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American Smuggling as White Collar Crime

When Edwin Sutherland introduced the concept of white-collar crime, he referred to the respectable businessmen of his day who had, in the course of their occupations, violated the law whenever it was advantageous to do so. Yet since the founding of the American Republic, numerous otherwise respectable individuals had been involved in white-collar criminality. Using organized smuggling as an exemplar, this narrative history of American smuggling establishes that white-collar crime has always been an integral part of American history when conditions were favorable to violating the law.

This dark side of the American Dream originally exposed itself in colonial times with elite merchants of communities such as Boston trafficking contraband into the colonies. It again came to the forefront during the Embargo of 1809 and continued through the War of 1812, the Civil War, nineteenth century filibustering, the Mexican Revolution, and Prohibition. The author also shows that the years of illegal opium trade with China by American merchants served as a precursor to the later smuggling of opium into the United States.

The author confirms that each period of smuggling was a link in the continuing chain of white-collar crime in the 150 years prior to Sutherland's assertion of corporate criminality.

Lawrence Karson is currently an assistant professor of criminal justice at the University of Houston-Downtown. He retired from the U.S. Customs Service, where he served in the investigation division managing a fleet of aircraft and vessels used to pursue and apprehend drug traffickers smuggling contraband into the United States by air or sea.

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17 **American Smuggling as White Collar Crime**
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In memory of George Reyes Saenz
father, husband, brother, son . . . customs pilot
1955–1989

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Individualism isn't and solitary works aren't ...

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Contents

Introduction

In 1939, the president of the American Sociological Society, Edwin H. Sutherland, gave a presentation at a joint meeting of the society and of the American Economic Society. That presidential address was later published in the society's journal as 'White-Collar Criminality', and still later developed into a book titled *White Collar Crime*. Defining white-collar crime as 'a crime committed by a person of respectability and high social status in the course of his occupation',[1] Sutherland brought to the public's attention that 'respectable or at least respected business and professional men'[2] were involved in criminal activities that were otherwise unrecognized as such, introducing the concept of white-collar crime both to sociology and to the general public. He also pointed out that these same elites had the influence and power to define crime so as not to necessarily encompass their activities within the penal code. He would later identify the activities of these white-collar criminals as a form of organized crime, recognizing both formal and informal organizations, which allowed for organized restraint of trade, the influence over both criminal and civil legislation, the limitation of enforcement through restricted funding, and the development of a consensus among the involved businessmen as their objective.[3]

The purpose of this monograph is to demonstrate that white-collar crime, as conceived by Sutherland, has a historical lineage in America dating back at least to the founding of the Republic and that the presence of white-collar crime is reflected in the violation of the nation's smuggling laws. Distinctively, 'persons of respectability and high social status in the course of their occupation' conspired at various times in American history to smuggle a variety of contraband into or out of the United States, or into other countries, in contravention of 'regulatory norms', to obtain a profit in an attempt to achieve the American Dream, whenever an 'excess of definitions' were favorable to the violation of law.[4] The economic version of that dream, as defined by the sociologist Robert Merton, was a striving for success by all members of society, whatever their station and by whatever means may be necessary.[5]

Sutherland believed that the explanation for white-collar crime could be found in his theory explaining the general process of criminality: differential

association. It was Sutherland's premise that criminal behavior is learned through interaction with other persons as is any other behavior, and that learning criminal behavior takes place in intimate personal groups where, besides the techniques of committing a crime, the motives, drives, rationalizations, and attitudes in support of criminal behavior are also learned. As Robert Merton described the premise, 'individuals learn to engage in criminal behavior by associating with others, principally in face-to-face groups, who prefer and practice such behavior'.[6] It was Sutherland's belief that criminal behavior takes place when 'the specific direction of motives and drives is learned from definitions of the legal codes as favorable or unfavorable', varying by interrelationships assessed on 'frequency, priority, duration, and intensity',[7] or as De Fleur and Quinney express:

> Overt criminal behavior has as its necessary and sufficient conditions a set of criminal motivations, attitudes, and techniques, the learning of which takes place when there is exposure to criminal norms in excess of exposure to corresponding anticriminal norms during symbolic interaction in primary groups.[8]

In short, Sutherland's position was that criminal behavior is based on the values an individual receives from interactions with others, including with those whom a person associates in a business or a political environment. When the weight of those values supports activity in violation of a specific law, that law will be ignored.[9] Sutherland also recognized that while differential association explained a person's initiation into criminal activity, the premise of social disorganization explained crime from 'the point of view of society', appearing in the form of a 'lack of standards or conflict of standards'.[10] In the former, '[i]n any period of rapid change, old standards tend to break down and a period of time is required for the development of new standards'.[11] In the latter, when the political will is not effectively organized against business interests that violate the law, that social disorganization allows for white-collar crime.[12]

When Robert Merton wrote his paper 'Social Structure and Anomie', he had just witnessed perhaps the greatest period of communal criminality in the history of America, the years of American Prohibition. His paper, published a year before Sutherland's speech in one of the earliest volumes of the American Sociological Society's (later known as the American Sociological Association) journal, sought to explain how a society that placed a high emphasis on economic success, such as America, led some to use the most expedient methods, including crime, to achieve their financial goals. He recognized that '[t]he extreme emphasis upon the accumulation of wealth as a symbol of success in our own society militates against the completely effective control of institutionally regulated modes of acquiring a fortune'.[13] In particular his typology of adaptations to the possible conflict between the cultural goals of a 'prestige-bearing' financial success and

the institutionalized means available identified some as choosing 'innovation', the concept of 'relinquishing the institutional means and retaining the success-aspiration', to deal with the conflict.[14] These individuals recognized that the traditional, approved paths to success were not necessarily available and the rationally chosen, alternative path to success through crime was an achievable path.

Some years later Merton further developed his original work, including an extended description of the success-theme in American culture, recognizing that the goal of monetary success was embedded in the nation's culture. Though the pursuit of money was not limited to Americans, in referring to his earlier paper Merton believed that there was a difference in degree:

> But what makes American culture relatively distinctive in this regard and what was taken as central to the analysis of this case in the foregoing chapter is that this is 'a society which places a high premium on economic affluence and social ascent for *all* its members'. [. . .] The distinctive nature of this cultural doctrine is twofold: first, striving for success is not a matter of individuals *happening* to have acquisitive impulses, rooted in human nature, but is a socially-defined expectation, and second, this patterned expectation is regarded as appropriate for everyone, irrespective of his initial lot or station in life.[15]

Because success is appropriate for all, failure is easily considered a personal character flaw, even a moral flaw. 'The moral mandate to achieve success thus exerts pressure to succeed, by fair means if possible and by foul means if necessary'.[16] It would be this success theme that was distinctive to America and would, at times, dominate the moral compass of many Americans and those linked with them, leading to 'innovation' during times of social disorganization throughout the history of the nation. As one of the founders of the Republic commented, 'We have one material which actually constitutes an aristocracy that governs the nation. That material is wealth. Talents, birth, virtues, services, sacrifices are of little consequence to us'.[17]

Merton's success theme had earlier been famously expressed by historian James Truslow Adams in his *The Epic of America*. For Adams, the American Dream was 'that dream of a land in which life should be better and richer and fuller for everyone, with opportunity for each according to ability or achievement [. . .] It is not a dream of motor cars and high wages merely, but a dream of social order in which each man and each woman shall be able to attain to the fullest stature of which they are innately capable, and be recognized by others for what they are, regardless of the fortuitous circumstances of birth or position'.[18] It was a dream beyond material possessions and the demands of a consumer-driven society, but Adams acknowledged that the material was, as Merton later remarked, 'prestige-bearing', stating that 'so long as wealth and power are our sole badges of success, so long will ambitious men strive to attain them'.[19]

Yet the phrase had been used earlier, if not in quite the same affirmative view, still as an embodiment of a dream of financial achievement for the nation, as mentioned in an 1893 article on U.S. banking written by W.R. Lawson in *Bankers', Insurance Managers' and Agents' Magazine*. In remarking about the Chicago World's Fair of 1893, Lawson described it to be 'the greatest and grandest of all World's Fairs—a year of over-flowing prosperity, bonanza crops, heavy exports and universal boom [. . .] proving to [European tourists] by ocular demonstration how far ahead the New World had got of the Old. Such was the American dream of eighteen hundred and ninety-three'.[20] Though a less nuanced view of the American Dream than was Adams' later iteration, this banker's idea of prosperity and profit is an easy fit into the Andrew Carnegie model of rags-to-riches American achievement and, again, as a reflection of the 'prestige-bearing' financial goals defining the 'innovation' typology of Merton.

The American Dream, an ambiguous concept that easily morphs into a variety of adaptations depending on those interpreting it, has had numerous other readings, including the idea of agrarianism, also termed the pastoral ideal, 'the theme of withdrawal from society into an idealized landscape'.[21] It would be reflected in the works of 'Cooper, Thoreau, Melville, Faulkner, Frost, [and] Hemingway', serving as a catalyst to each author's 'imagination'.[22] In the political sphere a Jeffersonian ideology of 'rural virtue' would mirror the theme.[23] Jim Cullen describes a variety of other versions of the Dream, including the dream of liberty (seeing the Declaration of Independence as the dream's 'charter'), upward mobility, minority equality, home ownership, and personal fulfillment, recognizing that his list was 'suggestive rather than exhaustive' of the Dream's numerous manifestations.[24] It was a dream not limited by geography, extending at times south across the Rio Grande and northward to Canada. 'The American Dream has danced on the horizon for generations of Canadians, a wagon or train trip away in earlier times, a car or plane ride in more recent times.'[25] Though referring to Canadian emigrants the comment is no less true of those who stayed north and trafficked in contraband southward.

One of the earliest iterations, and one of the most durable, was the dream of religious expression unencumbered by the mandates of society or state. From the earliest Puritans to later Quakers, Lutherans, and Jews, numerous individuals risked all and ventured across the North Atlantic to a New World for the opportunity to practice their chosen faith as their spirit determined; for many their Dream was simply one expressed as a 'liberty of conscience'.[26] Yet some versions of that religious faith may have contributed to an attitude of acceptance for later white-collar criminality. More than one theorist has suggested that the Protestant work ethic born of the Calvinistic foundations of various Protestant denominations and exemplified by the Puritans of New England may well have offered a religious justification to extensive monetary acquisition and contributed to the materialistic culture some later identified as part and parcel to American society.[27]

Steve Messner and Richard Rosenfeld also recognized that American crime, and by extension white-collar crime, were intrinsic in the nation's very social structure:

> [T]he American Dream itself and the normal social conditions engendered by it are deeply implicated in the problems of crime. In our use of the term 'the American Dream' we refer to a board cultural ethos that entails a commitment to the goal of material success, to be pursued by everyone in society, under conditions of open, individual success, and they are encouraged to believe that the chances of realizing the Dream are sufficiently high to justify a continued commitment to this cultural goal. These beliefs and commitments in many respects define what it means to be an enculturated member of our society. The ethos refers quite literally to the *American* dream.[28]

Their position was that though beneficial for society, the American Dream had a dark side that led to an excessive willingness to succeed financially at any cost, that created a weakening of community and its ability to control deviant behavior through social structural mechanisms, and that only allowed a limited acceptance of other forms of personal and professional success.[29]

Albert Cohen, Richard Cloward and Lloyd Ohlin, and Robert Agnew would build on Merton's work.[30] Yet 'Merton's theory of anomie is still among the most influential of all criminological theories [. . .] continuing to draw commentary and research'.[31] Both Merton and Sutherland concurred that their separate theories—anomie theory and the theory of differential association—were complementary, applying to both ordinary and white-collar crime.[32]

Sutherland, in establishing his concept of white-collar criminality, supported his argument by providing a variety of examples of the various types of crimes to which he was referring and of the types of businesses involved. Restraint of trade, discriminatory rebate practices, patent infringement, advertising misrepresentation, unfair labor practices, fraudulent financial manipulations, embargo circumventions and neutrality violations were all included.[33]

Yet Sutherland, his contemporaries, and those academics who followed them directed their research toward examples of modern corporations and other organizations that were involved in activities that qualified as white-collar criminality with minimal research looking back to historical examples. Though much has been written in recent years about the history of crime and of criminal justice,[34] little has been addressed at the 'intersection between history, biography and social structure' as it relates to white-collar crime.[35] Sutherland himself recognized the historical precedent, having remarked that the 'unscrupulous American business entrepreneurs', latter known as the 'robber barons' of the late nineteenth century, were within

his definition of white-collar criminals.[36] Prior to Sutherland's *White Collar Crime* and a precursor to his work, the muckrakers of the early twentieth century had developed a reputation for exposing business malfeasance. Two of the more notable examples were Ida Tarbell revealing the business practices of John D. Rockefeller—one of those characterized as a 'robber baron'—and his Standard Oil Company's attempts to monopolize the oil industry, as well as Upton Sinclair revealing the plight of factory workers striving for the American Dream and the abominable health hazards of the meat packing industry.[37] Again, with the exception of the 'robber barons' of the late nineteenth century, there has been limited discussion of other historical examples of white-collar crime in America.[38] The purpose of this monograph is to demonstrate that white-collar crime, as conceived by Sutherland, has been a tradition in America since the nation's founding as reflected in its history of smuggling. That tradition provides ample evidence that Sutherland's premise that 'persons of the upper socioeconomic class engage in much criminal behavior' has actually been a practice throughout American history and that 'this criminal behavior differs little from the criminal behavior of the lower socioeconomic class'.[39]

Shortly after Sutherland presented his original paper on white-collar crime, Frank Hartung published his own paper on white-collar offenses in the Detroit wholesale meat industry, Robert Lane circulated his study of national labor law violations, and Marshall Clinard released his research of the American black market during World War II.[40] A decade later, Earl Quinney followed with his study of social structure and its relationship to the criminal behavior of retail pharmacists.[41] Soon after, Gilbert Geis looked at the criminal case history of the heavy electrical equipment antitrust cases against senior executives of General Electric and Westinghouse Electric.[42] Fifty years later, the Enron debacle became one of the more infamous examples of white-collar criminality, documented by Bethany Mclean and Peter Elkind, among others.[43]

These classic criminology studies, which concentrated on then contemporary offenses, paralleled the effort of researchers focused on the history of American crime and criminal justice. Roger Lane's history of the eighteenth-century Boston police department, Eric Monkkonen's monograph on urban policing in the late nineteenth and early twentieth centuries, and James Richardson's study of New York policing from colonial times to the twentieth century are examples of organizational histories giving an understanding of the development of modern policing.[44] Wilber Miller and Michael Hindus achieve a similar goal with their comparative studies of the New York police and London bobbies, and of slave-holding South Carolina's and industrial Massachusetts' justice systems, respectively.[45] Frank Prassel addresses the activities of western lawmen, while Frederick Calhoun focuses his work on the U.S. marshals and their deputies.[46] Carl Prince and Mollie Keller address U.S. Customs history while Irving King achieves the same for the Coast Guard through a series of works.[47] Other work looked at various

offenses. For example, Robert McGrath studied violence in the West while Eric Monkkonen attempted to understand historical homicide rates in New York and Los Angeles, as did Douglas Eckberg for post-Reconstruction South Carolina homicides.[48]

This work seeks to approach that 'intersection between history, biography and social structure' where evidence related to historical white-collar criminality is found,[49] looking at the violations, the violators, and the social culture that seemingly condoned much of this behavior. It follows in the interpretational work of Gilbert Geis, who offered a historical perspective of white-collar crime, asserting that '[t]he record shows that there has been a long-standing ancient tradition, passed on to the Judeo-Christian world, that associated commerce with fraud and avarice and that held that such endeavors were a potential source of moral corruption and decay'.[50] Geis held that food shortages in ancient Greece and Rome allowed for the manipulation of the market to the seller's advantage, and the communities enacted various laws to control market conspirators, thereby allowing commodities to be available to all at reasonable prices. Geis extended his argument into the European Middle Ages, identifying various theologians and intellectuals who condemned predatory marketers. He argued that forestalling, regrating, and engrossing, all techniques used to artificially raise the market price of food—were early European examples of white-collar criminality. He also recognized that the muckraking movement of early twentieth-century America contributed to the public exposure of predatory business practices.[51] The white-collar smuggling found throughout the history of America is simply a more evident continuation of Geis' recognition of a history of white-collar criminality.

This work also builds on and substantiates Michael Woodiwiss' argument that the United States has a long history of organized criminal activity, the white-collar criminality found in many types of organized smuggling being one extensive example supporting his position. Woodiwiss observed that criminality extended beyond foodstuffs in ancient history, and that '[c]riminal enterprise was itself embedded in the machinery of Roman law and government'.[52] Viewing crime across history as organized and embedded in the social structure of various cultures, he identified the robber barons of feudalism as a continuation of the powerful controlling the law to serve their own ends. He further identified early modern European business crime, in particular the stock frauds perpetrated by the South Sea Company and the Mississippi Company in the early eighteenth century, 'as spectacular antecedents of modern organized business crime'.[53] He extended his survey of organized business criminality into the fraudulent land deals of the American founding fathers that originally contributed to the nation's expansion westward and into the organized slave smuggling into the South after 1807, finally transitioning from the rural to the urban by identifying the corruption, party politics, and gangs as different aspects of one problem: organized criminality. This work further substantiates Woodiwiss' recognition that business was integral to the organized crime of Prohibition.[54]

Much of the literature in the last fifty years related to white-collar crime has focused on developing a definitive meaning of the very term 'white-collar crime'. One of the earliest challenges to Sutherland's work was Paul Tappan's legalistic argument that without a conviction, a person could not be considered a criminal whether the violation was business related or otherwise.[55] Yet Sutherland himself had addressed that limited view in his article 'Is "White-Collar Crime" a Crime?' by arguing that the failure of the state to choose to prosecute a criminal action, instead utilizing a civil process for redress, did not mitigate the criminality of the offense.[56] The discussion continued with many trying to further clarify its meaning by developing a typological approach. Eventually 'Clinard and Quinney put forward what has become a widely accepted distinction in scholarship on white-collar crime, that between (1) occupational criminal behavior and (2) corporate criminal behavior', separating crimes of employees related to their occupations from the crimes of corporations and corporate officials to benefit the corporation itself.[57] A general typology came to also include governmental/state sponsored crime, financial crime, computer crime, and various hybrids of these violations.[58]

Gary Potter and Larry Gaines would later view white-collar crime as less of a definitional issue than as a social construct and a 'heuristic device guiding the study or analysis of crimes by certain actors in certain social settings', similar to the use of the terms 'street crime' or 'juvenile crime', a view that informs this monograph.[59]

In 1931, Americans were presented with a view of crime that identified the purveyors of illicit alcohol as organized business entities encompassing 'combinations of illicit distributors, illicit producers, local politicians, corrupt police and other enforcement agencies, making lavish payments for protection and conducting an elaborate system of individual producers and distributors'.[60] The report regarding the enforcement of the Prohibition laws in the United States, widely known as the *Wickersham Report*, contributed to an image that was personalized by Hollywood and the news media. For Hollywood, the gangster of Prohibition became a simplified personification of the American Dream, a success story exemplifying the Andrew Carnegie rags-to-riches model of American achievement, if somewhat perverted still not beyond recognition or approval.

The acceptance and approval of Americans for the framing of the American Dream in a gangster/Horatio Alger narrative was demonstrated time and again at the box office as Americans crowded theatres to witness the successes of the gangster on the silver screen in the 1920s and 1930s. Only national censorship prevented the gangster from achieving long-term financial success without the requisite denouncement at the end of the last reel.[61] The classic gangster films of the 1930s invented the media hood, taking portrayals from the silent era of films and turning him into a 'central cultural figure', an individual who wanted 'to be somebody' and who embodied the competitive and individualistic ideals of American capitalism to achieve that