

CJ 406 / Fall 2008

Introduction to:

Weisburd, D., S. Wheeler, E. Waring, and N. Bode. 1991. *Crimes of the Middle Classes: White-Collar Offenders in the Federal Courts*. New Haven: Yale University Press.

Introductory thoughts

Steve Earle is a rock/country musician who has been around for over 3 decades, served serious prison time, done serious drugs, and won at least two “Grammy” awards, and played an ex-addict Narcotics Anonymous group leader in “the Wire.” His song Amerika v. 6.0 was the track playing over the credits in John Sayles’ eco crime-politico thriller “Silver City.” In the lyrics to the song, do you see a connection between what the taxpayers are doing and what the HMOs are doing? (Lyrics at end)

Authors’ focus

The approach taken here is: let’s select some white collar crime categories, and then let’s use information about Federal court cases in these categories to describe who these people are, the variation in what they did, and the factors driving the variation in what they did.

The key outcome feature of interest is the amount of harm resulting from the crime in question. You want to pay close attention to how they operationalize this outcome.

How to approach

As you read a book like this, which is empirical with a lot of quantitative variables and a lot of data, you want to pay close attention to the correspondence between concepts and indicators, the specifics of operationalization. For more detail see the chapter from my 1994 research methods book, posted with readings on Bb site. You want to be sure you understand what operationalization does, and how you judge if it is successful or not.

Ask yourself: Do the variables that are being used capture the ideas the authors are telling you they capture?

You also want to be thinking about the implications of their data collection strategies. Corporations were left out, like Hooker Chemical which brought you Love Canal, and Beatrice foods which brought you “A Civil Action.”¹ Can you see how the data collection strategy might have made it more or less likely for them to find certain patterns?

To help you think about what they have done here, imagine the following: If you were going to do a study of Part I violent crimes, and you sampled crimes so that they were representative of all Part I violent crimes, what would your most frequent crimes be? How many murderers would be in your sample? How many serial murderers?

Come back to this question after you have their main findings in focus.

¹ Harr, J. 1996. *A Civil action*. New York: Random House.

Researchers' agendas

There are several agendas here, and you want to be alert to them.

A.

The authors are trying to take into account two huge shifts in society since Sutherland first drew our attention to white collar criminals: **changes in the social class distribution** across U.S. society, and the increasing volume of and changing nature of white collar work for many.

As you read think carefully about the consequences he is describing for each of these. Stated differently, they are making a case that the distribution of white collar criminals across different levels of society, and the nature of the what white collar criminals do, and how they do it, all link to the current structure of social class and the current nature of work. Do you agree or disagree with this explanation of their findings?

B.

Related to the second change, the changing structure of how we do work, the idea of **organizational complexity** is key. Be sure you understand why this is more important now than it was when Sutherland was first writing, and how the researchers capture it. Does their operationalization capture the complexity of what they are doing? Do you agree with their historical frame?

C.

Another matter has to do with how they define white collar crime (WCC). They argue that it must be defined in terms of incidents which could receive a criminal sanction.

Here is the relevant background. When an individual or a corporation does something that breaks a rule – notice I did not say a law – they could be charged with regulatory or administrative or criminal sanctions. An example of a regulatory sanction would be losing a permit to discharge x amount of y type of toxic discharge. If my company violates the discharge permit by discharging too much, then I could lose my permit to discharge altogether. An administrative sanction would be being required to pay a certain fine for the violation. A criminal sanction of course involves being required to serve jail/prison time, but also can include fines.

They are arguing that if the behavior in question would result only in a regulatory or administrative sanction, and not a criminal sanction, then the behavior itself is not a white collar crime.

Although this is understandable and in line with a strictly legal perspective on crime, here is where it creates issues.

In the case of street crime, everyone will always agree at all times that burglary and homicide are crimes. But in the case of white collar crimes, people may not always agree at all times that certain actions are criminal. Public attitudes may shift over time. Dumping of toxic chemicals into a landfill that eventually became a school playground may not have seemed criminal in the 1950s, but people may feel differently about it in the 1970s when people start getting sick.

In the late 1980s and early 1990s with environmental crimes policy makers hoping to strengthen deterrence pushed for expanded criminalization.² State Attorney Generals sought penalty changes and started prosecuting environmental crimes much more vigorously in some states. For a while New Jersey even had a state Environmental Prosecutor, Steve Madonna.

If you use the criminal penalty/no criminal penalty cut point as part of your definition, then something that was not a crime one day but was a crime the next the next when jail time became a possible sanction with changes in sentencing laws.

Hopefully you can see how this creates challenges in defining WCC.

Understanding harm

Relatedly, what kinds of factors make people think the actions are deserving of serious criminal sanctions, like prison time?³ There are some very thorny issues here.

Think about the following:

- in street crimes the harm is usually immediately evident. In various WCCs there can sometimes be delays between the action and the evident harm. Sometimes the lag can be lengthy – years or decades.
- The question of *mens rea* can be clouded. Suppose there is a malfunction at the plant and there is an unexpected discharge of toxic materials into the river resulting in a significant fish kill?⁴ Is this a crime?
- Much WCC is corporate crime, conducted in the course of doing business. Businesses provides a “corporate shield.” If an individual commits a crime in the course of corporate operations, there are certain conditions under which the individual is not liable for criminal conduct. The business operation creates a shield between the individual and the liability arising from his/her conduct.

If criminal penalties are supposed to be proportional to

- a) the amount of harm that has taken place and
- b) the guilt of the offender, either through mens rea or recklessness/negligence

how do we put white collar crimes and street crimes on the same yardstick?

² Celebrezze, A. J., Jr., E. D. Muchnicki, J. M. Marous, and M. K. Jenkins-Smith. 1990. "Criminal enforcement of state environmental laws: The Ohio solution." *Harvard Environmental Law Review* 14:217-251.

³ Taylor, R. B., and Mason, R. (2002) Responses to prison for environmental criminals: Impacts of incident, perpetrator and respondent characteristics. *Environment and Behavior* 34 194-216.

⁴ For insight into how regulators view such actions, and the kinds of things they take into account to decide on questions of criminal intent and/or reckless behavior, see: Hawkins, K. (1984). *Environment and enforcement: Regulation and the social definition of pollution*. New York: Oxford University Press.

Their model

Sutherland argued that the high socioeconomic status (SES) of white collar criminals was key. Weisburd et al. want us to get a better handle on how the effects of SES link to greater harm associated with the crime – if they do.

The researchers are presenting a mediating model to help explain how offender variables link to outcomes like degree of harm. In short:

$$X \rightarrow M \rightarrow Y$$

Where

X = offender SES

M = some mediating characteristic

Y = outcome (amount of harm)

You want to understand how mediated relationships work, and how they are different from both direct relationships and moderated relationships.⁵

Pay close attention to how Weisburd et al. model the impacts of status of the offender on outcomes. This is their attempt to follow up and revise Sutherland's suggestion that lots of WCC is committed by very high status individuals.⁶

⁵ Baron, R. M. and D. A. Kenny. 1986. "The moderator-mediator variable distinction in social psychological research: Conceptual, strategic and statistical considerations." *Journal of Personality and Social Psychology* 51:1173-1182.

⁶ Sutherland, E. H. (1940). White-collar criminality. *American Sociological Review*, 5(1), 1-12.

Artist: Steve Earle

Track: Amerika v. 6.0 (It's the best we can do)

Album: Jerusalem (2002)

Look at ya
Yeah, take a look in the mirror now tell me what you see
Another satisfied customer in the front of
the line for the American dream
I remember when we was both out on the boulevard
Talkin' revolution and singin' the blues
Nowadays it's letters to the editor
and cheatin' on our taxes
Is the best that we can do
Come on

Look around
There's doctors down on Wall Street
Sharpenin' their scalpels and tryin' to cut a deal
Meanwhile, back at the hospital
We got accountants playin' God and countin' out the pills
Yeah, I know, that sucks – that your HMO
Ain't doin' what you thought it would do
But everybody's gotta die sometime
and we can't save everybody
It's the best that we can do

Four score and a hundred and fifty years ago
Our forefathers made us equal as long as we can pay
Yeah, well maybe that wasn't exactly what they was thinkin'
Version six-point-oh of the American way
But hey we can just build a great
wall around the country club
To keep the riff-raff out until the slump is through
Yeah, I realize that ain't exactly democratic,
but it's either them or us and
And it's the best we can do

Yeah, passionately conservative
It's the best we can do

Conservatively passionate
It's the best we can do

Meanwhile, still thinkin'

Hey, let's wage a war on drugs
It's the best we can do
Well, I don't know about you, but I kinda
dig this global warming thing...