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White Collar Crime

Artur Victoria

Forewords

Ricardo Salgado detained under the Monte Branco operation. It was these titles that appeared on July 24, 2014 in national newspapers. The largest banker holding one of the largest fortunes in Portugal was being indicted for committing financial crimes to astronomical and unthinkable values.

Without entering this story started to be public in 2014 and whose final judgment will take beyond 2030 to make an analysis of the components of white-collar crime is desirable, based on this study case.

The possibility of manipulation of the instances of control by the criminals of high social status, due to their influence in the elaboration of the laws, in the capacity to pay the best lawyers and in the empathy of the law enforcers to people from the same social environment, besides the difficulties in highlighting the abuses of trust and determining the culpability of the agents, the subtlety of victimization and the problems involved in obtaining of the evidence. The ineffectiveness of the process and the sanctions criminals are primarily responsible for the diverse treatment of white-collar criminals.

The fact that such agents, when convicted, are more likely to be released freely - whether through the imposition of substitution sentences or because of the specific ways in which the sentence is executed - is justified by circumstances unrelated to a treatment privileged: the frequent absence of previous convictions and the fact that there is no need for re-socialization make imprisonment less necessary.

The definition of Sutherland - which restricts white-collar crime to infringements committed by persons of high social status and respectability in the exercise of their profession - is usually accused of theoretical sterility and, taking into account only the behaviour of the powerful in the exercise of their professions, to ignore a series of materially similar conduct.

The idea of discrimination brings unequal treatment to similar situations. Those who characterize white-collar crime from the inherent specificity of the offense itself, and not from the agent, will hardly argue that there is a choice of criminal justice in comparison to common crimes, since this would represent a claim of equal treatment for materially different realities.

However, it should not be denied that criminal statistics show a high incidence of crime in the poor strata and a small incidence in the economically higher classes. Sutherland considers such data distorted, a fact that is due to the political and financial power of

people from the upper social strata, who get rid of prison and the outcome happens in extra penal instances rather than criminal courts, in addition to be exercised by their peers.

With odd cunning, natural exploitation of the victims' good faith and fascinating presentation, the white-collar criminal has the ability to present himself "in the robes of the lawfulness - 'business man' - provided that it is a kind of criminal mimetically, 'legal business'

It should be noted, for example, that many of the "white collar" crimes, in addition to requiring, for their perpetration, accentuated organizational planning, tend to rise to levels of damage and perversity infinitely higher than those found in common delinquency, with iniquity residing in all the legal and jurisprudential conception, which, disregarding the social diffusion of the damage resulting from the mediate effects of this category of economic criminal offenses, tends to compare them, for the purpose of receiving benefits, to conventional crimes such as stealing, in light of another hypothetical, seditious common factor, usually portrayed in the cliché expression "nonviolent crimes."

More serious than this circumstantial comparison, however, is the finding of a privileged legal and judicial treatment historically conferred - with exceptions that only confirm the rule - to economic delinquency.

Because white-collar crime possesses peculiar traits, which gives it some exclusivity, scholars consider it a specific category of offenses.

Some characteristics become evident when compared to common criminality. Certainly, some trait may be common to both, such as the fact that both are aimed at the asset advantage over others.

White-collar criminals, according to Sutherland, do not consider themselves criminals, but violators of the law. Often, they rejoice in their environment for the violations they practice.

This is one of the most dangerous facets of this type of crime, "in the face of a revealing tendency of an elite sub-culture, consisting in approving successful offenders, by the other members of that social group, into a true ethical degeneration."

Usually these delinquents show little guilt, their consciences identify with that of businessmen, seek success at any price. Obscured by the need for success, his fantasies of omnipotence and wealth surpass his judgment. On the basis of a structure of narcissistic character, a dichotomy develops between practical judgment and dreams of conquest.

Such traits are commonly identified in these criminals. The German doctrine of Mergen who outlined a psychogram, known as the "Mergen Psychogram", about this class of delinquents, thus identifying the following points:

- materialism: the white-collar delinquent only grants value to material goods, appreciating ideal values, intellectual or moral only as a means of enrichment. Like the drug addict, he

needs to constantly increase the dose of the drug. His psychological tension is liberated with greed, his psychology being in this sense similar to that of a gambler;

- Egocentrism and narcissism: his personality does not pass through the first stage of egocentrism, without development of his affectivity and without openness to rational life. His narcissism makes him feel measured and judged by others, sovereign and insensitive to criticism; dynamism and audacity: they are endowed with an extreme dynamism, characteristic of their primary character and their self-centred optimism, which prevents them from dosing risks. This vitality gives them easy persuasion;

- Intelligence: they are refined, perhaps intelligent, but rarely educated. His intelligence is directed to immediate success. They are not violent, but use their intelligence against what is necessary without inhibition;

- Dangerousness: in spite of being a superficial observer they have them as honourable citizens favoured by fate, the fact is that the combination of a strong criminal potentiality and a great adaptability makes them one of the most dangerous criminals. His dangerousness is accentuated by ignoring every ethical limit;

- Hypocrisy: his immorality contrasts with his social role as a patron and an encouraging man of great causes; neurosis: the profit mania causes serious deficiencies of affectivity that allows finding neurotics with difficulties of human communication and with a characteristic sexual behaviour of impotence;

- Lack of sense of guilt: compared to common crime, economic crime does not provoke social reaction, which explains why the author lacks guilty conscience.

Mergen's findings are based on personal research, judicial review, and analysis of psychotherapeutic treatments. Psychogram has been very criticized for their vagueness and imprecision, further argue, that it lacks a necessary substrate and an empirical verification that embosses it;

On the other hand, there is a preponderance of positivist pre-judgments and characteristic Neolombrosian characteristics.

Even with criticism, it is unanimous the fact described by Mergen's theory that the white-collar criminal has a high degree of intellectual preparedness and a manifest lack of social ethics and solidarity.

Motivated by an ambitious, individualistic feeling, coined by the unceasing pursuit of personal advantage, the illicit actions practiced by the white collar delinquent propitiate the privatization of profit and the socialization of prejudice, little if given if society is to absorb the deleterious effects of its action.

interesting observation is the fact that some of these criminals, ambiguous and paradoxical, now complain about the "presence" or "absence" of the State.

Their presence discomforts them when the state supervises them. State absence also discourages them; never, however, with regard to the social needs arising from the inaction of the State in the exercise of fundamental obligations towards less privileged citizens, but rather when in question the (non) implementation of policies that subsidize private business.

Sutherland, in his studies, presented another feature in such crimes: the issue that white-collar crime is a truly organized crime.

The organization around these infractions comes from a planning that expands tentacles on any order of factors related to it. Thus, since the strong power of influence over the legislative production, triggered by powerful lobbies acting with the respective power of State, there is an aggregation of economic corporations in the sense of planning the crime in such a way that the conduct, yes, an "air of lawfulness", in order that the illegality does not in any way appear.

This is the case, for example, in the practice of collusive practices, such as the price concert between competitors resulting from a cartel action, or, in the area of tax offenses, in establishing a chain of "perfect" accounting operations, even if without ballast in the factual world, propitiated by the conniving act of financial institutions.

This form of white collar crime has great effects on criminal law, especially as regards the materiality of crime. The judge's perspicacity is a determining factor, both in the progress of the criminal action and in its conclusion.

Nowadays, in the path of society and man, crime has evolved. Unlike what happens in relation to homicide, for example, a hypothesis in which even an illiterate can attest to it by simply stumbling on the corpse stretched to the ground, in the crimes of the "white collar" the examination of its materiality will require a interpretation that differs from that of ordinary crime.

Such complexity influences the law tending to regulate these crimes. He also warns that if such crimes are not properly understood, the resulting inaccuracy creates perplexity and uncertainty.

The criminal moved away from the violence itself to establish its bases in the fraud. Your lesson is as follows:

Instead of clandestinely, physical violence or intimidating threat, the agent uses the deception or uses it to let the victim inadvertently let himself be plundered. It is an evolved way of capturing others.

In modern times, fraud is the predominant feature of crimes against property. The violent thief, so common in other times, is presently a latecomer or sporadic phenomenon. The bursting lion has become a mattress fox... Violence leaves indiscreet or obvious signals, offers the danger of a victim's reaction, is scandalous and alarming. The fraud, by contrast, comes within the ring of Gyges. It is difficult to be identified by the victim, because he knows how to take the colour of truth, innocence and sweetness"

Another aspect to be taken into account is that the white-collar offender does not directly face the law, he deludes it; whereas the conventional delinquent does not have this ability to conceal. In addition, the technical complexity of the infraction neutralizes the social reaction.

Impunity and the privileged treatment granted to White Collar crime

"The law, with its majestic equality, forbids the rich as much as the poor sleeping under bridges, begging in the streets and stealing bread"

This topic begins with the quote by Anatole France, because of the dramatic and ironic way in which he refers to equality of law, since the Aristotelian maxim warns of the need to take into account - in order to achieve equality - measure of inequalities. Now, how rich will you sleep under the bridge, beg in the streets, or steal bread?

In the same sense: which poor will use the financial, tax, economic system, or their "privileged" situation to commit illicit acts?

This inequality of treatment, marked by a highly selective criminal justice system, led Alessandro Baratta to build his Theory of Minimal Criminal Intervention, since the system is directed almost exclusively against the popular classes and, in particular, against the weakest social groups, as evidenced by the composition of the prison population, although socially negative behaviours are distributed throughout all social strata and the most serious violations of human rights occur through the work of individuals belonging to the dominant groups or who state organizations or private, legal or illegal economic organizations.

This selectivity led Zaffaroni to affirm that the penal system, although the official legal discourse points to another meaning, "is directed almost always against certain people more than against certain actions."

The myth of equality is expressed in two propositions:

a) Criminal Law also protects all citizens from offenses caused to essential goods, to which all citizens have an equal interest;

b) criminal law is the same for all, that is, antisocial behaviour authors and violators of criminal penalties have the 'chance' to become subjects of the criminalization process, with the same consequences.

The propositions that summarize the results of the criticism are exactly opposite:

a) Criminal Law does not defend all and only the goods in which all citizens have equal interest, and when it penalizes the offenses of essential goods, it does so with unequal intensity and fragmentarily;

b) The criminal law is not equal for all, the status of criminals applies unequally to the subjects, regardless of the social damage of their actions and the seriousness of the infractions to the criminal law performed by them.

Criticism therefore addresses the myth of criminal law as an egalitarian right par excellence, and shows that criminal law is no less unequal than other branches of bourgeois law and that, contrary to what it appears, it is, on the contrary, right inequality par excellence.

There is also the García-Pablos syndrome of circumstances, which weighs on the economic crime, which makes its punishment practically impossible if compared to the conventional crime.

The image of the offender, in such cases, far from displaying the predicates that are only made related to the prison population - black, poor and prostitutes - is accompanied by an excellent business card.

The delinquent knows how to present himself and offer others a favourable image of himself, taking advantage of his prestige, his honour and his influence.

-Impunity for such crimes.

In addition to the ones presented above, but to somehow relatable, GarcíaPablos refers to three others, which he calls:

a) Neutralization techniques;

b) Insufficient material and procedural legislation; and

c) Lack of determined political will on the part of the public authorities to prevent, control and punish such criminal practices.

Techniques of neutralization, according to the author, are the set of strategies used by the "trainers" of public opinion and the powerful mass media aimed at hiding, concealing or excusing certain behaviours harmful to society, in a subtle and sophisticated way, usually

through the manipulation of the image or the language. Focusing on specific fact, or diverting it, is included in this tactic.

[...] another important aspect: the fact that, as a rule, white-collar criminals, unlike street criminals, participate in the same social leisure and entertainment locus of those who will prosecute them and judges them by the practices of their crimes (the legal operators), circumstances to contribute, per se, so that they are not stigmatized as authentic delinquents that they are. Indeed, both attend the same restaurants, sports clubs, theatres, cultural events, beaches and hotels; have their children enrolled in the same schools, common friends, and this when they do not come from the same family origin or belong, one or the other, to the family of some of their very close.

These statements, indicate the subtle way in which the criminal conduct of the white-collar criminal takes on the air of sweetness and ends up in the conscience of the operator of the law, who considers it not as a model of behaviour, as "a mere legislative adversity, which is undesirable, but whose physical and immediate invisibility of the damage resulting therefore intimately prohibits it from comparing it to serious crimes ..."

The 'natural' practice of differentiation in treatment.

What is underpinned by this privileged treatment is not the law - in some cases, it may even be -, even less the Constitution, whose value contributions would allow a treatment, but in disfavour, never for the sake of "white collar" delinquency.

The Sublime Comporta resort has long been considered by the New York Times as one of the 52 must see places around the world and excels in luxury in an area of outstanding natural beauty. And of course, it is not accessible to all wallets. A couple of nights is never below 1000 euros, and the average is between 4 and 5 thousand euros for minimum stays of 4 nights.

It was in 2014 that the world of Ricardo Salgado collapsed, with bankruptcy and redemption to Banco Espírito Santo, worth several hundred million euros. The banker came to be arrested at his home and later released on a historic bond of 3 million euros.

Conclusion about the study case:

W3e3Ricardo Salgado is involved in 9 lawsuits and charged by the Public Prosecution Service with 21 crimes - 1 of active corruption of political office holder, 2 of active corruption, 9 of money laundering, 3 of trust abuse, 3 of falsification of documents and 3 of qualified tax fraud.

Already this year, at the end of April, the former administrator of BES was condemned by the Court of Santarem to pay a fine of 3.7 million Euros in the Banco de Portugal, and was also prohibited from holding positions in the banking sector for 8 years.

In 2018 the old banker Ricardo Salgado is back to Comporta, his destination of choice for vacations. After not having accompanied his wife, Maria João Salgado, staying in a house of 11 rooms that the couple holds near the beach of Pêgo, who was called "The Owner Of Everything", dines in one of the most luxurious resorts in the area, the Sublime Comporta,

Currently he lives with a monthly pension of 39,162 Euros.

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