

REVIEWS

WHITE COLLAR CRIME. By Edwin H. Sutherland. New York: The Dryden Press, 1949. Pp. x, 272. \$3.00.

IN this study of "white collar crime" Professor Sutherland carries forward his researches into that rich, but largely unexplored, field—violation of law in the American business community. Professor Sutherland, as in his previous work, defines "white collar crime" as "crime committed by a person of respectability and high social status in the course of his occupation." Within this category he includes not only violations of law punishable by criminal process but also violations subject to other forms of restraint, including statutory injunction, cease and desist orders, civil damages, forfeiture and the like. Although increasing attention has been given to white collar crime in the past few years, largely due to the efforts of Professor Sutherland himself, this is the first systematic inquiry into that vital area of criminal law.¹

The picture which emerges is not a pretty one. It will come as a profound shock to those who accept uncritically the popular notion of the American business man as a paragon of social virtue and the pillar of society. Professor Sutherland writes in a mild semi-detached manner, from the viewpoint of an observing scientist. But he does not hesitate to call a crime a crime. Nor does he shrink from pressing the analogy between white collar crime and conventional crime. Some feeling of the atmosphere of the book may be gleaned from Professor Sutherland's remark, after noting that a group of large corporations had an average of four criminal convictions each: "In many states persons with four convictions are defined as 'habitual criminals.'"

Professor Sutherland's study has two main objectives. One is to depict the prevalence of white collar crime in the business community; the other is to "present some hypotheses that may explain all criminal behavior, both white collar and other." In the first of these tasks the book is reasonably successful; in the second, as Professor Sutherland is the first to admit, his efforts fall somewhat short of the mark. With a number of other issues—issues that stand forth sharply as a result of the data brought together in the study—Professor Sutherland unfortunately does not deal.

So far as concerns the prevalence of white collar crime the book is built primarily around an analysis of the records of America's 70 largest manufacturing, mining and mercantile corporations. The data is assembled from the public records of adverse decisions against these 70 corporations by the courts and the various law enforcing agencies. These decisions include violation of

1. Professor Sutherland's book includes the substance of his own previous articles in the field. For treatment of the subject by others see BARNES & TEETERS, *NEW HORIZONS IN CRIMINOLOGY* Part I (1943); MANNHEIM, *CRIMINAL JUSTICE AND SOCIAL RECONSTRUCTION* cc. 6-9 (1946); Ploscowe, *Crime in a Competitive Society*, 217 *ANNALS* 105 (1941). See also ARNOLD, *THE FOLKLORE OF CAPITALISM* (1937).

laws pertaining to restraints of trade; rebates; infringement of patents, trademarks and copyrights; misrepresentation in advertising; unfair labor practices and certain other labor matters; financial fraud and violation of trust; war regulations; and a few miscellaneous matters. The time span ranges from 1900 (or the subsequent origin of the corporation) to 1944, with 60% of the decisions occurring in the last decade of that period, that is from 1935 to 1944.

Professor Sutherland's findings are spectacular. He has discovered a total of 980 adverse decisions against the 70 corporations, of which 583 were rendered by courts (158 in criminal prosecutions) and 397 by administrative agencies. Of the 980 decisions Professor Sutherland excludes 201 cases of patent and trademark violation as not constituting strictly "evidence of criminal behavior," although about half of these "involved wilful appropriation of the property of others and might have resulted in penalties under state or federal laws if the injured parties had approached the behavior from the point of view of crime." This leaves 779 cases of "criminal behavior." With the exception of 11 settlements submitted to the courts for approval the figures do not include "hundreds of other cases" in which settlements were reached without court proceedings. The significance of the data is greatly enhanced by the well-known fact that, in the enforcement of any law, only a small fraction of the total number of cases ever reach the final stage of formal decision. Professor Sutherland further finds that of the 70 corporations, 30 were "either illegal in their origin or began illegal activities immediately after their origin" and that 8 others were "probably illegal in origin or in initial policies."

After giving this overall view of the crimes of his 70 corporations Professor Sutherland proceeds, chapter by chapter, to examine the records of the corporations in each sector of law enforcement mentioned above. These chapters are in part a further analysis of the statistics of adverse decisions and in part a running account of the nature of the violations. The specific findings confirm and illuminate the general picture. In the anti-trust field, for instance, Professor Sutherland states that 60 of the 70 corporations have been violators; that 73 per cent of these 60 corporations are recidivists, averaging 5.1 adverse decisions each; that "at least 48 of the 60 large corporations engaged in illegal restraint of trade almost continuously from their organization to the end of 1944"; that "probably" all of the 10 remaining corporations "have violated the anti-trust laws." In other sectors Professor Sutherland finds that 72 per cent of his 70 corporations have records of infringement of patents; that 60 per cent of the corporations which engage in advertising for sales purposes have adverse decisions from the Federal Trade Commission for misrepresentation in advertising, with an average of 3.5 decisions per corporation; that 62 per cent of the corporations have been found by formal decisions to have engaged in unfair labor practices in violation of the National Labor Relations Act, averaging 3.4 violations. And so on. For good measure Professor Sutherland adds a chapter on white collar crime by 15 public utilities, a form of enterprise not included in his main group of 70 corporations.

From this analysis Professor Sutherland reaches certain conclusions. He finds that "these crimes are not discreet and inadvertent violations of technical regulations" but "are deliberate and have a relatively consistent unity"; that "the criminality of the corporations, like that of professional thieves, is persistent: a large proportion of the offenders are recidivists"; that "the illegal behavior is much more extensive than the prosecutions and complaints indicate"; that "the businessman who violates the laws which are designed to regulate business does not customarily lose status among his business associates"; that "businessmen customarily feel and express contempt for law, for government, and for government personnel"; and that "white collar crimes are not only deliberate" but "are also organized."

Are these conclusions justified on the basis of the data Professor Sutherland presents? Certain limitations in the method and certain defects in the content of the book must be stated.

In the first place, and perhaps most significant, the bulk of the data is quantitative rather than qualitative. The 70 largest corporations are gigantic, rambling enterprises. They are subject to hundreds of statutes and thousands of administrative regulations. They have tens of thousands of employees, not all of whom can be kept under perfect control. Consequently it would not be surprising if these large corporations ran afoul of the law with a fair degree of frequency. It becomes important, therefore, to ascertain not only the existence of the violation but its character and significance in the whole operation of the corporation and in the enforcement of the law. Professor Sutherland does make some effort to show this, but the showing is mostly by way of illustration. A qualitative analysis would certainly impose an arduous burden, but more data of this nature would seem to be required before the picture can be complete.

Secondly, the book is marred by certain unfortunate errors of fact. In discussing the labor laws, for instance, Professor Sutherland mistakenly asserts that in 1932 the Norris-LaGuardia Act made collective bargaining obligatory upon the railways (the obligation was imposed by the Railway Labor Act of 1926); that during World War I collective bargaining was made mandatory under the "War Labor Act" (there was no such statute; the only obligation arose out of a Presidential proclamation); that the National Labor Relations Act was declared constitutional by the Supreme Court in 1936 (the correct date is April 12, 1937); that in 1937 Congress expanded the scope of the National Labor Relations Act (the NLRA was not amended until passage of the Taft-Hartley Act in 1947). Such errors naturally raise some doubts concerning the accuracy of the author's statements not subject to verification from extrinsic sources.

Thirdly, there are signs that Professor Sutherland does not at times fully appreciate some of the realities of law enforcement. For instance, he is consistently critical of the use of non-criminal sanctions against corporations, attributing this to the softness of legislators and administrators and to their

unwillingness to attach the stigma of crime to white collar offenses. To a certain extent Professor Sutherland is right. But it is also true that in many situations the criminal sanction is far too cumbersome for practical use and that effective enforcement requires additional and more flexible measures.

Again, by confining his study almost entirely to the 70 corporations Professor Sutherland neglects considerable material which would throw important light upon his problems. The accumulated experience of the National Labor Relations Board, the administrator of the Fair Labor Standards Act, the Office of Price Administration, the War Production Board, and a number of others would be of immense value.

Despite these shortcomings, however, Professor Sutherland presents a powerful case, certainly one that cannot readily be brushed aside. Moreover, his findings with respect to the prevalence of white collar crime conform to my own experience both at the National Labor Relations Board and at the Office of Price Administration. To give but one example: On the day when sugar rationing went into operation all business consumers of sugar were required to file with OPA a statement of their current inventories; future allocations were to take into account existing supplies. The same day OPA enforcement agents made a check of the actual inventories of a large sample of hotels, restaurants, and other consumers in a number of cities. The number of enterprises which had underestimated their inventories, in spite of the patriotic pressures of war, came as a shock and a revelation of the difficulties to come in OPA enforcement. The percentage of misrepresentation ran as high as 85 per cent in some cities and nowhere was lower than 35 per cent.

From experiences of this sort, as well as from the data presented by Professor Sutherland, I would conclude that the problem of white collar crime is, generally speaking, of the order of magnitude that Professor Sutherland depicts. In bringing this situation out into the open his book represents a contribution of first-rate importance.

Turning to the other phase of Professor Sutherland's study—the "theory of white collar crime"—the author's thesis is that "white collar crime has its genesis in the same general process as other criminal behavior, namely, differential association." And he goes on to say, "The hypothesis of differential association is that criminal behavior is learned in association with those who define such behavior favorably and in isolation from those who define it unfavorably, and that a person in an appropriate situation engages in such criminal behavior if, and only if, the weight of the favorable definitions exceeds the weight of the unfavorable definitions." Professor Sutherland realizes that this hypothesis is "not a complete or universal explanation of white collar crime or other crime," but he believes the theory "fits the data of both types of crime better than any other general hypothesis."

In developing this thesis Professor Sutherland makes some pointed observations. His emphasis upon the influence of the mores of the business community and upon the effect of competitive business relations seems well taken. So do his views upon the isolation of businessmen from criticism in the public

agencies of communication and upon the "less critical attitude of government toward businessmen than toward persons of lower socio-economic status." His brief discussion of the impact of "social disorganization," which he attributes to the growing complexity of business behavior, the rapid change in business practices, and the absence of effective government and public opposition to white collar crime, is also suggestive. On the other hand his dismissal of the "psychological characteristics" of white collar offenders as even a partial explanation of white collar crime seems to me to ignore the process of natural selection which brings to the top of the business community individuals possessing certain types of personality structure.

In any event, as Professor Sutherland readily concedes, his explanation of the extent of white collar crime barely scratches the surface. Much deeper probing into the structure of our economy, into the nature of our governmental process, into the character structure of business executives, and into the whole area of public opinion would be necessary before full insight into the problem can be achieved.

Professor Sutherland's book leaves many questions unanswered. His data on the prevalence of white collar crime shake the very foundations of our whole system of reformed and regulated capitalism. Is it possible, under the conditions that Professor Sutherland outlines, to make such a system work at all? The answer depends upon a far more exhaustive study of the administration and enforcement of economic regulation—a problem that has been shamefully neglected. We need to know much more about how far our economic regulations have been able to accomplish their purposes; which ones have been tolerably effective and which not, and why; what techniques are available for improving their effectiveness—techniques of drafting statutes and regulations, of making investigations, of getting the most out of investigating and prosecuting staffs, of the use of various sanctions, of the role of publicity.² We need to know also the possibilities of other methods for achieving compliance—such as public information and education—and the role of political factors. At present we do not have even a single study of the current operations of that most antiquated of all our governmental institutions, the Federal Department of Justice.

Professor Sutherland's survey poses a crucial problem for American democracy. It deserves the most careful and thoughtful consideration. It is to be hoped that many others will explore the paths he has opened.

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2. See, e.g., for a valuable study of the use of the statutory injunction in the enforcement process, Comment, *The Statutory Injunction as an Enforcement Weapon of Federal Agencies*, 57 *YALE L.J.* 1023 (1948).

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