation, but its answer is not required to define the subject matter of the field. The challenge itself implies the

existence of the institution of private property in a society, and that alone is undoubtedly a sufficient, as well as a necessary, condition for contention over the use of the property. Furthermore, the accusation in the challenge presents social conflict in itself—a social injury calling for response whether or not there is truth in the allegation. This is not a new observation. The two thousand year old dynastic order in China was built on a recognition that one person's accusation of another necessarily represents social conflict. The Chinese made this postulate the foundation of their legal system.¹⁶ The definition of exploitation is simply another recognition of the principle.

CONCLUSION:

APPLICATION OF THE CONCEPT OF EXPLOITATION

The study of property crime, in general, and white-collar crime, in particular, has been founded on an unfulfillable promise. The crux of the promise is that violations of criminal law are what disrupt the harmonious coexistence of society's members. By locating the conditions that lead to crime, and changing them to eliminate the phenomenon, society's members will live in peaceful, happy harmony. By acting against crime conscientiously, we may not eliminate the causes of interpersonal strife, but at least interpersonal conflict will be controlled and thereby reduced.

An analysis of Sutherland's and Tappan's definitions of white-collar crime shows how tenuous the promise is. The substantive provisions of the law are just as apt to defend social injury as to react against it. In Sutherland's terms, a strict application of penal sanctions would likely punish most of society's members repeatedly. In the "discovery" of white-collar crime, given the vagaries of operationalization of the term, the socially powerful few could be expected amorally to prevail. The social scientist, as he thus delimits a field of inquiry, may socially dictate the categories by which one man's claim of injury is given higher status than another's, while in a paradoxical sense, one man's righting of a wrong is another's wronging of a right. As Sutherland was undoubtedly moved to isolate and weaken one source of social conflict and inequity, he sowed the seeds of another source to use in its place.

This failing of Sutherland's definition is re-

¹⁴ D. MATZA, *DELINQUENCY AND DRIFT* (1964).

¹⁵ Schur, *Reactions to Deviance: A Critical Assessment*, 75 *AM. J. SOCIOLOGY* 309 (1969).

¹⁶ S. VAN DER SPENKEL, *LEGAL INSTITUTIONS IN MANCHU CHINA* 29 (1962).

vealed by its conceptual and operational inadequacies. Where a conceptual inadequacy is found to exist, it is a sign that acceptance of the conceptualization is a manifest threat to the interests of some who fear the consequences of its social acceptance. For example, those who can imagine that what a legislature dictates might not be a social injury may be imagining that they might be legally punished for what to them is an innocuous act that they foresee carrying out. Where an operational inadequacy is found to exist (in the field of sociology, at least), it is apt to be because the finder fears the consequences for himself of being, or not being, as the case may be, associated with a phenomenon in a way he cannot foresee. What precautions, for example, can an academician take to avoid being branded a chronic thief of writing supplies from his university employer? Prof. Sutherland was apparently not overly alarmed at this prospect.

Our conceptualization of any field of research and action concerned with social problems necessarily implies an ideological perspective on the problem. A recognition that one man's defense against exploitation may itself be another man's exploitation requires us to make an ideological choice. Are we going to define the field in such a way as to give one man's exploitation a higher status than that faced by his adversary? The choice made in this definition of a field of study is not to address the problem of one man's injury by lending legitimacy to the injury of another as a resolution of the problem.

The definition of exploitation obviates the necessity for ranking injuries. Though the injury represented by a challenge to exploitation is assumed to be real, the role of the alleged exploiter in creating the injury is held problematic. Indeed, when the remedy of the exploited is likely to result in the exploitation of his alleged "offender," deprivation of the resources of the alleged exploiter can scarcely be seen as a viable strategy to reduce the incidence of exploitation in the society. The remedy, if challenged, would itself be exploitation. The choice between helping the victim or helping the offender becomes moot. The victim of exploitation remains the client of him who investigates and reacts to exploitation, but the immediate object of change becomes social conditions, not personalities. The question of what is responsible for exploitation-based conflict replaces the question of who is responsible; personal responsibility attaches to him who attempts to change these

conditions rather than to the person or group labeled "exploiter."

There are hints of those social conditions that might be related to the incidence of exploitation. Exploitation presupposes the institution of private property. There might be some societies, like that of the jungle people, depicted by Henry,¹⁷ in which there is apparently no such institution, and, therefore, no basis for a challenge to exploitation. More commonplace would be particular settings in complex societies in which the institution did not exist. An example would be the case with food in the refrigerator for some families. Other distinctions between these settings and those in which exploitation occurred might provide clues as to how the institution of private property and the accompanying exploitation might be abolished. The desirability could be evaluated of having conditions obtain that were found peculiarly to accompany the use of resources that do not constitute private property.

A challenge to exploitation could reflect an ordering on one or the other of two distinct concerns: an alleged use of private property should change hands, or that the character of the resources allegedly used could be changed so that they were no longer private property at all. Where the challenge to exploitation is founded on a challenge to the institution of private property itself, as in collectivization of farming resources in the People's Republic of China, a condition for reducing exploitation might already exist that would bear studying, and then establishing elsewhere.

One fundamental hypothesis well worth testing is whether the rate of exploitation in a social setting can be reduced so long as challenges to the exploitation have as an object the appropriation of the use of private property. This is to suggest that for those who accept the institution of private property and who react against exploitation, such exploitation cannot be eliminated. This was Marx's assertion.¹⁸ It would appear that the acceptance of the institution of private property has several concomitants, although these relationships, too, bear further empirical confirmation.

One concomitant would seem to be acceptance of social status differentiation.¹⁹ The antithesis of this acceptance is not, incidentally, a belief that

¹⁷ J. HENRY, *THE JUNGLE PEOPLE: A KAINGANG TRIBE OF THE HIGHLANDS OF BRAZIL* (1964).

¹⁸ See K. MARX, *supra* note 10, at 152-67.

¹⁹ *Id.* at 3-32.

all men are exactly alike. It is the belief that the sum of any man's characteristics and talents is of a social worth exactly the same as any other man's, and therefore that the two different people deserve equal respect, admiration and other social rewards. Acceptance of social status differentiation implies acceptance of the categorization of people, as, for instance, deviants, white-collar criminals or exploiters. It could well imply the casting of oneself as deserving of exclusive use of private property because one is a victim of exploitation. Possibly, also, an investment in a system of social status differentiation could support exploitation as a means of describing and maintaining other status boundaries.

Acceptance of individualism is another possible concomitant of acceptance of exploitation and of the institution of private property.²⁰ However, de Tocqueville²¹ suggests that this is true only when the foundations of ascribed status have been implied away by democratic revolutions. Individualism is expressed in the norm that a man's

²⁰ See W. BONGER, *CRIMINALITY AND ECONOMIC CONDITIONS* (1969); K. MARX, *supra* note 10, at 3-32; E. SCHUR, *OUR CRIMINAL SOCIETY: SOCIAL AND LEGAL SOURCES OF CRIME IN AMERICA* (1968).

²¹ A. DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 136-38 (1945).

first duty is to himself and that others must fend for themselves.²² Individualism would seem to present a climate conducive to the incidence of exploitation, *i.e.*, that challenges occur to the perceived antagonism of others to the self-interest the challenger aims to protect.

As these examples indicate, research on exploitation would comprise studies to isolate particular conditions under which social processes resulted in exploitation or its elimination. The field of exploitation is divisible along two dimensions. One dimension would classify studies according to the institutions that support or oppose exploitation. One such institution is law in any of various forms, the common law system of response to crime, for example.

The other dimension includes the settings in which exploitation is maintained or eliminated. One such setting is business activity (which can be further subdivided) in the United States. Hence, the phenomena formerly included in the field of white-collar crime, in particular, and of criminology, in general, are subject to study in the field of exploitation, but within a more nearly adequate conceptual framework.

²² *Id.* at 104-06.