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From Crime Convenience to Punishment Inconvenience: The Case of Detected White-Collar Offenders

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ABSTRACT

The theory of convenience suggests that white-collar offenders find it convenient to use illegitimate gain to explore possibilities and avoid threats. Furthermore, there is convenient access to resources to commit and financial crime, and offenders can conveniently justify crime and neutralize guilt feelings. This article extends the concept of convenience into the concept of inconvenience when white-collar offenders face detection, investigation, conviction, and incarceration. The extent of inconvenience is dependent on a number of issues such as public opinion about seriousness of wrongdoing, fraud examinations versus police investigations, symbolic defense by attorneys, and the special sensitivity hypothesis versus the special resilience hypothesis. While facing the criminal justice system is never convenient for the offender, the extent of inconvenience might limit itself and partly find compensation by a number of circumstances on the way from crime detection to release from prison.

Keywords: Convenience theory, white-collar crime, fraud examination, defense lawyers, special resilience hypothesis.

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INTRODUCTION

The theory of convenience for white-collar crime is concerned with financial possibilities and threats, organizational opportunity to commit and conceal financial crime, as well as personal willingness for deviant behavior (Vasiu and Podgor 2019). White-collar offenders commit financial crime in the course of their occupations (Craig 2019; Craig and Piquero 2016; Jodanoska 2018; Onna and Denkers 2019). Convenience theory suggests that the financial motive in white-collar crime is to explore possibilities and avoid threats; the organizational opportunity is to commit as well as conceal crime, while the willingness is deviant behavior by justification and neutralization (Gottschalk 2019). The theory of convenience is an integrated and deductive theory crossing levels based on synthesis of individual-level, group-level and nation-level perspectives (Chan and Gibbs 2020).

Research shows that very few white-collar offenders are detected (Gottschalk and Gunnesdal 2018; Huff, Desilets, and Kane 2010; Wall-Parker 2020). Among those few detected, convenience does not necessarily disappear completely when a white-collar offender faces investigation, prosecution, conviction, and incarceration – at least not in the form of relative convenience or relative inconvenience compared to other criminals. While being investigated, prosecuted, convicted, and incarcerated is not particularly convenient, it might nevertheless not be particularly inconvenient either. It depends on public opinion about seriousness and other factors. Inconvenience is the state or fact of being troublesome or difficult with regard to one's personal requirements and comfort. Inconvenience is simply the opposite of convenience.

This article extends the idea of convenience in white-collar crime into the concept of inconvenience during investigation, prosecution, conviction, and incarceration. Just as

convenience was a core concept when Gottschalk (2017) first introduced it to white-collar criminology, inconvenience is another core concept of importance to white-collar criminology.

CRIME CONVENIENCE

The integrated deductive theory of convenience results from a synthesis of perspectives in three dimensions:

- *Convenience in motive.* It is convenient to use illegitimate financial gain to explore possibilities and avoid threats. Climb the hierarchy of needs for status and success (Maslow 1943), realize the American dream of prosperity (Schoepfer and Piquero 2006), satisfy the need for acclaim as a narcissist (Chatterjee and Pollock 2017), and restore the perception of equity and equality (Leigh, Foole, Clark, and Lewis 2010) are some of the perspectives integrated in the motive dimension of convenience theory. In addition, goal setting is a common practice in the field of organizational behavior, where high performance goals tend to encourage unethical behavior (Welsh, Bush, Thiel, and Bonner 2019). The extra profit from financial crime enables the offender to handle desired possibilities and potential threats. It is mainly the convenience of extra profit, rather than the convenience of illegal profit, that is important in the motive dimension of convenience theory. However, under certain circumstances, there might be some extra benefits from illegal extra profit rather than extra profit in general, since illegal funds avoid the attention of external and internal control mechanisms, including compliance functions (Kawasaki 2020). Illegitimate financial gain can thus find its ways into exploring possibilities and avoiding threats that recorded funds cannot.
- *Convenience in opportunity.* There is convenient access to resources to commit and conceal financial crime. Legitimate access to premises and systems (Benson and

Simpson 2015), specialized access in routine activity (Cohen and Felson 1979), blame game by misleading attribution to others (Eberly, Holley, Johnson, and Mitchell 2011), and institutional deterioration (Rodriguez, Uhlenbruck, and Eden 2005) are some of the perspectives integrated in the opportunity dimension of convenience theory. A typical white-collar offender does not go into hiding as many street criminals do. Rather, the offender conceals financial crime among legal transactions to make illegal transactions seem legitimate, or the offender conceals financial crime by removing certain activities from the books. A typical white-collar offender who has convenient legitimate access to commit crime might spend most of the energy on concealing crime in the professional context.

- *Convenience in behavior.* Offenders can conveniently justify crime and neutralize guilt feelings. Application of neutralization techniques (Sykes and Matza 1957), sliding on the slippery slope (Welsh, Ordonez, Snyder, and Christian 2014), and lack of self-control (Gottfredson and Hirschi 1990) are some of the perspectives integrated in the willingness dimension of convenience theory. Narcissistic identification with the organization (Galvin, Lange, and Ashforth 2015), learning from others by differential association (Sutherland 1983), and professional deviant identity (Obodaru 2017) are other perspectives for willingness. When a white-collar offender justifies crime, then it is obvious to him and her that wrongdoing occurred. However, the offender can claim that the act of wrongdoing is morally justifiable (Schnatterly, Gangloff, and Tuschke 2018), and that a negative life event has occurred (Engdahl 2015). When a white-collar offender denies a guilty mind, then the offender applies neutralization techniques. When a white-collar offender makes crime as a choice, it is convenient based on identity (Galvin, Lange, and Ashforth 2015), rationality (Pratt and Cullen 2005), and learning from others (Sutherland 1983).

Convenience is the state of being able to proceed with something with little effort or difficulty, avoiding pain and strain (Mai and Olsen 2016). Convenience is savings in time and effort (Farquhar and Rowley 2009), as well as avoidance of pain and obstacles (Higgins 1997). Convenience is a relative concept concerned with the efficiency in time and effort as well as reduction in pain and solution to problems (Engdahl 2015). Convenience is an advantage in favor of a specific action to the detriment of alternative actions. White-collar offenders choose the most convenient path to reach their goals (Wikstrom, Mann, and Hardie 2018).

The potential offender faces the alternatives of legal versus illegal means, where the relative convenience determines whether or not law-abiding versus law-breaking behavior is most convenient and thus chosen. Convenience addresses the time and effort exerted before, during, and after an action or avoidance of action (Collier and Kimes 2013). Blickle, Schlegel, Fassbender, and Klein (2006) found that if the rationally expected utility of an action by a white-collar offender clearly outweighs the expected disadvantages resulting from the action, thereby leaving some net material advantage, then the offender would commit the offense in question.

A convenient individual is not necessarily bad or lazy. On the contrary, the person can be seen as smart and rational (Sundström and Radon 2015). Convenience orientation varies among individuals, as some are more concerned than others are about time saving, effort reduction, and pain avoidance.

CRIME SERIOUSNESS

When detection of a white-collar offender occurs, an issue of public opinion about seriousness emerges. Cullen, Chouhy, and Jonson (2020) studied public opinion about white-collar crime, and they found public willingness to punish white-collar offenders. However, they found that

public opinion about inflicting punishment on white-collar criminals varies depending on clarity of culpability, typical harm, violation of trust, and need to show equity. If a detected offender is successful in disclaiming responsibility for crime by not being culpable, then the preference for punitive action declines. The offender can claim one or more of the conditions of responsible agency did not occur. Using this technique, the offender rationalizes that the action in question is beyond his or her control. The offender might present himself or herself as a billiard ball, helplessly propelled through different situations (Craig and Piquero 2017; Engdahl 2015; Pratt and Cullen 2005; Sutherland 1983; Sykes and Matza 1957).

If there is no evidence of typical harm – or evidence of typical harm remains hidden successfully – then public desire for punitive action declines. Most people consider economic harm less serious compared to physical harm. When people perceive no damage, harm or victim from the offender’s action, then people consider the offense less serious (Michel 2016). The offense is thus not very serious because there is no emerging evidence of any party suffering directly or visibly because of it (Jordanoska 2018; Kaptein and Helvoort 2019; Siponen and Vance 2010).

Violation of trust is the third factor of seriousness identified by Cullen, Chouhy, and Jonson (2020:223), “often compounded by purposeful deception and concealment of injury”. Public opinion about inflicting punishment on white-collar criminals depends thus on the extent of violation of trust. Dearden (2016) argues that violation of trust is at the core of white-collar crime. Trust implies that vulnerability finds acceptance based upon positive expectations of the motives and actions of another. By successfully playing the blame game, the offender will attribute blame for wrongdoing to someone else (Eberly, Holley, Johnson, and Mitchell 2011; Keaveney 2008; Lee and Robinson 2000, Sonnier, Lassar, and Lassar 2015), thereby reducing the perceived violation of trust.

Need to show equity is the fourth and final factor by Cullen, Chouhy, and Jonson (2020:223):

The norm of equity demands that white-collar offenders, especially those who enjoy a privileged life, should be treated as harshly as poor, minority criminals are treated. We argue that in comparison to Americans in the 1940s and 1950s, the norm of equity is strong among today's citizenry and will fuel punitiveness when called into play.

However, the norm of equity might suffer from confusion and manipulation by the special sensitivity hypothesis suggested for white-collar offenders. The special sensitivity hypothesis implies a relatively tougher life for white-collar offenders when investigated, prosecuted, convicted, and incarcerated (Dhami 2007; Logan 2015; Stadler, Benson, and Cullen 2013). Therefore, the equity perspective can imply that treatment of elite level criminals should not be as harsh as treatment of street level criminals. White-collar offenders and their attorneys can stress the special sensitivity hypothesis and deny the special resilience hypothesis, which suggests that white-collar offenders are able to adapt to prison life more successfully than other inmates do (Logan, Morgan, Benson, and Cullen 2019). By symbolic defense, rather than substance defense, white-collar attorneys use the media and other channels to present the client as a victim rather than as a potential offender. The purpose of symbolic defense is to communicate information and legal opinions by means of symbols. Examples of attorney opinions are concerns about unacceptable delays in police investigations, low-quality detective work, or other issues related to police and prosecution work. Complaining about delays in police investigations is not substance defense, as the complaint is not expressing a meaning about the crime and possible punishment. Complaining is symbolic defense, where the objective is to mobilize sympathy for the white-collar client (Gottschalk 2014).

The less serious an offender is able to make his or her offense in the public domain, the less willingness to punish the offender. An offender can create dynamics reducing punishment inconvenience by causing cloudiness of culpability, by blurring harm, by restoring trust, and by claiming sensitivity.

CRIME INVESTIGATION

White-collar crime investigation is the reconstruction of past events and sequences of events without drawing legal conclusions. The objective is to collect information and develop knowledge to answer questions regarding what happened, how it happened, when it happened, who did what to make it happen or not happen, and why it happened (Brooks and Button 2011; Button 2019; Button, Frimpong, Smith, and Johnston 2007; Button, Johnston, Frimpong, Smith, 2007; Nilsen, Aaserud, and Filstad 2018). Investigators are interested in information regarding people, locations, activities, timing, capabilities, motives, opportunities, and behaviors. Investigators explore a number of information sources such as witnesses, suspects, whistleblowers, documents, and databases.

When a white-collar offender is detected, the organization may first attempt to initiate an internal investigation without the involvement of law enforcement agencies such as the police (Brooks, Button, and Frimpong 2009; Button and Gee 2013; Fitzgibbon and Le, 2018). There is a growing business of local law firms and global auditing firms, which conduct fraud examination for their clients (Schneider 2006; Williams 2005a, 2005b, 2014). Internal investigation is more convenient than police investigation, as the organization can control the mandate and thus the direction of the investigation (Gottschalk and Tcherni-Buzzeo 2016), as well as avoid public attention (Meerts 2019:5):

Organizations are disinclined to report to law enforcement agencies as a result of, first, a low level of trust in the capabilities and expertise of law enforcement agencies and, second, expected negative effects of a report to the authorities (e.g., reputational damage or loss of productivity).

Surprisingly often, fraud examiners conclude in their investigation reports with wrongdoings, but no crime, even though they are not supposed to draw legal conclusions (Button, Shepherd,

Blackbourn 2018). Frequently, law enforcement agencies seem happy with such private conclusions by staying away from the case. Examples include Lehman Brothers in the United States (Jenner Block 2010), NNPC in Nigeria (PwC 2015), Danske Bank in Denmark (Bruun Hjejle 2018), Nordea in Sweden (Mannheimer Swartling 2016), and Telenor in Norway (Deloitte 2016). The inconvenience of detection becomes in this way partly compensated by the convenience of controlling the investigation and often keeping the report of investigation secret (Gottschalk and Tcherni-Buzzeo 2016).

In cases where law enforcement agencies take on the matter and conduct investigations, white-collar suspects and their organizations quickly hire skilled defense lawyers to protect their interests. A white-collar defense lawyer does not limit efforts to substance defense, using interpretations of laws and previous court rulings to argue that the client has done nothing that justifies police investigation or court proceedings (Gottschalk 2014:60):

Defense lawyers in white-collar crime cases tend to take charge of information control at an early stage. Instead of being at the receiving end of documents from the police or prosecution, the attorney is in a position where the flow of information can be monitored.

In addition to substance defense and information control, white-collar attorneys also apply symbolic defense strategies. A symbol is an object or phrase that represents an idea, belief, or action. The purpose of symbolic defense is to communicate information and legal opinions by means of symbols. The objective might be to portray the client as a victim rather than as an offender. For example, the client might be a victim of massive media coverage (Burns and Meitl 2020:288):

White-collar defense attorneys often suggest that the publicity surrounding the alleged crime is already enough punishment for a formally upstanding member of the business community.

The less obvious evidence police investigators are able to collect, the more reluctant they are to suggest prosecution. Based on substance defense, information control, and symbolic defense, white-collar lawyers can succeed in helping the client avoid the inconvenience of prosecution. In fact, inconvenience can turn into a kind of convenience, as failing investigations in many jurisdictions make suspects entitled to claim financial recovery and compensation from the state.

CRIMINAL PROSECUTION

As argued by Burns and Meitl (2020:284), prosecutors face difficult dilemmas in the decision of who to charge with what kinds of crime:

In white-collar cases, this decision is often complicated by a variety of factors.

Because white-collar crimes often require that the prosecutor prove the specific intent of the defendant (that is, that the defendant knew what they were doing was corrupt or illegal at the time they performed the alleged criminal act), the prosecutor must carefully examine the actions of a variety of individuals in each white-collar context.

What Podgor (2007) found to be the most interesting aspect of Sutherland's (1983) work is that a scholar needed to proclaim that crime committed by a member of the upper socioeconomic class was in fact crime that should be prosecuted. When prosecuted in court, white-collar defendants have paid defense lawyers who tend to be specialists in financial crime, while prosecutors and judges tend to be generalists (Gottschalk 2014).

In their classic book on local prosecutors at work in combating white-collar crime, Benson and Cullen (1998) discuss knowledge and discretionary decision making by legal actors as a central and unavoidable component of the law in action. Prosecutors have authority to attain broad legislative goals. The process of rule into action depends on legal actors interpreting and making choices. In this perspective, prosecutors are powerful actors in criminal justice.

However, white-collar crime often represents prosecutorial problems. Benson and Cullen (1998:25) argue that most illegal white-collar conduct does not result in criminal prosecution:

Scholars differ over why this is so. One school of thought stresses the political and economic power of corporations; the other emphasizes the practical difficulties of applying the criminal law to corporate offenders. These views represent recurrent themes in research on corporate crime but are not necessarily mutually exclusive.

Undoubtedly, both have merit.

Galvin and Simpson (2020:391) stress the importance of collecting reliable evidence:

Due to the complexity, difficulty of gathering evidence, and the relative rarity of these cases, it seems probable that white-collar cases should be more likely to result in favorable plea agreements.

Since plea bargain in the United States is “largely unknown to German (and continental) system of criminal law” (Walburg 2020:341), prosecutors in continental Europe tend to be reluctant to prosecute white-collar cases lacking complete and convincing evidence. As argued by Galvin and Simpson (2020), a number of factors can influence prosecutorial perceptions of case strength, such as evidentiary load, victim behavior, and offender characteristics.

The less satisfying such factors are to the prosecution, the more reluctant they are to bring a case to the court. Again based on substance defense, information control, and symbolic defense, white-collar lawyers can succeed in helping the client avoid the inconvenience of court hearings. In addition, inconvenience can turn into a kind of convenience, as terminated prosecution in many jurisdictions make potential defendants entitled to claim financial recovery and compensation from the state.

CRIMINAL PROCEEDINGS

While there are differences between court systems throughout the world, legal courts in democratic societies have some common characteristics. A court is an institution for finding solutions and making decisions in conflicts (Christensen and Szmer 2012). In a small nation such as Norway, the district court is the basic level in the judiciary system for both criminal and civil law. Court of appeal is the second level in the system, where the case trial repeats district court hearings. The third and final level is the Supreme Court in the capital Oslo.

While court proceedings for traditional street crime tend to last for some days, court proceedings for white-collar crime tend to last for some months (Gottschalk 2014).

One of the reasons for this tremendous difference is the difference in challenge for the prosecution. While street crime cases are concerned with evidence linking the crime to the defendant, white-collar crime cases are concerned with evidence of the crime itself. At the investigation stage, police detectives were looking for offenders in street crime cases, while they were looking for offenses in white-collar crime cases.

An advantage of the months-long proceedings for white-collar defendants is the knowledge rivalry that takes place in court. The rule is that if there is any reasonable doubt, the court must dismiss the case against the defendant. Defense attorneys as clever knowledge workers thus compete with prosecutors about the truth to create doubt about facts, laws, and guilt (Burns and Meitl 2020).

If white-collar defendants are convicted in court, the sentencing tends to be more lenient compared to street crime defendants. An explanation for differential treatment is the status advantage for white-collar criminals, including the extent of technical and vocational training. In the United States, “due to the complexity, difficulty of gathering evidence, and the relative rarity of these cases, it seems probable that white-collar cases should be more likely to result in favorable plea agreements” (Galvin and Simpson 2020:391).

A comparison in Norway between social security fraud and white-collar fraud indicates significant differential treatment. While social security fraudsters go to jail for a year for fraud of less than the equivalent of one hundred thousand US dollars, white-collar fraudsters receive the same jail sentence for fraud of more than one million US dollars (Gottschalk and Gunnesdal 2018). On average, convicted white-collar offenders have to go to jail for two years and two months, where the average amount of money involved in the financial scam is the equivalent of five million US dollars (Gottschalk 2014, 2019).

The more doubt that occurs during criminal proceedings, the less likely the defendant is facing conviction. The inconvenience of being a defendant for weeks or month might turn into a kind of convenience, as a case dismissal represents a verdict of innocence where the innocent is entitled to claim financial recovery and compensation from the state, in addition to a role of complaining about the criminal justice system privately and in the public.

CRIMINAL INCARCERATION

If convicted to jail or prison, white-collar offenders end up in low-security institutions. Minimum-security institutions with minimum security have dormitory housing, a relatively low staff-to-inmate ratio, and limited or no perimeter fencing. These institutions in Norway have regular hotel standard with units for each inmate with individual bathrooms. A white-collar offender who received a verdict of nine years in prison for serious bank fraud served his sentence in Hassel prison in Norway. He was into bike riding, and he organized a cycling team among inmates. He was excited about the Tour de France bike ride, and suggested to team members to bike from Norway to France. A team of ten Hassel inmates got on their bikes and reached the border between Norway and Sweden. At the border, Norwegian police stopped them, as someone had found out that inmates did not have permission to leave the country while in prison.

A prison manager stated that the increasing group of white-collar inmates represents a challenge to the correctional service (Pedersen 2017):

This is a new group consisting of quite ordinary people, who do not represent the same kind of security risk as organized criminals. This important case illustrates a new group of criminals who come from a higher level in society. They seem to continue with their smart dispositions after conviction, and believe that they can continue with their fixing and manipulation.

The inmates returned to Hassel prison. Some years later, when the prison had released them all, the cycling team made the bike ride from Hassel in Norway to Paris in France (Røkeberg 2012).

Hunter (2020) addressed the correctional experiences of white-collar offenders, where the underlying assumption is that white-collar offenders do experience punishment differently to their non-white-collar criminal peers. Overall, he found that white-collar offenders adjust more easily to prison. This is in line with Dhami (2007), who found that white-collar inmates adjusted to prison life because they felt that their high status and the assumption that they had significant financial resources gave them respect from other prisoners and from prison staff. White-collar offenders tended to find new friends more conveniently, and they were able to sleep all night, while most other inmates had trouble sleeping and making friends in prison (Stadler, Benson, and Cullen 2013).

As mentioned earlier, white-collar offenders and their attorneys can stress the special sensitivity hypothesis and deny the special resilience hypothesis, which suggests that white-collar offenders are able to adapt to prison life more successfully than other inmates are.

However, recent research suggests that there is more support for the special resilience hypothesis than the special sensitivity hypothesis (Logan, Morgan, Benson, and Cullen 2019).

The theory of convenience provides a basis for the special resilience hypothesis, because

white-collar offenders tend to have a strong convenience orientation to avoid pain and waste of energy (Gottschalk 2019).

After release from jail or prison, “the experience of punishment is likely to last beyond any formal sentence” (Hunter 2020:304):

As with most offenders, white-collar offenders are likely to find themselves in a position of needing to reestablish their lives once punishment has ended. The specifics of this are likely to differ, but we might broadly suggest that this involves some sort of financial independence and acceptance back into the wider community. Many white-collar offenders are pessimistic about their ability to manage this, however, fearing that a conviction is too much of an obstacle to allow them to successfully resettle.

Based on anecdotal evidence from Norway, it seems that reestablishing lives is an issue in several dimensions and depending on several circumstances. Reestablishing professional life seems more challenging than reestablishing private life with family. The circumstance of being a capitalist owning the company or being self-employed as a consultant makes it less troublesome getting back to work.

CONCLUSION

Crime is an act that should be punished, independent of whether or not there is a legal statute. Crime is then wrongdoing that requires punishment, while law is statutory principles, which may or may not cover specific wrongdoing (Friedrichs 2020). This definition is at the core of white-collar crime seriousness as discussed in this article. Many cases of white-collar wrongdoing are not obvious crime in the sense of law violations. Only law violations have relevance in the criminal justice system. Public opinions about seriousness versus the punishment of white-collar offenders might be a matter of whether or not violation of law has occurred.

Punishing white-collar offenders becomes also troublesome because the facts are often missing, misleading or incomplete. This kind of uncertainty creates many opportunities for suspects and their helpers to create ambiguity concerning punishment. The uncertainty and thus almost random outcome develops from detection via investigation, prosecution, and conviction to possible incarceration. The result of all these blurring lines between guilt and innocence reduces the inconvenience for white-collar offenders as discussed in this article.

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