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**Social Conflict Theory and White-collar Criminals:
Why Does the Ruling Class Punish their Own?**

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Social Conflict Theory and White-collar Criminals: Why Does the Ruling Class Punish their Own?

Elena G. Bystrova & Petter Gottschalk

Abstract

Social conflict theory suggests that the professional powerful and wealthy represent the elite and ruling class in society. The theory holds that laws and law enforcement are used by the dominant group to minimize threats to their interests. The justice system is biased and designed to protect the ruling class. Sanctioning of laws enables the dominant class to pressure a domestic order that allows its interests to be promoted and maintained. This article addresses the issue of deviant behavior by members of the ruling class. Specifically, it addresses the issue of law breaking by white-collar criminals. Reasons for law enforcement towards members of the elite are discussed in this article, including conflict reduction and class obedience. A research model is developed for predictors of white-collar crime prosecution.

Keywords

Conflict Theory, White-collar Crime, Ruling Class, Law Enforcement

Introduction

Social conflict theory suggests that the powerful and wealthy in the upper class of society define what is right and what is wrong (Petrocelli et al., 2003; Siegel, 2011). The rich and mighty people can behave like "robber barons" because they make the laws and because they control law enforcement (Chamlin, 2009; Kane, 2003; Haines, 2014; Sutherland, 1940, 1949; Veblen, 1899; Wheelock et al., 2011). The ruling class does not consider white-collar offences as regular crime, and certainly not similar to street crime (Hagan, 1980; Lanier and Henry, 2009a, 2009b; Slyke and Bales, 2013).

Nevertheless, crime by individuals in the elite tends to be prosecuted if crime is detected and evidence of wrongdoing is present (Brightman, 2009; Gottschalk and Rundmo, 2014; Seron and Munger, 1996), as long as they are not too powerful (Pontell et al., 2014) and do not have too excellent defense attorneys (Gottschalk, 2014). This article explores reasons why elite crime in terms of white-collar crime is prosecuted. Specifically, this article addresses the following research question: *Why does the ruling class punish their own?*

Social Conflict Theory

Social conflict theory views financial crime as a function of the conflict that exists in society (Siegel, 2011). The theory suggests that class conflict causes crime in any society, and that those in power create laws to protect their rights and interests. For example, embezzlement by employees is as a violation of law to protect the interests of the employer. However, it might be argued that an employer must and should protect own assets. Bank fraud is a crime to protect the powerful banking sector. However, in the perspective of conflict theory one might argue that a bank should have systems making bank fraud impossible. If an employee has no opportunity to commit embezzlement, and if a fraudster has no opportunity to commit bank fraud, then these kinds of financial crime will not occur, and there will be no need to have laws against such offenses. Law enforcement protects powerful companies against counterfeit products, although they should be able to protect themselves by reducing opportunities for the production of counterfeit products.

Social conflict theory holds that laws and law enforcement are used by dominant groups in society to minimize threats to their interests posed by those whom they perceive as dangerous and greedy (Petrocelli et al., 2003). Crime is defined by legal codes and sanctioned by institutions of criminal justice to secure order in society. The ruling class secures order in the ruled class by means of laws and law enforcement. Conflicts and clashes between interest groups are restrained and stabilized by law enforcement (Schwendinger and Schwendinger, 2014).

According to social conflict theory, the justice system is biased and designed to protect the wealthy and powerful. The wealthy and powerful can take substantial assets out of their own companies at their own discretion whenever they like, although employed workers in the companies were the ones who created the values. The superrich can exploit their own wealth that they created as owners of corporations as long as they do not hurt other shareholders. Employees have no right to object. It is no crime to take out values from own enterprises and build private mansions for the money. This is no crime by the owners. Even when the owners just inherited the wealth created by earlier generations, they can dispose freely of it for private consumption. Similarly, top executives who are on each other's corporate boards grant each other salaries that are ten or twenty times higher than regular employee salaries. As Haines (2014: 21) puts it, "financial practices that threaten corporate interests, such as embezzlement, are clearly identified as criminal even as obscenely high salaries remain relatively untouched by regulatory controls". Furthermore, sharp practices such as insider trading that threaten confidence in equities markets have enjoyed vigorous prosecution, since the powerful see them as opaque transactions that give an unfair advantage to those who are not members of the market institutions.

Marxist Criminology

Karl Marx – who analyzed capitalism and suggested the transition to socialism and ultimately to communism – created the basis for social conflict theory. Capitalism is an economic system in which persons privately own trade, industries, firms, shops and means of production and operate these enterprises for profit. Socialism is an economic system characterized by cooperative enterprises, common ownership, and state ownership. Communism is a socioeconomic system structured upon the common ownership of the means of production and characterized by the absence of social classes.

Marxist criminology views the competitive nature of the capitalist system as a major cause of financial crime (Siegel, 2011). It focuses on what creates stability and continuity in society, and it adopts a predefined political philosophy. Marxist criminology focuses on why things change by identifying the disruptive forces in capitalist societies, and describing how power, wealth, prestige, and perceptions of the world divide every society. The economic struggle is the central venue for the Marxists. Marx divided society into two unequal classes and demonstrated the inequality in the historical transition from patrician and slave to capitalist and wageworker. It is the rulers versus the ruled. Marx also underlined that all societies have a certain hierarchy wherein the higher class has more privileges than the lower one. In a capitalist society where economic resources equate to power, it is in the interest of the ascendant class to maintain economic stratification in order to dictate the legal order (Petrocelli et al., 2003).

When economic resources equate to power, then conflict and competition between groups will occur for scarce resources such as education, housing and jobs. Dominant groups can reduce the threat of other groups in the competition for resources through social control and criminal punishment (Wheelock et al., 2011).

In Marxist criminology, capitalism is a criminogenic society, i.e., a society that has a tendency to produce criminality. Capitalism is a system of economic production in which power is concentrated in the hands of a few, with the majority existing in a dependency relationship to the powerful (Lanier and Henry, 2009b: 259):

This class-based economic order is maintained by a criminal justice apparatus that serves the interests of the wealthy at the expense of the poor. Those who challenge this system of production are destined for social control, especially if they are seen as a serious threat to the system.

Another German theorist was Max Weber, who wrote about classes in society, economic exploitation of people, political repression, and conflict within society. Neither Marx nor Weber wrote extensively about theories of crime or criminal behavior, but their theoretical perspective served as a good basis for conflict theory. Economic inequalities advance to assume disproportionate power in society and lead to social conflict.

Laws and Law Enforcement

Conflict theory provides an explanation of crime, since it is concerned with social inequality, class and racial differences, and the power used by the ruling class through its criminal justice apparatus. Conflict theorists see inequality based on differences in wealth, status, ideas, and religious beliefs. Not only do capitalist societies generate vast inequalities of wealth, but also those who own the wealth, who control large corporations and financial and commercial institutions, influence those who have political power to get the laws they want (Lanier and Henry, 2009b).

Conflict theory is a perspective in criminology that emphasize the social, political, or material inequality of a social group (Seron and Munger, 1996), that draw attention to power differentials, such as class conflict. Crime stems from conflict between different levels in society fueled by a system of domination based on inequality, alienation, and justice. Crime is harm that comes from differences in power (Lanier and Henry, 2009a).

Conflict is a fundamental social process. Society is largely shaped by the competing interests of social groups who struggle for dominance in order to enact or maintain a social structure most beneficial to them (Petrocelli et al., 2003: 2)

Conflict theory asserts that the relative power of a given social group dictates social order in that powerful groups not only control the lawmakers, but also the law enforcement apparatus of the state. In essence, laws are made which serve the interests of the privileged, and the police are used to suppress and control any segment of society that poses a threat to the status quo.

According to conflict theory, economic inequalities and repression lead to deviant behavior. Laws, law breaking, and law enforcement are factors that evolve from and contribute to social conflicts, and strengthen the dominant position of powerful individuals. Laws tend to penalize behavior of certain classes, and not individuals, because it is the more powerful classes that are in a position to pronounce certain actions as illegal. The ruling class is faced with the decision, which values to enforce when making laws. Criminal law plays the role of a social control mechanism. Certain types of conduct are prohibited, and certain kinds of sanctions are imposed for their infringement. The ruling class in society has the power to define certain behavior as deviant, while the ruled class might be of a differing opinion about what is right and what is wrong. Criminal laws are established mainly for the protection and development of the institutions of capitalism. Through laws, the powerful class exercises its power and controls the resources.

An example is alcohol versus drug laws. Alcohol is legal, while drugs are illegal in most capitalist societies. Hagan (1980) argues that the reason why the

prohibition of narcotics outlasts the prohibition of alcohol is that historically the use of different drugs has been associated with minority groups, whereas alcohol has been a socially acceptable intoxicant used by members of the middle and upper classes. Drug laws are specifically, if not explicitly, targeted at looser groups in society. As a result, alcohol prohibition was eventually repealed, while drug laws are still in force.

In addition to laws and law breaking, sanctioning of laws in terms of law enforcement is a factor that evolves from and contributes to strengthen the dominant position of the ruling class. Even if some of the acts of misconduct and offenses by members of the ruling class are determined by law as crime, law enforcement is often reluctant to investigate and prosecute the criminals. They may be too powerful with friends in key positions (Pontell et al., 2014). Furthermore, the size of the police force is typically larger for policing the lower classes. As an example, Norwegian police has two national units for investigations of violent crime and financial crime respectively. While the National Criminal Investigation Service has 700 employees, the National Authority for Investigation and Prosecution of Economic Crime and Environmental Crime has only 140 employees. Thus, combatting financial crime has only 20 percent of the resources available to combatting street crime. As stated by Chamlin (2009: 546), “crime control practices are disproportionately responsive to the concerns and fears of the more powerful segments of society.”

Kane (2003) studied the relationship between the size of the police force and minority population on the precinct level in New York City. The study shows that the police force increased when minority population fractions increased. The study supports the minority group-threat hypothesis that the percentage of black and Latino populations in US cities can predict variations in municipal police resources. Specifically, the study found that increases in the percentage of Latino populations of precincts can predict changes in police deployment, and the link between Latino populations and police deployment is nonlinear. This leads to police perception of the area as an offense space, and they tend to choose aggressive policing in the area.

Sanctioning of laws enables the dominant economic class to pressure a domestic order that allows its interests to be promoted and maintained. Economic stratification is so important to the ruling class that they will pressure legislators to enact repressive measures intended to control groups considered volatile and threatening (Petrocelli et al., 2003). Conflict theory of crime control contends that the political state functions to further the distinctive interests of the most powerful segments of society. Within the context of crime control, this means suppressing illegal activities of out-group members that particularly endanger social elites or violate their behavioral norms (Chamlin, 2009).

White-Collar Criminals

A white-collar criminal is typically a member of the privileged socioeconomic classes in society (Sutherland, 1949) who is involved in illegal activities and commits nonviolent acts for financial gain (Gottschalk, 2014). The white-collar criminal is a person of respectability who commits crime in a professional setting, where criminal activities are concealed and disguised in organizational work by law-abiding behavior (Pontell et al., 2014). The criminal has power and influence, he forms relationships with other persons or professionals, which protects him from developing a criminal identity, and he enjoys trust from others in privileged networks (Benson and Simpson, 2015). White-collar crime refers to offenses committed in an organization by those who indulge in dishonest activities, either by themselves or using agents, for financial gain (Schoepfer et al., 2010).

Law enforcement targeted at white-collar criminals is non-aggressive and often discrete not only because of the upper class affiliation. Another reason is white-collar defendants' ability to recruit top defense lawyers who apply symbolic defense in addition to substance defense, as well as information control, in their work for white-collar clients (Gottschalk, 2014). It is well known that having a well-qualified and possibly famous attorney increases one's chances of a favorable outcome in any legal dispute. Some individual white-collar offenders avoid criminal prosecution because of the class bias of the courts (Tombs and Whyte, 2003).

When white-collar criminals appear before their sentencing judges, they can correctly claim to be first-time offenders. According to Slyke and Bales (2013), theory and empirical research often have agreed that white-collar offenders benefit from leniency at the sentencing stage of criminal justice system processing. Croall (2007) argues that the term "crime" is contentious, as many of the harmful activities of businesses or occupational elites are not subject to criminal law and punishment but administrative or regulatory law and penalties and sanctions. Therefore, very few white-collar criminals seem to be put on trial, and even fewer higher-class criminals are sentenced to imprisonment. Another reason for the low prosecution and conviction rate for white-collar criminals is the extraordinary broadly and fuzzy defined offenses in criminal law for white-collar crime (Hasnas et al., 2010). This is in line with social conflict theory.

Reason 1

Reduce Conflict

Since white-collar crime is crime by the wealthy and powerful, it seems to contradict social conflict theory. There are no reasons why the wealthy and powerful would like to see laws that turn their own actions to regular criminal offences. When Sutherland (1940, 1949) first coined the term "white-collar

crime”, there were indeed reactions in the audience of upper-class people. They asked why one should define actions by privileged individuals of the influential classes as crime at the level of street crime by ordinary criminals. According to Brightman (2009), Sutherland's theory of white-collar crime first presented in 1939 was controversial, particularly since many of the academics in the audience perceived themselves to be members of the upper echelon in American society. The audience was the American Sociological Association where Sutherland gave his address and first presented his theory of white-collar crime. What Podgor (2007) found to be the most interesting aspect of Sutherland's work is that a scholar needed to proclaim that crime of the upper socio-economic class is in fact crime that should be prosecuted. It is apparent that prior to the coining of the term “white-collar crime”, wealth and power allowed many persons to escape criminal liability.

Veblen's (1899) sociological study of the “leisured classes” and their rapacious conspicuous consumption had an influence on Sutherland's (1940, 1949) research. Josephson (1962) who coined the term “robber barons” in the 1930ties was also an influential scholar at that time. Therefore, Sutherland's work on white-collar crime seems to fit with conflict theory, where he might have seen a need to reduce the level of conflict in society by defining obvious unjustified misconduct by privileged individuals as regular crime. This is in line with Arrigo and Bernard (1997), who apply conflict theory to explain initiatives for more prosecution of white-collar criminals. Seron and Munger (1996: 187) quoted that “The plain fact is that in a new stage of capitalism, class divides as ruthlessly as it did in the age of the Robber Barons.”

Reason 2

Government Influence

Another reason for starting to define capitalists and other persons of respectability and high social status as regular criminals when they abuse their powers for personal or organizational profit is the need of governments to gain some kind of control over the business sector and the market economy. Business and professional elites had achieved political influence beyond what most democratic governments found acceptable. Even worse, some enterprises were so powerful that they became almost untouchable for government interventions. They were “too powerful to fail, (and) too powerful to jail” (Pontell et al., 2014).

Criminological attention on the activities of business enterprises and other organizations, their creativity and power, remains in a conflict with political influence of business executives, capitalists and members of the professional elites. Haines (2014: 20) discusses corporate fraud as an example, where she argues that:

Criminalization of corporate fraud deflects attention to one of these actors, the business and its directors, without clear recognition of the role played by government itself.

Haines (2014) argues that governments critically, in close consultation with the professions, “enact legal and regulatory reforms that engender confidence in both the accuracy of accounts and materiality of money while also further institutionalizing their underlying ambiguities”. Hence, even as governments are excited to sanction corporate criminals with more vigor, they are at the same time implicated in the creation of corporate criminals. Corporate fraud implies that there has been a criminal misrepresentation of a financial or business state of affairs by one or more individuals for financial gain, where banks, shareholders and tax authorities are among the victims. Yet, misrepresentation is a matter of opinion rather than accuracy. For example, estimating values of products in stock is no exact science. If nobody wants to buy products in stock, they have no value. While governments work at arm's length through external auditors, law enforcement is reluctant to prosecute unless misrepresentation of the value of a business is completely out of range.

Reason 3

“Our” Laws

A third reason for the prosecution of the wealthy and powerful is that their own laws did not intend to target members of their own class. The lawmakers had others in society in mind. When caught by surprise that members of their own class violate their own laws leads the ruling class to turn laws against their own allies. When those allies demonstrate non-conforming and deviant behavior, others in the ruling class take on the task of prosecuting deviating members of the elite. "As we are reminded today, those who make the laws don't have the right to break the laws", Richard Frankel, the specialist agent in charge of the Criminal Division of the New York office of the Federal Bureau of Investigation, said at a news conference.

FBI held its news conference as Sheldon Silver, the speaker of the State Assembly in New York, faced prosecuted for corruption. State prosecutors charged Silver with having exploited his position as one of the most powerful politicians in the state of New York to obtain millions of dollars in bribes and kickbacks. Prosecutors accused Silver's law practice of being a fiction where the sources of large payments of bribes were hiding (Rashbaum and Kaplan, 2015: A24). Silver was arrested on Manhattan on a five-count indictment in January 2015. US attorney Preet Bharara alleged that the Manhattan democrat used New York's ethics laws to hide his scheme – allowing him to become wealthy off his position in power (Spector, 2015).

Silver resigned a few weeks later as speaker (McKinley, 2015). At the same time, Malcolm A. Smith, a former majority leader of the New York State Senate, was convicted of federal corruption charges including bribery, wire fraud and extortion (Vega, 2015).

Reason 4

Deviant Behavior

A fourth reason might be disappointment within the ruling class. The ruling class in society face decisions over which values to enforce. When individuals in their own upper-level class violate some of these values, then the majority defines it as a crime. Those who violate values of fair competition among capitalists and market access, for example, are potential criminals, even if they belong to the same class as those condemning them.

President George W. Bush's connections to Enron and CEO Kenneth Lay were well documented in major American newspapers. However, when Enron emerged as a deviant organization with a bad apple CEO, Lay and other top executives were prosecuted. Lay died of a heart attack before his conviction (Bendiktsson, 2010).

Reason 5

Crime Victims

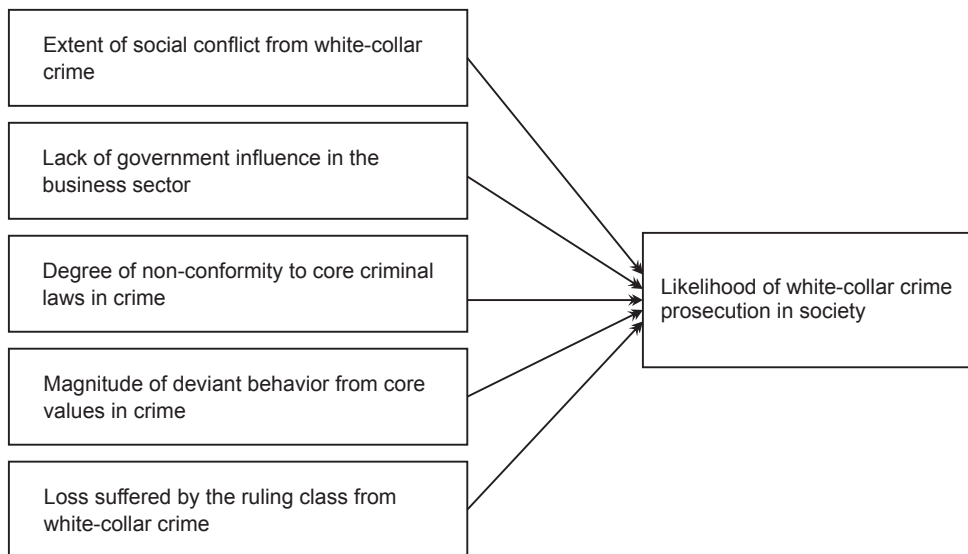
A fifth reason might be the victim of crime. If the victim of white-collar crime were another person in the upper class, then the ruling class would like to protect that person. Victimization of upper-class members by other upper-class members can be considered a crime. Upper-class members need protection against deviant individuals in their own class. It is an inter-group conflict in the dominant class (Wheelock et al., 2011). Maybe Madoff can serve as an example. Rich Jews placed their money in Madoff's investment fund with the promise and expectation that the rate of return would be extraordinary good. Instead, they lost their money. Wealthy people were victims of Madoff's Ponzi scheme. The government had to sanction such behavior by Madoff, and he received a record prison sentence of 150 years (Ragothaman, 2014).

In a study of convicted white-collar criminals in Norway, the distribution of victims was as follows (Gottschalk, 2013): (1) employers, (2) banks, (3) tax authorities, (4) customers, (5) shareholders, and (6) others. Employers belong to the elite themselves, while banks and tax authorities are powerful institutions in societies. Customers may be weak victims, while shareholders who become victims of insider trading, can be a quite powerful group in collaboration with the stock exchange.

Theoretical Model

Our discussion of several reasons why the ruling class punish their own can be framed into a theoretical model as illustrated in figure 1. The dependent variable is the likelihood of white-collar crime prosecution which can be defined at both a national jurisdiction level and an individual person level. Here it is at the national jurisdiction level in society. The likelihood of white-collar crime prosecution increases in society according to the following propositions.

Figure 1. Research Model for Predictors of White-collar Crime Prosecution from Social Conflict Theory.



Proposition 1:

Growing social conflict from financial crime by upper socio-economic class members increases the likelihood of white-collar crime prosecution.

Proposition 2:

Deteriorating government influence and control over the business sector increases the likelihood of white-collar crime prosecution.

Proposition 3:

Lacking conformity to laws by the ruling class among upper socio-economic class member increases the likelihood of white-collar crime prosecution.

Proposition 4:

Deviating behavior from ruling class values among upper socio-economic class members increases the likelihood of white-collar crime prosecution.

Proposition 5:

Victimization of ruling class members and their interests by white-collar criminals increases the likelihood of white-collar crime prosecution.

Both propositions 3 and 4 are concerned with class obedience in terms of upper-class expectations to their own members.

In addition to these five reasons derived from social conflict theory, there are a number of other factors influencing the likelihood of white-collar crime prosecution in society. For example, the extent of laws and law enforcement are of importance.

Discussion

Conflict theory is an interesting approach to our understanding why most still do not consider white-collar crime as a regular kind of crime similar to street crime. In terms of neutralization theory (Bock and Kenhove, 2011), it is possible to explain the lack of guilt feeling among many convicted white-collar criminals with their perception of not having done anything wrong (claim to entitlement) and with their perception that laws are wrong (legal mistake).

Reiman (2007: 112) argues that the criminal justice system functions from start to finish in a way that makes certain that the offender at the end of the road in prison is likely to be a member of the lowest social and economic groups in society:

For the same criminal behavior, the poor are more likely to be arrested; if arrested, they are more likely to be charged; if charged, more likely to be convicted; if convicted, more likely to be sentenced to prison; and if sentenced, more likely to be given longer prison terms than members of the middle or upper classes.

Based on conflict theory, there is no reason why members of the elite should arrest, charge, convict, and sentence themselves. In fact, behavioral economics dating back to Adam Smith's book «The Theory of Moral Sentiments» can explain why it instinctively is relevant to express sympathy with white-collar criminals, which again is reflect in laws and statutes. As Ashraf et al. (2005: 141) express it, we humans tend not to have sympathy with poor people, but rather with rich people, i.e. that «contrary to the sensible notion that one should sympathize with those less fortunate than oneself, Smith argued that there is a natural tendency to experience sympathy for the great and rich». Smith explained in 1759 human sympathy for rich people in misconduct in the following way: “What pity we think, that anything should spoil and corrupt so agreeable a situation». That is, we have sympathy with and feel pity for white-collar individuals who are “victims” of their own crime. Instinctive irrationalities can give extreme consequences in terms of who we accept and respect, and those we despise and dislike despise – despite identical actions by both groups of people.

Conclusion

In this article, the following research question was phrased: Why should the powerful punish their own?

Five answers have emerged:

- i). reduce the level of conflict between rich and poor in society;
- ii). increase government control over the business sector;
- iii). avoid those making the laws breaking the laws;
- iv). punish those who do not behave according to elite values, and
- v). punish those upper-class members that victimize other upper-class members.

This article has demonstrated that social conflict theory can provide valuable explanations of how white-collar crime is perceived and treated in society. While the theory implies an initial reluctance to prosecute white-collar criminals, there are reasons found in certain circumstances that make prosecution desirable by the ruling class.

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