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Crime of the Powerful: A Theoretical Review

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ABSTRACT

In the past few decades, the frequency of reports on crimes committed by the powerful class of the society has been on the rampant. It is said that one is above the law, however, a review of crimes by the rich and powerful members of the society depict a perturbing trend of them either being under punished or getting free with their crimes. Most of the dire deviance acts are consensus crimes which are based on the assumptions that society is founded on shared. The consensus perspective assumes that the majority of the community agree on what action should be considered wrong or right, hence people not only adhere to laws due to fear of violating the rules but because of the internalised and inherent societal values and norms perceived as appropriate by the society. Nonetheless, the consensus view is challenged by a conflict perspective that states that crimes are subject to the different social groups based on their societal laws, norms, and differing interests hence a conflict. Based on this perspective, it is argued that the high rate of crime in societies with inequalities is attributed to the tendency of the disadvantaged groups committing more crimes compared to the affluent group. Therefore, this paper argues that most criminology and criminological theories have significantly focused on the petty but many wrongdoings of the marginalised or relatively powerless individuals of the society instead of directing more attention to the harms and wrongdoings of the powerful.

INTRODUCTION

Crime and criminology are common terms across societies with their history stemming from time immemorial. According to Newburn, the definition of the crime or criminology are deceptively simple in appearance; however, in reality, the definitions are quite complicated to provide a definitive answer (Newburn, 2017). According to Schram and Tibbetts, crime can be categorised into three: *mala in se*, *mala prohibita*, and deviance (Schram &

Tibbetts, 2013). *Mala in se* crimes are those that are considered to be fundamentally and inherently evil such as murder which has an injurious consequence and is immoral in nature whether noticed or punished (Schram & Tibbetts, 2013). The *mala prohibita* crimes are prohibited but are not inherently immoral because they are only considered so as they are expressly forbidden by positive law.

On the other hand, deviance acts or crimes are those that do not necessarily violate the law but are uncommon hence often considered as immoral but not illegal (Little & McGivern, 2012; Schram & Tibbetts, 2013). According to Jones (2013), most of the dire deviance acts are consensus crimes which are based on the assumptions that society is founded on shared. The consensus perspective assumes that the majority of the community agree on what action should be considered wrong or right, hence people not only adhere to laws due to fear of violating the rules but because of the internalised and inherent societal values and norm perceived as appropriate by the society (Little & McGivern, 2012; Schram & Tibbetts, 2013).

Nonetheless, the consensus view is challenged by a conflict perspective that states that crimes are subject to the different social groups based on their societal laws, norms, and differing interests hence a conflict. Based on this perspective, Matsueda and Grigoryeva claim that in the consensus and egalitarian societies, crimes rates are often low compared to those stricken with inequalities (Matsueda & Grigoryeva, 2014). It is argued that the high rate of crime in societies with inequalities is attributed to the tendency of the disadvantaged groups committing more crimes compared to the affluent group. Therefore, this paper argues that most criminology and criminological theories have significantly focused to the petty but many wrongdoings of the marginalised or relatively powerless individuals of the society instead of directing more attention to the harms and wrongdoings of the powerful.

Criminalisation Process

Edward indicates that the life of criminal law is centred on criminalisation; criminalisation refers to the process of making specific acts or activities into a type of crime based on principles, beliefs or norms believed by the society to be necessary and critical to the promotion of social coexistence and mutual respect to human dignity and life (J. Edward, 2018). Therefore, whenever an individual engages in an act that ought not to have undertaken as per the eyes of the law, the action is criminalised based on the legal implications. Jones referred to this as “crime in the eye of the beholder” in that crime is dependent on the consensus of values prescribed by

the community. People often react either positively or negatively to the behaviours of others (Jones, 2013).

Jones and Edwards both agree that crimes are not static, but a product of a consequence determined in a process involving legislation, the offender, the victim, and law enforcement (J. Edward, 2018; Jones, 2013). A particular act is only considered as a crime provided the society labels it to be one. This insinuates that a group of individuals have a capacity to criminalise specific actions and activities based on their reaction to the crime. Jones indicates that people in the position of dominant play a significant role in determining what should be criminalised and not (Jones, 2013). Crimes are a social control; Little and McGivern defined social control as a set of enforceable regulations aimed at changing and influencing the behaviours of people. The powerful being in legislative positions, they take the opportunity to change and shape the laws to best suit their interests (Matsueda & Grigoryeva, 2014). There are several theories coined in explaining criminalisation and criminology in society.

Agnew, Piquero, and Cullen (2009) point out that based on the legalistic standpoint in which crimes are founded, the powerful individuals having political influence in lawmaking often impose their self-centred definition of criminal behaviours on the offenders. Using their positions of power, the powerful lawbreakers bend the interpretation of the laws hence often manage to escape punishment for the crimes they commit (Lasslett, 2010). However, this view of crime and criminal justice is conceptually narrower because it primarily focuses on the common offenders and traditional offences majorly committed by the relatively powerless and most marginalised in the society side-lining the crimes of the powerful. Agnew et al. (2009) posit that a study by Edwin Sutherland on criminology and criminal justice vindicated that the criminological theories used by many scholars to define and evaluate crime were incomplete and biased by focusing on justifying crime from the differing perspective inclined more on the marginalised groups of the society (Agnew et al., 2009).

Crime and Social Class

It is a common belief that deviance and crime are highly associated with the powerless and underprivileged members of society (Little & McGivern, 2012). It is true that there is indeed a high association between members of lower socioeconomic classes with serious street and violent crimes such as assault and armed robbery. However, these crimes do not represent the most atrocious crimes in societies but often seem so because of the high focus projected to them in terms of defining and enforcing them (Little & McGivern, 2012; Matsueda & Grigoryeva, 2014). On the contrary, the crimes committed by members belonging to the powerful and wealthy classes often remain unpunished and underpunished despite their high costs and implications to the society (Lasslett, 2010). As opposed to the consensus crimes and deviance such as murder, most of the crimes committed by the powerful are conflicting crimes. This is because despite being illegal there is substantial public disagreement about the magnitude of their seriousness because the powerful have not labelled them to be as heinous as consensus crimes (Little & McGivern, 2012). Besides, it is difficult to prosecute crimes committed by the powerful because they often use their positions and wealth to secure top-notch legal experts who advise them on how to bend and manoeuvre around the laws. The deviances and crimes committed by the powerful are referred to as white-collar crimes, a term popularized by Edward Sutherland.

According to Matsueda and Grigoeyeva (2014), in the modern industrial societies, the context of the criminalisation process to a great extent is a product of a political process which is controlled to the powerful. The powerful have a significant influence on the criminal laws as legislators as well as often have the power to influence the legislators and law enforcers to act in their favour. To a great extent, crime is rooted in political-economic inequality because inequality affects the social control and definition of what should be termed as criminal behaviour. Newburn; Little and McGivern point out that this can be understood through the lens of symbolic interactionism theories such as labelling theory (Little & McGivern, 2012; Newburn, 2017).

Newburn notes that according to the positivist criminology, crimes are unproblematically but become so when described as such by society. Thus, the definition of crimes shifts from nature of the deviances to the contexts under which people commit crimes such as a particular society (Newburn, 2017). Little and McGivern state that symbolic interactionism theorists seek to explain the social reaction to crime by defining behaviours that are conventional or deviant (Little & McGivern, 2012). Social groups based on authorities they possess criminalise certain behaviours by making an enforceable rule so as to exclude some people they consider as outsiders. Hence deviance is not a matter of inherent social qualities in individuals but rather a product of social interactions between various social groups in respect to what they define as wrong or right.

Although many of us are prone to occasionally breaking laws, very few people dare to consider themselves as criminal or deviant (Little & McGivern, 2012). More often than not, those individuals who term consider themselves as deviant only but gradually do so because of being labelled as “deviant” the society. Therefore, the labelling theory explains the attribution of certain behaviours as deviant by social groups. The labelling process results in primary and secondary deviance; primary deviances infer to the violation of laws that do not translate to long-term implications on the self-image of individuals to pint they can limit their interactions with others. On the other hand, secondary deviance refers to the transition of primary deviance into extreme cases where the self-image and behaviours of individual changes after being labelled by members of the society (Little & McGivern, 2012; Newburn, 2017). Labelling theory has been the ground under which the powerful have used political-economic inequality to discredit crimes committed by members belonging to the high social classes at the expense of the crime committed by the marginalised.

Conflict theory justifies the disparity in crime brought about by the labelling theory. The conflict theory states that due to social inequality, racial and class differences, the powerful often use their power to influence criminal justice (Newburn, 2017). Bystrova and Gottschalk (2015) posit that

the conflict theorists believe that labelling of crime is not only a matter of the inequalities of wealth but also the influence of those in political power by the wealthiest who control large corporations, commercial, and financial institutions (Bystrova & Gottschalk, 2015, p. 4). Crime is fuelled based on a system of domination grounded on socio-economic inequality and power differences. Jones points out that due to power and social differences, the creation of criminal offences is often a product of the pressure from the powerful whenever they deem see their interests threatened (Jones, 2013). When it comes to the crimes committed by the powerful, they ensure that the law is as lenient as possible to them.

White-Collar Crimes

White-collar crimes can be considered in terms of crimes committed by individuals in high-status positions; secondly, on behalf of an organisation regardless of the political or socioeconomic status of the person; and thirdly, committed against organisms. Newburn wonders aloud why are white-collar crimes and related crimes such as corporate crimes received little attention by criminal justice enforcers, penalties for the offenders being to be relatively low and why the topic remains skewed addressed in the mainstream of criminology (Newburn, 2017).

Newburn identified the theft at work, fraud, corruption, employment offences, consumer offences, food offences, environmental crime, and state-corporate crime as some of the critical corporate crimes (Newburn, 2017). Theft of work refers to minor small-scale employee deviances and 'fiddling' which can extend to large-scale embezzlement cases. These include offences such as claiming of false refunds, direct stealing of the company, overcharging of customers, and exaggeration of bills among others. Newburn (2017) indicates that in 1999, the British retail consortium reported that over £350 million were lost through theft by staff. Fraud is the most prevalent white-collar crimes in the current century which include benefit fraud on social securities; charity fraud such donations to fictitious charities; cheque frauds; consumer fraud such as scams; data-compromise frauds; insurance frauds; lending

frauds; tax frauds and procurement fraud among others.

Cliff and Desilets indicate that in 2012, a report by Javelin Strategy and Research found out that identity theft increased by 12.6% in 2012 translating to about 11.6 million American having been victims of identity theft (Cliff & Desilets, 2014). The theft amounted to about \$18 billion where only 35% of the victims reported the thefts. Cliff and Wall-Parker report that in 2014, it is estimated that about 10% (\$98 million) of the Medicaid and Medicare annual budget was embezzled while over \$272 billion is lost in insurance fraud across the U.S. health sector (Cliff & Wall-Parker, 2017). Cliff and Wall-Parker report that in 2015, the Federal Trade Commission received 3,083,379 fraud-related consumer complaints, an 850% increase compared to the reports in 2001. In references to benefit fraud, Cliff and Wall-Parker indicate that the pension and social security sector for the elderly is the most vulnerable to white-collar crimes. In 2015, it was estimated that elderly Americans loss over \$36.48 billion annually in benefit fraud (Cliff & Wall-Parker, 2017). Based on this statistic among others, white-collar crimes ought to receive increased attention as they account for over 90% of the financial losses incurred by the society and further increase the gap between the rich and poor.

Little and McGivern note that in the 1990s, the value of street crimes in the United States was approximately 5% of the total value white-collar crimes or "suite crime" and corporate crime (Little & McGivern, 2012). In Canada, the value of property crime was reported to be worth \$5.8 billion compared to \$116 billion in costs of corporate crimes in 2008. In addition, \$170 billion is estimated by Canadian for Tax Fairness in 2013 to be concealed in untaxable offshore tax havens which robs Canada over \$7.8 billion tax revenues (Little & McGivern, 2012). In 2015, it was estimated about 36% of the business and 25% of the household were victims of at least one while-collar crime compared to 1.1% and 8% prevalence of violent and traditional property crimes respectively (Cliff & Wall-Parker, 2017; Little & McGivern, 2012). Little and McGivern notes that in every white-collar crime, the victims lose at least \$5 million (Little & McGivern, 2012). Compared to

traditional crimes, white-collar crimes are more injurious to society; however, most remain under punished and unpunished compared to violent and traditional crimes (Galvin, Loughran, Simpson, & Cohen, 2018). This ensues contentious debates because, in reality, the white-collar crimes ought to be more prioritised as compared to traditional crimes.

Zachary points out that criminal offences committed by the politically and socio-economically powerful account for the most significant financial implications ever witnessed in the history of the United States (Zachary, 2016). The USA economy losses an estimate of \$250 billion to \$1 trillion annually in terms of economic damage compared to about \$14 billion incurred by the blue-collar (traditional) crimes. The most perturbing fact is the rate at which the white-collar crimes remain unnoticed and underpunished (Galvin et al., 2018). Michel, Cochran, and Heide joined other scholars to point out that even though the grave financial consequences and injuries witnessed from white-collar crimes overshadow the impacts of street crimes, the efforts directed to punishing and managing street crimes overwhelm those directed towards fighting of the white-collar crimes (Michel, Cochran, & Heide, 2016).

Corporate Crimes

More often than note, corporate crimes are used interchangeably with white-collar crimes. However, Newburn distinguished the two stating that the former constitutes of offences committed by business or corporations while the latter by individuals within or outside corporations (Newburn, 2017). When a chief executive officer embezzles money from a business, it would be referred as a white crime, but when the organisation at large is involved in steals from the customers, then it is termed as corporate crime. Ponzi schemes created by the organisation to directly defraud money from investors are increasingly reported across American and globally (Matsueda & Grigoryeva, 2014; Van Herwaarden, 2016). Toxic emission and dumping are some of the commonly reported corporate crimes which impact on the health of the society.

Tombs; Levi and Lord indicates that corporate crimes remain limitedly address just like white-

collar crimes (Michael & Nicholas Lord, 2017; Stephen Tombs, 2009). However, white-collar crimes are relatively more popularised through financial crimes such as money laundering, fraud and bribery which have been relatively explored compared to crime directly committed by corporations (Jones, 2013; Steve & David, 2010; Van Herwaarden, 2016). Tombs indicate that crimes such as selling of counterfeit and unfit products, illegal marketing practices, conspiracies to fix prices and shaping of market shares as well as the selling poisoning of foods and environmental pollution are marginally addressed in the mainstream of criminology (Tombs, 2009). For instance, a study by Michel, Cochran and Heide found out 66.7% of the respondents believed that many people are prone to dying from toxic dumping, 38.2% due to medical malpractice compared to criminal homicides, 69.1% from human trafficking (Michel et al., 2016). Michel, Cochran and Heide attribute the lack of public knowledge towards the constitutes of white-collar, and corporate crimes limit the social aggressiveness towards fighting the crimes. In addition, a study by Zachary vindicated that 62.9% of the surveyed respondents indicate that blue-collar offenders are highly likely to be arrested and sentenced with harsher penalties (66.6%) while 65.4% believed that violent criminals ought to receive higher punishment than white-collar offers (Zachary, 2016). This may be attributed to the *mala in se* nature of blue-collar crimes as supported by consensus theory as well as primary and secondary deviances. The white-collar crimes are perceived as primary deviances despite their tremendous implications while blue-collar as secondary because the perception of the society is inherently anchored on the belief that they ought to receive higher punishment for deterrence purposes.

However, critically, white-collar offenders are supposed to receive even higher and harsher penalties. Cliff and Desilets indicate that for example, in 2011, the U.S. government seized counterfeit products worth \$178 million a 5% and 35% decrease from 2010 and 2008 respectively (Cliff & Desilets, 2014). There was a 44% increase in seizures of products considered to be harmful to human safety and technology in 2011. Cliff and Desilets note just like any other counterfeit products; the pharmaceutical sector has been in the

limelight due to the selling of poor-quality drugs, faking clinical drug trials, deceptive marketing high-risk drugs and conspiracies to fix prices and sell more drugs for profit maximisation (Cliff & Desilets, 2014). An estimate of 38% of all online pharmacies in the U.S. sells authentic medications. The opioid crisis in the United States is an evident manifestation of corporate crime. Hedegaard, Minino, and Warner point out that the opioid crisis has been contributed by the over prioritizing of profits over public health by pharmaceutical companies by engaging in the deceptive promotion of opioids for long term pain management and conspiring with physicians to prescribe higher doses of opioids for financial rewards (Warner, Trinidad, Bastian, Miniño, & Hedegaard, 2016).

In 2017, 70,237 cases of drug overdose-related deaths were reported in the U.S. Very few of the pharmaceutical companies have been held responsible for their contribution to the opioid crisis and drug overdose-related death. Many continue to operate freely continuing with their endeavours to supply the market with unhealthy drugs. By definition of crimes, the companies commit a criminal offence but because of their close linkages with the politically powerful they use their overflowing profits to hire legal experts that help them manoeuvre around the law as well bribe the government and interest organisations as well as judges to rule in their favour hence evade the law. According to the Lancet Editorial, United States spend over \$115 billion in treatment and management of opioid crisis compared to about \$3.6 trillion spent on treatment of 12 million men and 36 million women have experienced intimate partner violence (CDC, 2018; The Lancet Editorial, 2018, p. 713). Compared to opioid affecting about 11.2% of the U.S. population (LeoDasgupta, Nabarun, & Ciccar, 2018), costs of intimate partner violence are much lesser. However, the blue-collar offenders such as the intimate violent partners are more likely to be arrested and convicted compared to the white-collar offenders such as pharmaceutical companies. The prevalence and continued leniency on the crimes committed by the powerful require to be handled with great urgency; however, they will continue to plunder the nations into overwhelming political, socio-economic, health and environmental collapse or strenuousness.

CONCLUSION

As alluded earlier, conflicting and consensus theories, symbolic interactionism theory as well as labelling theory and social control explain why the blue-collar crimes are prioritised as opposed to white-collar and corporate crimes. The prevalence of white-collar crimes can be described using the anomie and strain theory. Newburn; Little and McGivern states that anomie or normlessness theory coined by Émile Durkheim assumes that whenever there are insufficient or ineffective norms to limit the desires of individuals, there is a higher chance of people engaging in the illegal activities. As opposed to blue-collar crimes that are consensus in terms of many societies have a relatively unanimous view about them, most of the white-collar crimes lack coherent norms to limit the behaviours of the offenders. For instance, a study by Zachary found out that respondents believed that violent crime offenders should receive harsher penalties than white-collar crimes. This insinuates that a violent robber of \$1,000 should serve longer jail time compared to a white-collar offender stealing the same amount. In this case, blue-collar crime is a *mala in se* and *mala prohibita* as opposed to crimes by the powerful. The society reacts to white-collar crimes with leniency hence promoting the perpetration of the crimes. Because of lack of sufficient normlessness in defining the white-collar crimes, most remain unpunished, unnoticed and underpunished contrary to the blue-collar crimes that the society acknowledges. Therefore, lack of coherent regulation, public awareness and punishment of the white crime offender aggravates the biased focus on offences of the powerless in the mainstream of criminology.

On the other hand, the strain theory as explained by Little and McGivern assumes that socially acceptable goals significantly influence the ability of an individual to deviate or conform to laws and rules. For instance, financial success is a socially acceptable goal hence an incentive for everyone to strive to achieve it. However, due to socio-economic inequalities, many people are prone to engage in deviant behaviours to achieve their goals due to a strain created for financial success. Little and McGivern indicate that due to pressure, the powerful often rebel by creating their own goals to replace the society's goals. Being in the positions

of power characterised by an immense desire to maintain the status, the powerful are incentivised to use illegal means to protect their interests. The powerful often do so and remain unnoticed as the law defends them; when the powerless try the same they end up committing blue-collar crimes intolerable by the society; however, the atrocities by the power ought to be coherently captured by the mainstream of criminology. Crimes of the powerful result in the most devastating impacts ever experienced by the societies stemming from socio-economic to environment injustices when compared to the crimes of the powerless.

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